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16.08.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMA 2002 of 2018
With
CAN 1 of 2022**

**Mozammel Haque
Versus
State of West Bengal & Ors.**

**Mr. Ananda Mohan Sen.
... for the appellant**

**Mr. K.M. Hossain,
Mr. Sanatan Panja.
... for the State**

The land belonging to the mother of the appellant was acquired by the Secretary of the Irrigation and Waterways Directorate, Government of West Bengal. The mother of the appellant applied for appointment as her land was acquired for the purpose of construction of “MASKATA KHAL” Drainage Scheme under Basirhat Irrigation Sub-Division of Basirhat Irrigation Division on the land loser category. The respondent did not pass any order on the application.

The appellant filed the writ petition being W.P. no. 3578 (W) of 2014.

This Court by the order dated 16th January, 2015 directed the Secretary of the Irrigation and Waterways Directorate, Government of West Bengal the respondent no. 1 herein to pass orders on the application. By the order dated 8th October, 2015 the respondent no. 1 rejected the claim of the respondent and his mother. The appellant filed present writ petition challenging the order dated 08.10.2015 rejecting the claim of the appellant.

Learned Judge by the order dated 18.04.2017 dismissed the writ petition holding that there is no scope for consideration for giving the employment to the appellant.

Against the said order the present appeal is filed.

Learned counsel appearing for the appellant submitted that learned Judge failed to consider that reasons given by the respondent no. 1 in the impugned order is not valid. When the land of the appellant's mother was acquired, the appellant's name should have been empanelled on the application of his mother. Learned Judge ought to have directed the respondent to consider the name of the appellant as per the existing scheme. Learned Judge failed to consider the delay and laches on the part of the respondents in considering the application of the appellant and his mother under land loser category and prayed for allowing the writ petition.

Per contra, Mr. Hossain, learned counsel appearing for the State submitted that the respondent no. 1 is not the authority to consider the claim and appoint the person under land loser category. The respondent no. 1 considered the relevant circulars and notification and rejected the claim of the appellant as there is no scope for giving appointment under land loser category.

He further submitted that as per the notification dated 21.08.2002 the Screening Committee has been formed and he is not having any instructions as to whether the appellant's name was empanelled for appointment under land loser category and sent to the Directorate of Employment. He further submitted that the learned Judge considered the materials on record rightly dismissed the writ petition. The

present appeal is liable to be dismissed and prayed for dismissal of the appeal.

Heard Mr. Ananda Mohan Sen, learned counsel appearing for the appellant and K.M. Hossain, learned counsel appearing for the State and perused entire materials on record.

From the materials on record, it is seen the appointment was sought for by the appellant under land loser category. The appointment on compassionate ground for death of an employee, is given for immediate financial support of the death of the employee, the breadwinner of the family.

The application for compassionate appointment under land loser category, is different from the scheme for appointment on compassionate ground on the death of the employee while in service.

In the present case, the parties relied on the memorandum dated 14.10.1980 issued by the Labour Department, Government of West Bengal and notification dated 21.08.2002 issued by the Labour Department, Government of West Bengal. The memorandum dated 14th October, 1980 wherein it has been held that without any reference to the employment exchange under land loser category appointment is to be made. The subsequent notification dated 21st August, 2002 with regard to appointment on compassionate ground under land loser category. In this notification elaborate procedure is prescribed for giving appointment under land loser category. The procedure prescribed in the said notification is extracted as follows:-

Notification

No 303 – EMP/1M-10/2000 – 21st August, 2002 – In exercise of the powers conferred by sub-section (c) of section 3 of the west Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Bengal Act, XIV of 1999), the Governor is pleased to prescribe the following procedure for filling up the vacancies reserved for the Exempted Categories as specified under sub-section (a) of section 3 of the aforesaid Act.

A. GENERAL PROCEUDRE TO BE FOLLOWED RESPECT OF DIFFERENT EXEMPTED CATEGORIES:

- 1.***
- 2.***
- 3. Persons belonging to the families of Land Loser : (1) For the purpose of enlistment of eligible persons of this category the Government may constitute a screening committee for a District/Sub-Division. The Screening Committee will prepare a combined list in order of priority for families affected by acquisition of land and forward the same to the District Magistrate concerned. Till such committee is formed the District Magistrate concerned will prepare the list of eligible persons of this category.***
- (2) Only one member of a family of land loser will be eligible for consideration for enlistment in the exempted category. The beneficiary should be either an awardee of compensation for acquisition of land or a member of his family as may be nominated by the awardee.***
- (3) The order of priority in the list will be determined by the date of acquisition in chronological order.***

- (4) *The priority list should contain the name of the persons seeking employment, the nature and quantum of land acquire and quantum of land owned by the family, the employment status and earnings of the members of the family. The date of birth, educational standard of the enlisted persons should be indicated in the list. If any such person belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes that should be indicated against his name. In case of persons with disabilities the nature of disabilities may also be indicated.*
- (5) *In case of any doubt regarding the eligibility of a person and/or other connected issue reference may be made to the Labour Department for clarification and or decision.*
- (6) *The District Magistrate concerned will forward the list of eligible persons to the Director of Employment, West Bengal, and advise the enlisted persons to enroll their names in the Exempted Category Cell of the Directorate of Employment, West Bengal, at 67, Bentinck Street, Kolkata – 700 069, by producing supporting papers list of eligible persons of the category of land losers already prepared and maintained by the District Magistrates in terms of the earlier circulars issued by the Labour Department shall also be forwarded to the Director of Employment, West Bengal. The District Magistrate concerned shall advise such enlisted persons to get their names enrolled in the Exempted Category Cell of the Directorate of Employment by producing supporting papers.*
- (7) *The Director of Employment, West Bengal will maintain the list of eligible persons belonging to the exempted category of land losers as enrolled in the Exempted Category Cell along with the lists of eligible persons included in other exempted categories.”*

As per the procedure prescribed in notification dated 21st August, 2002 the Screening Committee has to be formed in every district to identify eligible persons for appointment on compassionate ground under land loser category. Once, the Screening Committee formed and identified the persons, the list has to be forwarded to the concerned District Magistrate who in turn will forward the name of the persons to the Directorate of Employment and advise the concerned persons to enroll their names in the Exempted Category Cell of the Directorate of Employment, West Bengal.

It is the contention of the learned counsel for the respondent that already the Screening Committee is formed. The list of eligible candidates were identified.

From notification dated 21.08.2002, it is seen, the Exempted Category Cell, Directorate of Employment is the authority to consider the appointment under land loser category. When the respondent no. 1 is not the authority to give employment for appointing under land loser category and the procedure is to be followed as per the notification dated 21st August, 2002, the respondent no. 1 ought to have forwarded the application of the appellant to the District Magistrate to forward the same to the Exempted Category Cell, Directorate of Employment under land loser category.

In view of the same, the order of the respondent no. 1 is liable to be set aside. Learned Judge has not considered above facts while dismissing the writ petition. For the above reason, the order of learned Judge is set aside.

The respondent no. 1 is directed to send the application of the appellant to the District Magistrate, North 24 Parganas.

The appellant is directed to enroll his name in the Exempted Category Cell of the Directorate of Employment, West Bengal, at 67, Bentinck Street, Kolkata – 700 069.

The District Magistrate, North 24 Parganas is directed to send the name of the appellant to the Exempted Category Cell of Directorate of Employment, West Bengal, if not already sent the name of the appellant. If name of the appellant is empanelled in the Exempted Category Cell, the Director of Employment is directed to sponsor the name of the appellant for employment under land loser category.

With above direction, the appeal is disposed of.

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

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)