

06.12.2022
DL-65
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3950 of 2022

Shri Shibsankar Mukherjee
Vs.
The State of West Bengal & Ors.

Mr. Barnamoy Basak,
Mr. S. Chakraborty
.....for the petitioner.

Mr. Amal Kumar Sen, AGP,
Mr. Sabyasachi Mondal
.....for C.S.T.C.

The petitioner has prayed for compassionate appointment on the ground that his father, who was an employee of Calcutta State Transport Corporation (in short, "CSTC"), was permanently incapacitated and declared "unfit" for any job on and from January 5, 1999. The petitioner's grievance is that several representations have been made by the petitioner from 1999 onwards, but the petitioner was not considered for appointment on compassionate ground. The last representation of the petitioner was made on July 2, 2021. Thereafter, the petitioner approached this Hon'ble Court by filing an application under Article 226 of the Constitution of India.

A coordinate Bench of this Hon'ble Court directed a report to be filed by CSTC clarifying the following issues :-

- (a) whether there was any scheme for employment on compassionate ground in CSTC at the specific point of time when the petitioner's father was declared unfit and the petitioner's mother made an application for appointment on compassionate ground for the petitioner;
- (b) whether such scheme has been withdrawn;
- (c) the time from which it has been withdrawn;
- (d) steps taken by CSTC upon receiving the application for compassionate appointment;
- (e) whether any appointment on compassionate ground has been given from February 5, 1999 to March 3, 2022.

From the perusal of the report on affidavit filed by the Managing Director, CSTC, it appears that the petitioner's representations were not considered since the Labour Department's notifications, both dated August 21, 2022 were not applicable to CSTC. Furthermore, the petitioner's father did not have more than two years of service left before reaching the age of superannuation and, therefore, his dependants could not be considered for appointment.

From a notification dated October 29, 2009 annexed to the report, it appears that 276 casual/contractual workers who were appointed on compassionate ground against the vacant regular posts got their services regularised.

Mr. Basak, learned counsel, appearing on behalf of the petitioner submits that despite regularisation of 276 casual/contractual workers of CSTC, the petitioner's representation for compassionate appointment was not considered.

Mr. Sen, learned counsel, appearing on behalf of CSTC submits that no appointment was given on compassionate ground in the category where the employees were declared to be permanently "unfit". The appointments were only made in died-in-harness category. All the casual/contractual workers of CSTC were working for quite some times with the Corporation before their services were regularised.

This Court finds that the applicable policy will be the policy that was prevalent on January 6, 1999, the date on which the petitioner's father was prematurely retired after being declared "unfit".

This Court finds that there is no mention of the scheme pursuant to which 276 casual/contractual workers of CSTC were appointed on compassionate ground only in "died-in-harness" category and not in "permanently unfit" category, in the notification dated October 29, 2009. From the report filed by the CSTC, no conclusion can be reached on the question of the scheme pursuant to which appointments of 276 casual/contractual appointments were initially made on compassionate ground. Had the appointments

been made pursuant to a scheme, CSTC were under an obligation to disclose it in their report. Had the said appointments been made without a scheme, then the Respondents arguments that only appointments were made in died-in-harness category due to the policy of CSTC is untenable in law. Furthermore, the contention that the petitioner's case cannot be accepted since there was no scheme can also not be accepted since others were engaged without a scheme. Furthermore, the report is silent on the Coordinate Bench's query regarding the prevalent scheme and its subsequent withdrawal. The Respondents have failed to show the steps taken by them pursuant to the representations made by the petitioner. Had no scheme been in place during the relevant time, there was no impediment in considering the repeated representations of the petitioner.

Having considered the rival submissions of the parties and the materials placed on record, this Court directs the respondent no.3 to consider the representations of the petitioner including the representation dated July 2, 2021 keeping in mind the notification dated October 29, 2009.

Let the representations of the petitioner be disposed of within 8 weeks from date upon giving a personal hearing to the petitioner. Let a reasoned

order be passed and communicated to the petitioner within 2 weeks of passing thereof, in the light of the discussions above.

With the directions aforesaid, **WPA 3950 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)