

15.03.2022
Ct. 25
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WPA 16594 of 2015

Tofayel Pir

-Vs-

State of West Bengal & Ors.

Mr. Subhasish Pachhal,

... for the petitioner

Ms. Sipra Majumdar,
Ms. Prativa Ghatak,

... for the State

The father of the writ petitioner while working as a Secretary of Uchchagram Gram Panchayat met with a vital accident and ultimately succumbed to injuries on August 7, 2014. The petitioner submitted an application for compassionate appointment before the Block Development Officer, Galsi-I, on August 12, 2014. The petitioner subsequently made another representation on November 3, 2014. The instant writ petition has been filed alleging inaction on the part of the respondent authorities to grant compassionate appointment to the petitioner in terms of the application dated August 12, 2014.

The State, by filing the affidavit-in-opposition, has stated that the family of the deceased has no urgent need of financial assistance. Report of the enquiry

committee has been annexed to the said affidavit and it was reported that the monthly income of the family is nearly the same to the net claim of the salary last drawn by the deceased employee.

Mr. Pachhal, learned advocate for the petitioner submits that the report of the enquiry committee took into account the monthly income from moveable and immovable properties, which is not based on any evidence. He also submits that the said report took into consideration the net claim whereas the relevant scheme provides for consideration of gross monthly salary of the deceased employee.

He further submits that the compassionate appointment cannot be denied on the ground that the mother of the petitioner is getting family pension. In support of his submission, he relies upon a judgement of the Hon'ble Supreme Court in the case of *Govinda Prakash Verma Vs. Life Insurance Corporation of India and Others*, reported at (2005) 10 SCC 289. He thus submits that the authority acted illegally and mala fide by not considering the prayer for compassionate appointment.

Learned advocate appearing for the State submits that the enquiry committee after making necessary enquiry reported that the monthly income of the family is nearly the same as the net salary that was drawn by the deceased employee at the relevant point of time.

She, however, submits that the father of the petitioner died some time in the year 2014 and more than seven years have passed in the meantime and as such, at this point of time, it cannot be said that there is any immediate need for employment. On the ground of delay and laches, she relied upon a coordinate Bench decision of this Court in the case of *Bijon Mukherjee Vs. The State of West Bengal & Ors*, reported at 2018 (3) CLJ (Cal) and also on an unreported judgement of a coordinate Bench of this Court in WPA 20969 of 2021 (Anindita Mandal Vs. The State of West Bengal & Ors.) delivered on February 21, 2022. She, thus, submits that the prayer for compassionate appointment is to be rejected by this Court.

I have heard the learned advocates for the parties and perused the materials on record. From the report of the enquiry committee, it appears that the committee took into consideration the monthly family pension as well as the estimated interest income on death gratuity and leave salary for the purpose of calculating the family income. It further appears from the said report that the family of the deceased was yet to receive the leave salary. The said committee, however, took into account the estimated monthly income from the moveable and immovable properties without specifying the basis of such estimate. Though it has been stated that the monthly income from such properties appeared

from the enquiry but the said report is silent as to the mode of making such enquiry and the persons, who were enquired, for arriving at the said figure.

Thus, this Court is of the view that the monthly income from moveable and immovable properties, which has been taken into consideration by the enquiry committee do not have any basis. The petitioner places reliance upon the Notification No. 251-Emp. dated December 3, 2013 and contends that the eligibility conditions laid down in the said notification is applicable in the instant case. The father of the petitioner died some time in the year 2014 and no other notification has been placed before the Court by the State respondents to show that such scheme was not applicable for the petitioner.

From the enquiry report annexed to the affidavit-in-opposition it appears to this Court that the Enquiry Committee observed that the monthly income of the family is nearly same to the net claim of the salary last drawn by the deceased employee though the eligibility condition in the Notification dated 03.12.2013 provides that an applicant will be eligible for appointment if the monthly income of the family falls below 90% of the gross monthly salary.

Thus, the report of the enquiry committee is without any basis and the same also do not conform to the notification of 2013. Thus the same cannot be

taken into consideration for deciding the petitioner's claim for compassionate appointment.

The unreported judgement of the coordinate Bench of this Court in the case of *Anindita Mandal (supra)* is not applicable to the facts of the instant case, as the mother of the petitioner in the said case was a teacher of a school. In view thereof, it was held by the coordinate Bench that it is not a case where the family is facing crisis to arrange even two square meals.

The another coordinate Bench in the case of *Bijon Mukherjee (supra)* dismissed the writ petition merely on the ground that the same was filed at the belated stage. It was observed by the Hon'ble Judge that the petitioner approached the Court after more six years after the concerned authority had rejected the application. However the petitioner in the instant case approached the court promptly.

The decision of the Hon'ble Supreme Court in *Govind Prakash Verma (supra)* is not relevant for the purpose of deciding the instant writ petition in view of the order proposed to be made. In the said decision the prayer for compassionate appointment was refused by the authority on the ground that the widow of the deceased was enjoying monthly pension apart from other terminal benefits. However, in the instant case the respondent authority is yet to take any decision on

the prayer of the petitioner for compassionate appointment. In view thereof such issue is left open.

It further appears from the enquiry report that the same was forwarded to the B.D.O. for taking necessary action. However, the respondents are silent whether any decision with regard to the prayer for compassionate appointment has been taken.

The petitioner now says that due to passage of time the monthly family pension has been reduced. Thus, this Court is of the view that a direction should be passed upon the respondents to take a decision on the prayer for compassionate appointment in the light of the observations made hereinabove.

The Block Development Officer, Galsi-I, being the respondent No. 7 herein is directed to consider the application for compassionate appointment filed by the petitioner on August 12, 2014 after making a fresh enquiry in accordance with the provisions of the relevant scheme for compassionate appointment and pass a reasoned order. The entire exercise shall be completed within a period of twelve (12) weeks from the date of communication of this order.

Needless to mention that the decision taken by the authorities shall be communicated to the petitioner within a week thereafter.

With the above observations, the writ petition being W.P.A. 16594 of 2015 stands disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(**Hiranmay Bhattacharyya, J.**)