

In The High Court At Calcutta
Civil Appellate Jurisdiction

Present:

The Hon'ble Justice Harish Tandon.
&
The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 80 of 2022

Antara Banerjee
v.
The State of West Bengal and Others.

For the Petitioner	: Mr. Anjan Bhattacharyya, Ms. Anita Shaw.
For the Respondents.	: Mr. Raja Saha, Mr. Biswabrata Basu Mallick, Mr. Sayan Ganguly.

Heard on : November 21, 2022.

Judgment on : November 21, 2022.

The Court:- At the very outset we must record that neither the Court nor the Tribunal or the persons manning such Institution can make out a

case on behalf of the parties for the purpose of deciding the disputes dehors the pleadings as well as the matter of record.

Unfortunately the instant litigation is travelling from one forum to another in relation to a dispute concerning the compassionate appointment. Upon an unfortunate death of a Government employee, the family is put in penury. Undeniably the Government employee had two daughters, who were given in marriage, and left the widow; which appears from the record does not have sufficient means to cater her need. The financial position of the married daughter, who applied for compassionate appointment and 'No Objection' was given by the other family members as she does not appear to have sufficient means to meet the expenses of the family. An application was made by a married daughter and our attention is drawn to the report of the enquiry committee recommending the fact that the family has no sufficient means to sustain, as the income is not in commensurate with the West Bengal Scheme for Compassionate Appointment, 2013.

It is no longer res-integra that the compassionate appointment is an exception to Article 14 of the Constitution of India and must be on the basis of the scheme or the rules framed by the employer to provide sustainability to the family members, who suddenly suffered financial crunch because of untimely death of the sole bread earner and to assist and help them to tide over therefrom.

Admittedly the scheme is in place, as indicated above, defining the "Dependent Family Members" in paragraph 3 thereof to mean spouse, son (including legally adopted son before death or incapacitation); unmarried daughter (including legally adopted unmarried daughter before death or incapacitation); married daughter who on the date of death or incapacitation was unmarried; brother or sister in case the employee is

unmarried, who are wholly dependant on the Government employee at the time of his death.

The question of dependency appears to have stringently incorporated in the category of 'brother and sister' of an unmarried employee at the time of death of the Government employee. However, paragraph 6 talks about the eligibility where the family appears to be indigent and requires immediate assistance for relief from financial destitution. The parameters in this regard have been incorporated therein, which appears to be vast and takes care of every situation. There was serious concern on the definition of "dependent family member" more particularly to the married daughter because of the further conditions being imposed therein to the effect that she must be unmarried at the time of death or incapacitation.

Ultimately the Special Bench was constituted because of inconsistent views in this regard in the case of State of West Bengal & Ors vs. Purnima Das & Ors. (F.M.A. 1277 of 2015). By judgement dated 13th September, 2017 the Special Bench struck down the adjective "unmarried" appearing before "daughter" to be violative of Constitution of India and further held that for the purpose of compassionate appointment, once the need is established in accordance with the formula laid down in the aforesaid Rules, the daughter, who is married, on the death of the Government employee must succeed in her claim of being entirely dependant on the earning of her father/mother on the date of his or her death and agree to look after the other family members of the deceased, if the claim is to be considered further.

The moment the aforesaid adjective is declared unconstitutional and violative of the Constitutional provisions, such declaration of law is binding on the authorities or the Government Instrumentality who cannot take

shelter that qualification attached to married daughter with an intent to thwart the legitimate claim.

The first rejection was on the ground that the married daughter who was not unmarried at the time of death of the Government employee cannot be brought within the ambit of the dependant family member under the aforesaid scheme. The said decision was challenged by the petitioner in OA 231 of 2021 before the Tribunal and the Tribunal after noticing the judgement of the Special Bench rendered in the aforesaid case directed the Secretary, Department of Health and Family Welfare, Government of West Bengal, to consider the case of the petitioner for appointment on compassionate ground in the light of the enquiry report for employment on compassionate ground. The said authority after the direction passed by the Tribunal further rejected the application taking a circuitous route and relying upon a judgement of the Supreme Court in case of *N. C. Santosh vs. State of Karnataka & Ors.* reported in (2020) 7 SCC 617 to the effect that in the said judgement the Apex Court has held that the compassionate appointment is an exception to the general Rule and, therefore, no aspirant has a right of compassionate appointment, as it can only be done on the norms laid down by the State policy or the satisfaction of the eligibility criteria as per policy. Another ground was taken that the earlier application was rejected and, therefore, in such perspective the application cannot be allowed.

Curiously enough the Tribunal did not interfere with the said order and founded its judgement on the first day of the Motion on extraneous factor, which is neither pleaded by the parties nor canvassed before it in any form. It is not expected that the Member of the Tribunal would make out a case on its own and dismissed the proceeding on such irrelevant factors. The authority while rejecting the application held that the

compassionate appointment is an exception to the general Rule and no inchoate right is vested upon the aspirant to seek the same unless the same is provided in the norms or the Rules framed by the State Government or the statutory authority. The Tribunal ought to have gone deep into the same and should fathom the ratio decidendi of the judgement rendered in N. C. Santosh (supra).

The judgement is to be read in the perspective of the factual matrix and the stray observation de hors the contextual text should not be applied as ratio decidendi. In the said Report the matter which fell for consideration before the Supreme Court was when a Rule provides that a minor has attained majority within the stipulated time and if the same has not been done, whether there is any question of extending the period simply because the claim was made after attaining the majority. Another important aspect, which is raised in the said Report, was as to whether the unamended provisions of the Rules shall apply or the amended provision; and in such perspective it was held on facts that the unamended Rules will not apply.

We do not find from the meaningful reading of the said judgement that the Apex Court has held that married daughter is completely debarred from being considered for compassionate appointment. The said issue was neither involved in the said judgement nor decided. We have been given to understand that the judgement of the Special Bench was challenged before the Supreme Court and the Special Leave Petition was dismissed and, therefore, the moment the said adjective “unmarried” appearing in the Rule has been struck down being ultra vires to the Constitution, the existence of the same by the authority was unwarranted and beyond the scope of the authority it possess. Furthermore, the eligibility criteria enshrined in the said scheme is exhaustive and imbibes within itself various conditions

bearing in mind that the compassionate appointment is regarded as an exception to the normal Rule of employment and may override the mandate of Article 14 of the Constitution, yet it is constitutionally valid because of its object and purpose.

We do not further countenance to the second ground indicated in the order of the authority that the moment the earlier application was dismissed, the subsequent application cannot be considered. The said authority either purposedly or overlooked the fact that the earlier order of the authority was set aside by the Tribunal with specific direction to consider the said application in the light of the observations made therein and also the enquiry report submitted by the committee.

As indicated above the committee found that the family needs appointment on compassionate ground of the petitioner and may be considered in this regard. The moment eligibility criteria incorporated under paragraph 6 of the said scheme is found to have been fulfilled or satisfied by the enquiry committee and, in fact, recommendation was made in this regard, unless there is incriminating materials found in course of hearing by the said authority and if there is no material to raise any doubt upon the recommendation of the enquiry committee, simply because the said authority formed another opinion, cannot be the ground for rejection of the said application. The moment earlier order is quashed and set aside, whatever observed therein lost its existence and cannot be re-imposed or resurrected at the subsequent stage.

On both the counts we do not find that the authority acted within its competence to pass the impugned order and the Tribunal ought to have taken into consideration the above aspect before it proceeded in haste without inviting the respondents to disclose their stand.

Since we have ventured to go into the nitty-gritty of the order passed by the authority and found to be infirm or contrary to the law, we find that it would be an idle formality to relegate the matter to the Tribunal for further consideration.

In view of the findings recorded hereinabove, the order of the authority challenged before the Tribunal is quashed and set aside. Since there is no counter-report submitted by the enquiry committee and in view of the observations made by the Tribunal in the earlier tribunal application, we direct the Secretary to consider the said application within fortnight from the date of the communication of this order and pass an appropriate order for appointment of the petitioner on compassionate ground in the light of the observations made hereinbefore.

The writ petition is thus disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)