

08
21.12.2022
S.D.

W.P.A. 25740 of 2022

**Sri Soumen Sur
Vs.
The State of West Bengal & Ors.**

Mr. Asim Hati
Ms. Nandini Sharma
Ms. Riya Ballav

..For the Petitioner

Mr. Soumik Ganguly

..For the Respondent No.4

Pursuant to the observations made by this Court, the petitioner has served the respondent concerned being the OSD and Deputy Secretary, Panchayat and Rural Development and Additional Executive Officer, Government of West Bengal. Despite being served twice, no one represents the respondent concerned.

Mr. Ganguly, learned counsel represents the respondent no. 4.

The petitioner's grievance is that his prayer for compassionate appointment was rejected arbitrarily/illegally and due to error apparent on the face of the records by the impugned order dated March 25, 2021. The said impugned

order was issued pursuant to an order passed by this Coordinate Bench in W.P. No. 652 (W) of 2019.

The petitioner's case is that his father died-in-harness on June 18, 1999 while working at the Parishad Press at Bankura. The petitioner/his mother made several representations for being appointed on compassionate ground, but the said representations did not come to any fruition. By an office memo dated June 18, 2015, the Additional Executive Officer, Bankura Zilla Parishad recommended the respondent no. 3/OSD and Deputy Secretary to consider the petitioner's case for appointment on compassionate ground since his family was in need immediately financial assistance. Despite such recommendation, the petitioner's case was not considered. Therefore, the petitioner approached this Hon'ble Court by filing W.P. 652 (W) of 2019.

Mr. Hati, learned counsel appearing on behalf of the petitioner argues that the impugned order is unsustainable/bad on two grounds; (i) the Additional Secretary to the Government of West Bengal held that the Notification applicable at the material point of time is the Notification dated August 21, 2002 passed by the Chief

Secretary and (ii) the family was unable to make out the case of immediate financial assistance.

He submits that the relevant Notification was the Notification applicable at the time of the death of the deceased employee, i.e. the Notification dated November 18, 1997 passed by the Chief Secretary, Government of West Bengal.

A copy of the relevant Notification dated November 18, 1997 as handed over in Court today is retained with the records.

Furthermore, the fact that the petitioner's family was in immediate financial need was also assessed by the respondent no. 4 and recommendation was made for giving him financial assistance by granting compassionate appointment. Despite such fact finding, the respondent no. 3/the Additional Secretary refused to consider the petitioner's prayer for appointment on compassionate ground.

Having considered the submissions made on behalf of the petitioner and the materials placed on record, this Court finds that the applicable Notification is the Notification that was prevalent at the time of the death of the deceased employee. In this case, it is the Notification dated November 18, 1997.

The aforesaid proposition of law is well settled and also reiterated in a recent judgment of the Apex Court reported in **(2022) 2 SCC 157 (State of Madhya Pradesh and Ors. Vs. Ashish Awasthi)**.

Furthermore, the recommendation of the fact-finding authority had to be considered by the Additional Secretary/respondent no. 3 while disposing of the application of the petitioner. The Additional Secretary while passing the reasoned order misdirected himself on the question of law and on facts. Therefore, the impugned order dated March 25, 2021 is set aside and/or quashed. In the light of discussions above, the respondent no. 3 and/or any other official delegated by him is directed to consider the petitioner's representations including the one dated September 20, 2022. The said representation had to be considered within six weeks from the date of the order upon giving a personal hearing to the petitioner. The observations made by this Court will be taken into account while considering the representations of the petitioner. A reasoned order shall be communicated to the petitioner within two weeks of passing thereof.

With the directions aforesaid, **W.P.A. 25740 of 2022** is **disposed of**.

Since no affidavits have been directed to be exchanged, all the allegations contained therein are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

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

(Lapita Banerji, J.)