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24.1.2023
S.D.

W.P.A. 625 of 2023

Hafijur Rahaman & Anr.
Vs.
Union of India & Ors.

Mr. Tarun Kanti Halder
Mr. G.S. Kaderi

...For the petitioners

Mr. Sauvik Nandy
Mr. Tapan Bhanja

.....For the respondents

The petitioner no. 1 submits that his father died-in-harness on May 11, 2009. His father was an employee of Syama Prasad Mukherjee Port/Kolkata Port Trust. The petitioner no. 1 made an application for compassionate appointment within a few days. Thereafter, the writ petitioners filed an erstwhile writ petition being W.P. 16266 (W) of 2013. By an order passed by a Coordinate Bench on July 23, 2018, the previous writ petition was disposed of by directing the authorities to consider the application of the petitioner no. 1 for compassionate appointment dated September 15, 2009 by passing a reasoned order.

A reasoned order was passed on October 5, 2018 whereby the petitioner no. 1's representation was considered. The name of the petitioner no. 1 has been enlisted in 2009 for compassionate appointment in the Died-in-Harness category. The reason why the petitioner no. 1 has not yet been given appointment is the fact that the Ministry vide its letter dated November 19, 2001 directed that no entry level posts should be filled up without specific approval of the Ministry in exceptional cases. All the posts lying vacant for more than a year were to be treated as abolished. Since the total health of the Kolkata Port Trust started declining since 1997, stringent measures were taken to restrict various expenditures.

In the said reasoned order, it has been mentioned that a very few compassionate appointments were made involving accidental death while on duty.

Mr. Halder, learned counsel appearing on behalf of the petitioners submits that the petitioner no. 1 should be given compassionate appointment on the basis of the application dated September 15, 2009 on the basis of the recommendation made by the Director, Marine Department dated October 21/22/2009. Furthermore, a writ in the nature of mandamus should be issued for providing an amount of Rs.10 lakh as compensation to the petitioner no. 1 for inordinate delay in

appointing the petitioner no. 1 on compassionate ground. The petitioners also prayed for compensation to the tune of Rs.50 lakh due to the incidental reasons of failure to provide compassionate appointment so far. The petitioners have prayed for prohibiting the Port Trust for appointing any other person/new hands/fresher.

Mr. Nandy, learned counsel appearing on behalf of the Port Trust submits that the petitioners have claimed purely monetary reliefs in the writ petition and have also not challenged the reasoned order dated October 5, 2018.

Considering the submissions of the parties and the materials placed on record, this Court is of the view that the reasoned order dated October 5, 2018 has not been challenged in the present writ petition. The said failure to challenge the reasoned order which provides the reason for keeping the petitioner no. 1's name on roaster since 2009 and the reason for delay in appointing the petitioner no. 1 leads to the conclusion that the findings made therein remain uncontroverted.

The petitioners have prayed for mandamus directing the respondents to appoint the petitioner no. 1 without challenging the reasons for non-appointment till date.

This Court is of the view that such a course of action is not acceptable.

Furthermore, this Court is of the view that purely monetary reliefs have been claimed in the writ petition. A Writ Court is not an appropriate forum to agitate a grievance for such monetary reliefs to the petitioner no. 1 for delay in appointment on compassionate grounds. Such claims of the petitioner have no statutory colour nor have crystallized due to violation of any legal right of the petitioners by the respondents.

The petitioner no. 1 has no indefensible right for appointment on compassionate ground. The only issue that has to be examined by the Writ Court is the decision making process of the respondent authorities is bad due to arbitrariness or unfairness or perversity. Since the order dated October 5, 2018 is not under challenge, this Court cannot look into the decision making process behind passing of the said order by the respondent authorities in the present writ petition.

In the light of the discussions above, **W.P.A. 625 of 2023** is **dismissed**.

However, this order will not prevent the petitioners from challenging the reasoned order dated October 5, 2018, if so advised.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the present writ petition 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 **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.)