

25 **12.04.**
2023
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.CT 12 of 2023

Sri Anil Shah
Vs.
The Director,
Botanical Survey India and another.

Mr. Piyush Kanti Khanra,
Mr. Somnath Khanra.
... for the petitioner.

Mr. D. N. Ray,
Mr. R. R. Kumar,
Mrs. Sarda Shah,
Mr. Rajesh Kumar Shah.
... for the respondents.

An order dated 6th September 2022 passed by the Central Administrative Tribunal, Kolkata Bench, in OA 732 of 2021 is assailed in the instant writ petition.

By the impugned order, the tribunal application was disposed of directing the respondent authorities to re-examine the case of the writ petitioner within a period of ninety days from the date of receipt of the said order and intimate the decision taken thereof forthwith.

The dispute pertains to grant of compassionate appointment on the death of the father, who was admittedly working as Preservation Assistant, Grade-I, in Botanical Survey of India under the Ministry Environment and Forests, Government of India. The said employee died while in service on 11th December 2010 leaving behind him surviving four sons and three daughters.

It is a categorical stand of the writ petitioner that after the death of the father, who was the sole bread earner, the family is in penury and immediately needs

financial assistance for sustenance. A representation was made, but the authorities did not accede to such claim, which constraint the writ petitioner to approach the Tribunal by filing OA 452 of 2013.

While disposing of the said tribunal application on 16th March 2014, the authority was directed to consider the said representation and passed an appropriate order. Pursuant to the said direction passed by the Tribunal, the claim of the writ petitioner was taken up by the concerned authorities and was rejected on the ground that the family is not in financial distress as the income as well as the parental property, where they are living in joint mess, are sufficient enough to cater their daily needs. It was further indicated that out of four sons, eldest two sons are employed and married and two daughters are also married and, therefore, the family cannot be said to be in penury. It was also indicated that the unmarried daughter is receiving the family pension, which is sufficient to sustain the other two sons, who claimed to be unemployed.

The challenge was made before the Tribunal taking a stand that the eldest two sons, who are married, have separated themselves from the family and the unmarried daughter has also living separately with the applicant. Such fact was found by the Tribunal to have not been considered by the authorities probably for the reasons that the same was not projected before the authorities while considering the application seeking compassionate appointment. The Tribunal thought it fit that the aforesaid facts need to be considered by the authorities concerned and thereafter to arrive at a decision whether the applicant can be said to be in financial distress needs immediate financial assistance by providing the appointment on compassionate ground.

We, thus, do not find any infirmity in the stand of

the Tribunal in remitting the matter to the authorities for reconsideration on the above facts discerned in course of hearing and the pleadings filed by the respective parties.

We, thus, do not find any ground to interfere with such ultimate decision taken by the Tribunal, which appears to be apt and justifiable on the disclosed facts.

However, in course of hearing, the learned Advocate for the writ petitioner by filing a supplementary affidavit drew our attention to the order passed by the competent authority in compliance to the direction passed by the Tribunal in the impugned order. It is contended that the authorities have acted with close mind and the identical ground has been taken for rejection.

In our view, the moment the impugned order has been implemented and/or complied with and a fresh decision has been taken by the authority, it gives a new cause of action, which is amenable to be challenged before the Tribunal. The writ petitioner cannot be permitted to jump the forum and challenge the order, which is distinct and independent taking a circuitous route of continuance of the lis.

We, thus, do not find any merit in the instant writ petition and the same is hereby dismissed.

However, it is open to the writ petitioner to challenge the order on the basis of the direction passed in the impugned order before the appropriate forum in accordance with law.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

