

22.02.2023
DL-7
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 896 of 2023

Shyamolima Bhaumik
Vs.
The State of West Bengal & Ors.

Mr. Kalyan Kumar Chakraborty,
Mr. Vivek Kumar Pandey,
Mr. Kashinath Bhattacharyya
....for the petitioner.

Mr. S. S. Koley
.....for WBSEDCL.

The petitioner has challenged the impugned order dated December 22, 2022 passed by the Manager (HR&A), West Bengal State Electricity Distribution Company Limited (in short WBSEDCL)/respondent no.4. The impugned order has been passed pursuant to the directions given by this Court on November 7, 2022.

Mr. Chakraborty, learned counsel appearing on behalf of the petitioner submits that the prayer of the petitioner for appointment on compassionate ground is rejected illegally, irrationally and arbitrarily by WBSEDCL and the same should be quashed and/or set aside.

Mr. Koley, learned counsel appearing on behalf of WBSEDCL submits that there is no mala fide intention or arbitrariness in passing of the impugned

order since the petitioner herself has refused to accept the job given by the respondent-corporation.

The petitioner's father died-in-harness as an employee of WBSEDCL on August 14, 2011. The petitioner applied for appointment on compassionate ground. The petitioner was called for a selection test on August 1, 2013. The petitioner prayed before the authorities on August 16, 2013 that she wished to appear for the post of Office Executive (Class-III) after completion of her graduation. Subsequently, the petitioner was called for another selection test on September 15, 2015. The petitioner was found to be successful. The petitioner made an application on June 27, 2016 requesting for extension of time till 2017 to submit a computer course certificate that was required for an office executive's post. However, the petitioner did not submit the same nor intimated the reason for non-submission. The prayer for compassionate appointment was then rejected by an office memo dated January 6, 2020. Again, after a period of two years, on June 16, 2022 the petitioner made a prayer for appointment on compassionate ground. In the said representation, the petitioner did not explain why after June, 2016 she did not submit any document, but stated that the cancellation of candidature, vide memo dated January 6, 2020

should not have been made since she was ill during that period and after January 6, 2020, the Covid situation became very serious and, therefore, she could not make any representation since January 6, 2020 till June 16, 2022. In the Impugned order it has been recorded that the petitioner is seeking to reopen her candidature for compassionate appointment after 11 years from the date of expiry of the deceased employee and has repeatedly refused in the past the offer of appointment made to her at a post that was lower than the post to which the petitioner had applied for. The non-submission of the computer certificate since 2016 without any intimation whatsoever was the reason for the authorities to come to a finding in January 2020 that the petitioner was not willing to retain her candidature to the post of the office executive under the died-in-harness category on compassionate ground.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the petitioner's conduct cannot be appreciated at all. No prayer for compassionate appointment can be renewed by her on June 16, 2022 after her candidature has been rejected on January 6, 2020. The petitioner cannot now seek to rely on the

ground of Covid outbreak which hit the country in March, 2020. No explanation has been given as to why between January 2020 and March, 2020, the petitioner did not challenge the said rejection of candidature.

Furthermore, apart from a bald statement made by the petitioner with regard to her ill health since 2016, this Court finds no corroborating evidence to support that contention. This naturally leads the Court to believe that the ground of illness is a purported one relied upon only for the purpose of this litigation.

The judgment relied upon by the learned counsel appearing on behalf of the petitioner being MAT 3957 of 2000 (**State of West Bengal & Ors. Vs. Sambhu Nath Saardar**) also does not come to the aid of the petitioner since the facts are completely different. In that case, the petitioner was let to believe by the authorities that the petitioner would be given compassionate appointment and only after she saw an advertisement in the newspaper regarding recruitment of persons in died-in-harness category without her candidature being considered she was advised to move the Court. In that circumstances, the delay in approaching the Court was condoned.

In the present case, the authorities have shown enough indulgence to the petitioner by keeping her candidature pending since 2013 (when she was first called for interview). The petitioner wanted to complete her studies before applying for the job. The said request was accepted by the respondent-corporation and she was allowed to sit for a written test and viva voce in 2015. The petitioner's application in 2016 for submission of the computer certificate course at a later date in 2017 was also accepted. The petitioner kept silent from 2016 till 2020 as to the reason for non-submission of the said document. Neither did she pray for extension of time for submission of the said document and only after her candidature was rejected on January 6, 2020, she challenged the same in June, 2022.

In the light of the discussions above, this Court finds no merit in the present writ petition. All the allegations made against WBSEDCL are frivolous.

The writ petition, being **WPA 896 of 2023**, is totally misconceived and is **dismissed**.

After conclusion of the submissions by the parties, learned counsel appearing for the petitioner submitted that directions for exchange of affidavits should be passed in the writ petition. This Court is not inclined to grant such prayer as in the view of this

Court such vexatious and frivolous litigations should be “nipped in the bud”. The view of this Court finds support in a judgment reported in (2008) 10 SCC 97 **(Abdul Gafur & Anr. Vs. State of Uttarakhand & Anr.)**

Since no affidavits have been called for in the writ petition, the allegations contained therein be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon’ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)