

29.03.2022

Court : 04
Item : PB-01
Matter : FMA
Status : DO
Transcriber: nandy

FMA 66 of 2022

with

CAN 1 of 2021

Mrinal Kanti Khumbhakar

Vs.

The State of West Bengal & Ors.

Mr. Dilip Kumar Sinha, Advocate

.....for the Petitioners

Mr. Rajarshi Basu, Advocate

Mr. K.M. Hossain, Advocate

.....for the State

The instant matter pertains to the compassionate appointment at the behest of the son of the employee who died on January 21, 2002 but the said application was kept in abeyance for a pretty long time which compelled the appellant/petitioner to approach this Court by filing a writ-petition being WP 16217 (W) of 2003. While disposing of the writ-petition direction was passed upon the Director of Public Instruction, respondent no. 2 herein, to consider the application made by the petitioner in accordance with law within the stipulated time.

The said respondent disposed of the said application directing the Principal of the College to forward the requisite information as well as the application filed by the petitioner before it. However, the gratuity and family pension was released but to the dismay, no steps were taken to forward the said application by the college.

The dispute hinges on the stand of two authorities i.e. the Principal of the College and the Respondent no. 2. The respondent no. 2 took a stand that the application along with the requisite information were never forwarded to the respondent no. 2 whereas the latter authority i.e. the Principal of the College was firm in his stand that the said application was forwarded along with requisite documents.

Be that as it may, further approach was made to this Court and the writ-petition was pending for a pretty long time. Even on one occasion because of the non-appearance of the petitioner the said application was dismissed for default but later on the same was restored even after an enormous delay. Obviously the Court found the explanation offered for non-appearance to come within the ambit of sufficient cause while restoring the said writ-petition. The writ-petition was ultimately dismissed solely on the ground that since the matter is pending for pretty long time, the purpose of the appointment on compassionate ground has elapsed.

The litigation, which was pending in the docket of the Court for pretty long time because of the inability of the Court to take up the matter and dispose of timely, cannot be a ground to defeat the claim. Merely because of the family has survived

for such a long time, does not *ipso facto* lead to the inference that the same is not in financial distress. The act of the Court shall not prejudice the litigant. The aforesaid principle is well founded on the legal maxim "*actus curiae neminem gravabit*". The compassionate appointment is not an alternative mode but the scheme is framed to aid the family who suffered financial crunch because of the death of the bread-earner. Though sometime it is perceived as contravening to the provisions contained under Article 14 of the Constitution but the same has received the legal sanction in this regard with the avowed object of providing financial stability to the family. The delay in disposal of the writ-petition cannot be construed to defeat the right, which is accrued under the scheme.

Therefore, we cannot concur with the view of the single Bench while dismissing the writ-petition on such score.

The impugned order is set aside.

The respondent no. 2 herein is directed to consider the application of the petitioner within four weeks from the date of communication of this order and shall dispose of the same by recording proper reasons.

It goes without saying that the respondent no. 2 shall be free to call for any information or the

documents as deem fit and shall not unnecessarily delay the disposal of the application.

With these observations, the appeal being **FMA 66 of 2022** and the connected application being **CAN 1 of 2021** are **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)