

28.03.2023
Court No.12
S/L. No.9
Sourav/
Suvayan

MAT 176 of 2018
With
CAN 1 of 2018 (Old No: CAN 1139 of 2018)
With
CAN 2 of 2018 (Old No: CAN 5525 of 2018)
With
CAN 4 of 2020
[CAN 4 of 2020 is not here]

Jagannath Nayek & Ors.
Vs.
The State of West Bengal & Ors.

Mr. S. N. Mitra, Sr. Adv.
Mr. Timir Baran Saha

...for the appellants.

Heard Mr. S. N. Mitra, learned Senior Counsel
being assisted by Mr. T. B. Saha, learned Counsel for
the appellants. None appears for the
State/respondents.

The present appellant's father was an existing
M. R. Distributor. On his death, the present appellant
along with his sister-in-law applied for their
engagement as M. R. Distributor in the place of the
late father of the present appellant on compassionate
ground under Clause 26 (VI) of the West Bengal Public
Distribution System (Maintenance and Control) Order,
2013, (in short 2013, Control Order). The competent
authority conveyed the appellant that they cannot
accept the joint application of the appellant along with
his sister-in-law and the appellant should apply for
compassionate appointment in his individual capacity.

The appellant, thereafter, applied in prescribed form for compassionate engagement as M. R. Distributor under Clause 26 (VI) of 2013, Control Order. When the competent authority sat over the matter, the appellant moved this Court in WP 18761 (W) of 2014 for necessary direction to the competent authority to consider the application of the appellant. Said writ petition was disposed of on 14.07.2014 directing the competent authority to consider the application of the appellant for compassionate appointment in place of his deceased father in accordance with law and pass a reasoned order thereon within eight weeks from the date of communication of this order.

In obedience to the aforesaid order of this Court, the Sub-Divisional Controller, Food & Supplies, Burdwan forwarded the application of the appellant to the District Controller, Food & Supplies, Bardhaman with comment from his end. Prior to the forwarding of the application of the appellant by the District Controller, Food & Supplies, Bardhaman to the Director, an enquiry was conducted by Sub-Divisional Controller, Food & Supplies, Burdwan in obedience to letter received from the Joint Director of Law, dated 31.07.2014. In course of enquiry, it was found that the appellant along with his sister-in-law is running a rice mill in the name and style of M/s. Jagannath Rice

Mill. As the appellant had regular means of subsistence, his application for compassionate appointment was rejected vide order dated 18.09.2014 passed by Sub-Divisional Controller, Food & Supplies, Burdwan.

Said order was challenged in the writ petition disposed of vide the impugned order holding that rejection of the application for the appellant for compassionate appointment is justified.

Mr. Mitra, learned Senior Counsel appearing for the appellants raises the following contentions before us:-

- i) the Sub-Divisional Controller, Food & Supplies, Burdwan having already forwarded the case of the appellant for compassionate appointment vide his letter dated 04.09.2014 to the District Controller, Food & Supplies, Bardhaman and the District Controller, Food & Supplies, Bardhaman having already forwarded the case of the appellant to the Director, Food & Supplies, the Sub-Divisional Controller, Food & Supplies, Burdwan, after enquiry had no jurisdiction to reject the prayer of the appellant for compassionate appointment

on the ground that he had regular means of subsistence;

- ii) The authority concerned should have given opportunity of hearing to the appellant inasmuch as the rice mill, they are alleged to be running is not sufficient to provide them adequate means of subsistence and the appellant is entitled to be appointed on compassionate ground.

Having heard the learned Senior Counsel for the appellants in absence of any counsel appearing for the State, we are of the view that the competent authority of the Food & Supplies Department are duty bound to find out whether an applicant has regular means of subsistence or not. If the income derived by the appellant is sufficient to maintain his family then his case for compassionate appointment may not be allowed. Further the competent authority is to find out whether the engagement of the appellant as M. R. Distributor is permissible under law when he is pursuing another avocation, on the date of application, irrespective of quantum of income, he is deriving from such avocation and to come to findings on both the aforesaid issues, it is necessary to give proper scope to the candidate to put forth his case before the competent authority in course of enquiry.

Regard being to all such facts and submissions, we remit the matter back to the Director, Food and Supplies for proper enquiry in the matter to take a decision after giving proper opportunity of hearing to the appellant. The entire exercise of enquiry and hearing of the appellant shall be completed within four months from the date of receipt of a copy of this order.

It is made clear that the appellant shall have obligation to produce before the authority concerned, all the documents he wishes to produce to substantiate his claim.

With the aforesaid observation, the appeal being **MAT 176 of 2018** and all connected applications are disposed of and the order passed by the Hon'ble Single Judge is set aside.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)