

04 04.08.2022
BD Ct.15

W.P.A. 17444 of 2019

Shri Krishnendu Ghoshal

-vs-

The State of West Bengal & Ors.

Mr. Arabinda Chatterjee

Mr. Arkadipta Sengupta

... for the petitioner.

Mr. Susanta Pal

Mr. Prabir Kumar Ray

... for the State.

The petitioner has questioned the decision of the Commissioner of School Education, West Bengal issued under memo dated 18th July, 2017 whereby the claim of the petitioner for appointment on compassionate ground due to untimely death of his mother was spurned.

The Court has perused such decision of the Commissioner of School Education, West Bengal which has been taken pursuant to order dated 22nd September, 2016 passed by a co-ordinate Bench on a writ petition being WPA 17609 of 2016.

Petitioner's mother was an assistant teacher in a primary school in the district of Howrah and died in harness on 1st December, 2010 pursuant thereto petitioner applied for appointment on compassionate ground and same was kept pending which triggered the first writ petition being WPA 17609 of 2016 and the same was disposed of by the co-ordinate Bench upon directing the respondent authority to take decision on entitlement of the petitioner to be appointed under death in harness

category.

Ultimately Commissioner of School Education, West Bengal, being the respondent no. 2 passed an order rejecting the claim of the petitioner. It is needed to be indicated herein that an order was passed by the Hon'ble Division Bench on intra Court appeals preferred by the contemnor against two orders one is dated 17th July, 2018 and another is dated 5th September, 2018 passed in a contempt proceeding initiated by the petitioner herein on alleged violation of the order dated 22nd September, 2016. Ultimately the Hon'ble Division Bench while disposing of two intra Court appeals vide judgement dated 30th July, 2019 held the impugned order of the respondent no. 2 as contained in memo dated 18th July, 2017 may give rise to a fresh cause of action but in the contempt proceeding the legality of the said order cannot be delved into. Pursuant to the observation made by the Hon'ble Division Bench in the judgment dated 30th July, 2019 the present writ petition was filed by the petitioner, *inter alia*, challenging the decision of the respondent no.2 as contained in memo dated 18th July, 2017 whereby the claim of the petitioner for according appointment on compassionate ground was rejected.

Mr. Arabindo Chatterjee, learned senior advocate representing the petitioner has submitted that while calculating the family income of the petitioner in terms of the relevant rules in order to find out the financial hardship unnecessarily the respondent no.2 took into consideration annual

income of the father of the petitioner was Rs. 60,000/-. As a result thereof by arithmetical calculation in terms of the method as contained in the relevant rules it was found that the monthly income of the petitioner's family is Rs. 11794/- being greater than the gross salary of a Group-D staff at the material point of time that is Rs. 10,200/-. It has been contended that basis of such consideration of the annual income of the father of the petitioner, that is found to be Rs. 60,000/-, is the certificate issued by the Block Development Officer, Jagatballavpur, Howrah, dated 10th December, 2015. It has also been contended that there is no basis of such certificate issued by the Block Development Officer and the respondent no. 2 ought not to have relied upon such certificate in order to come to a conclusion that father of the petitioner is having yearly income of Rs. 60,000/-. Therefore, according to the petitioner the calculation ought to have been made by the respondent authorities only based on the family pension which the petitioner's father received due to death of mother of the petitioner. It has also been submitted that had the calculation been made simply on the basis of such family pension which the father of the petitioner is receiving every month then the petitioner would have been found to be eligible for being appointed on compassionate ground.

Mr. Susanta Pal, learned advocate appears on behalf of the State respondents and in order to refute the submission made on behalf of the petitioner has drawn attention of this Court to the

order passed by the respondent no. 2 which is impugned in this writ petition wherefrom it appears on request being made by the respondent no. 2 the Chairman of the District Primary School Council, Howrah, vide memo dated 16th June, 2017 forwarded the certificate of the concerned Block Development Officer dated 10th December, 2015 and on receipt of the same while calculating the family income of the petitioner according to Mr. Pal the respondent no. 2 has rightly taken into consideration Rs. 60,000/- being the yearly income of the father of the petitioner.

According to the State respondents there is no anomaly in the order passed by the respondent no. 2 while rejecting the claim of the petitioner for appointment on compassionate ground.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record including the pleadings used by the respective parties.

It appears that in paragraph 13 of the affidavit-in-opposition it has been specifically averred on behalf of the State respondents that Sri Nemai Chandra Ghosal, being the father of the petitioner by affirming the affidavit on 7th September, 2011 described himself as retired person. In addition thereto it is stated that petitioner's father is a retired employee of Central Inland Water Transport Corporation Limited (A Government of India undertaking) and who retired voluntarily with effect from 31st March, 2001 and in

receipt of monthly pension @ Rs. 1110/-. In support of such submission a document has been annexed at page 34 of the affidavit-in-opposition dated 30th June, 2006 issued by the Assistant Provident Fund Commissioner (Pension) West Bengal, Howrah, which also corroborates such statements made in the affidavit-in-opposition.

Having noticed specific averments made in the affidavit-in-opposition this Court has made an endeavor to find out how this issue has been dealt with in the affidavit-in-reply by the petitioner but in paragraph 18 of the affidavit-in-reply wherein the statements made in paragraph 13 of the affidavit-in-opposition have been dealt with does not reveal disclosure of any facts relating to employment of the father of the petitioner and exact amount which he received on his voluntary retirement excepting formal denial at the first part of the said paragraph 18 relating to the statements made in paragraph 13 of the affidavit-in-opposition.

For effective adjudication of the issue involved in this writ petition as raised by the petitioner it would have been incumbent upon the petitioner to be very specific while dealing with the statements in paragraph 13 of the affidavit-in-opposition of the State respondents. In his affidavit-in-reply he ought to have disclosed service benefits/terminal benefits which the petitioner's father received on acceptance of voluntary retirement by the employer of the father of the petitioner.

Failure of the petitioner to disclose the aforesaid details relating to the service benefits accrued in favour of his father at the time of voluntary retirement appears to be fatal in consideration of the nature of relief claimed in the present writ petition. In stead of simply questioning the certificate of the Block Development Officer dated 10th December, 2015 the petitioner could have been candid before this Court in the matter of disclosure of service benefits which his father received due to voluntary retirement. The blanket challenge thrown to the said certificate of the Block Development Officer dated 10th December, 2015 pales into insignificance due to failure on the part of the petitioner to deal with the statements made by the State respondents in paragraph 13 of the affidavit-in-opposition.

In above conspectus the exercise made by the respondent no. 2 while calculating family income of the petitioner upon taking into consideration Rs. 60,000/- being the yearly income of the father of the petitioner does not call for interference.

Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

