

179 14.8.2023
Ct-08

FMA 305 of 2019

**Bikash Chakraborty
Vs.
The State of West Bengal & Ors.**

ar

Mr. Mohinoor Rahaman
Ms. Maria Rahaman
... For the Appellant

Mr. Bhaskar Prasad Vaisya
Mr. Pinaki Bhattacharya
... For the Respondent nos. 3 & 4

Mr. Avishek Prasad
... For the State

1. We have heard the learned counsel appearing for the parties.

2. In terms of our earlier order Mr. Avishek Prasad, learned counsel for the State, has filed a report on behalf of the Commissioner of School Education, West Bengal, the respondent no. 2 regarding verification of the income and members in the family of Birendra Nath Chakraborty, deceased Assistant Teacher under Dum Dum North Circle residing at Kadihati, P.O Ganti.

3. Mr. Prasad relying upon the enquiry report has submitted that the elder son of the widow is residing at his in-law's house, situated about 500 mtrs from the residence of the widow. He also refers to a Circular of Government of West Bengal dated 31st August, 2006 being no. 568 to show the criterion to be applied for calculating

the income of family for being considered the appointment in a died-in-harness category.

4. Mr. Prasad has submitted that the ratio in ***Umesh Kumar Nagpal Vs. State of Haryana and Ors.***, reported in ***(1994) 4 SCC 138*** has been re-affirmed in ***State Bank of India & Ors. vs. Surya Narain Tripathi***, reported in ***(2014) 15 SCC 739*** and in view thereof, the decision in ***Govind Prakash Verma Vs. Life Insurance Corporation of India and Ors.*** reported in ***(2005) 10 SCC 289*** is no more a good law.”

5. Learned counsel for the appellant submits that the appellant is entitled to get appointment on compassionate ground because the family income is well within the statutory limit and shall come under zone of consideration, particularly after the elder son left the house and started living separately and accordingly the family pension is a relevant consideration.

6. The eligibility of the writ petitioner for being considered in the died-in-harness category has to be determined on the basis of the Circular applicable when the application was made for appointment. Mr. Prasad has referred to relevant circular, which laid down the criteria that is required to be fulfilled before the case of the

person can be forwarded with recommendation to the Commissioner for consideration.

7. The enquiry report filed discloses prima facie a fresh consideration is required with regard to the appointment of the appellant under the died-in-harness category.

8. The pensionary benefit can be taken into consideration for the purpose of deciding the eligibility criteria in terms of Circulars dated 28th January, 2008 and 26th June, 2009 and in view of the decision in ***Surya Narain Tripathi (supra)***. These Circulars are not under challenge. Prima facie it appears that the appellant is eligible.

9. Based on the aforesaid Circulars and the enquiry report filed by Mr. Prasad, we are of the view that District Primary School Council, North 24 Parganas, shall reconsider the matter afresh after giving a reasonable opportunity of hearing to the family members of the deceased and in the event the said authority is of the view that the appellant is eligible for consideration, a suitable proposal of recommendation shall be sent to the Commissioner forthwith.

10. The Commissioner shall, upon consideration of the said report, take appropriate

measure without any delay.

11. The entire process shall be completed within six weeks from the date of communication of this order by either of the parties to District Primary School Council, North 24 Parganas.

12. On such consideration, the appeal being FMA 305 of 2019 is allowed. The impugned order along with all previous orders refusing compassionate appointment is set aside. However, there shall be no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

