

S/L 43
02.05.2023
Court. No. 12
Suwayan

WPA 1210 of 2016

Sweta Das (Lala)
Vs.
The State of West Bengal & Ors.

Mr. Kushal Chatterjee
Mr. Debrup Chaudhury

...for the petitioner.

Mr. Jahar Lal De
Mr. Srikanta Paul

...for the State.

Mr. Biswabrata Basu Mallick
Mr. Biman Halder

...for the respondent No. 6.

1. The writ petitioner, the respondent No. 1/State and the respondent No. 6/District Primary School Council, Uttar Dinajpur are represented by their respective learned Advocates.

2. The present writ petition is now taken up for hearing.

3. Heard learned Advocates for the parties in favour of and against the instant writ petition. The instant writ petition is now taken up for passing the appropriate order.

4. In this writ petition as filed under Article 226 of the Constitution of India the legality and validity of the Office Memo No. 771/1(1) dated 10.12.2015 as passed by Chairman of the respondent No. 6 has been assailed.

5. By filing this writ petition, the writ petitioner has prayed for quashing of the aforesaid memo dated 10.12.2015 with a further prayer for issuance of writ of mandamus directing the respondent authorities to give

compassionate appointment to the present writ petitioner.

6. Mr. Kushal Catterjee, learned Advocate for the writ petitioner in course of his argument at the very outset draws attention of this Court to the order dated 08.09.2015 as passed by a co-ordinate Bench of this Hon'ble Court in WP 21008(W) of 2015. It is contended by Mr. Chatterjee that in the said order dated 08.09.2015 this Hon'ble Court directed the Chairman of the respondent No. 6 to revisit the issue of the financial distress condition of the family of the present writ petitioner with a further direction to him that in the event the Chairman of the respondent No. 6 finds such criterion is fulfilled, he would recommend the appointment of the writ petition on compassionate ground in the died-in-harness category to the appropriate authorities. It is needless to say that in compliance of the order as passed on 08.09.2015 by a co-ordinate Bench of this Hon'ble Court, the Chairman of the respondent No. 6 issued the impugned memo holding that the present writ petitioner is not entitled to get benefit under compassionate consideration at that stage.

7. In course of argument, Mr. Chatterjee, submits before this Court that during the pendency of the instant writ petition the Chairman of the respondent No. 6 submitted a report No. 262 dated 03.03.2016 before this Court. Drawing attention to the impugned memo dated 10.12.2015 and the report dated 03.03.2016 it is submitted by Mr. Chatterjee that neither in the said

memo nor in the aforementioned report the Chairman of the respondent No. 6 made any endeavor to assess the present financial condition of the writ petitioner and on the contrary the Chairman of the respondent No. 6 without showing any justifiable ground express his view that the present petitioner is not entitled to get any benefit under compassionate ground. In course of his submission, Mr. Chatterjee, learned Advocate for the petitioner draws attention of this Court to the affidavit-in-opposition as filed by his client against the report dated 03.03.2016 as well as the supplementary affidavit as filed before this Court by the present petitioner.

8. It is contended by Mr. Chatterjee that from the annexure to the said affidavit-in-opposition as well as the supplementary affidavit as filed by the present writ petitioner, it would reveal that the present writ petitioner is at present leading her life in a distress condition. It has also been contended that from the aforesaid affidavit-in-opposition and the supplementary affidavit it would also reveal that she had to take loan to prosecute the studies of her children and that her husband being a deed writer has no static and sufficient income to support his family members. It is, thus, argued by Mr. Chatterjee that it is a fit case for allowing the instant writ petition by granting the prayer as made in the instant writ petition.

9. Mr. Jahar Lal De, learned Advocate for the State/respondent, however, opposes such contention. It is argued by him that considering the present age of the

writ petitioner (57/58 years approximately) the instant writ petition may be dismissed.

10. Mr. Biswabrata Basu Mallick, learned Advocate for the respondent No. 6 in course of his submission, however, places his reliance upon the impugned memo as well as the report dated 03.03.2016 as submitted before this Court by the Chairman of the respondent No. 6/authority. It is contended by Mr. Basu Mallick, learned Advocate for the respondent No. 6 that from the impugned Office memo dated 10.12.2015 it would reveal that the present writ petitioner is not an ordinary resident of the address which has been furnished in the writ petition and during enquiry it has been found that she is residing at Kolkata with her husband and other family members, that is, in her matrimonial home. It is further submitted by Mr. Basu Mallick from the report dated 03.03.2016 as well as from the annexures to the affidavit-in-opposition and the supplementary affidavit as filed by the writ petitioner it would reveal that the writ petitioner had sufficient bank balance to sustain her family.

11. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that there is no dispute that by an order dated 08.09.2015 as passed in WP 21008(W) of 2015 the Chairman of the respondent No. 6 was directed only to revisit the issue of the financial distress of the family of the present petitioner. On perusal of the impugned memo dated 10.12.2015 it reveals that the Chairman of the respondent No. 6/authority had

mechanically and most casually came to a finding that since the present writ petitioner is residing with her family members in Kolkata and not at the address which has been mentioned in the writ petition, the financial distress condition of the family of the writ petitioner could not be assessed.

12. In considered view of this Court the approach as taken by the Chairman of the respondent No. 6 is not at all appreciable since prior to reaching his conclusion, he could have made an endeavor to collect the present address of the writ petitioner and at the same time he must have made an endeavor to assess the financial condition of the present writ petitioner either by calling the present writ petitioner before him with all supporting documents or that such enquiry could have been conducted by sending an appropriate person at the matrimonial home of the present writ petitioner.

13. On perusal of the report dated 03.03.2016 as submitted by the Chairman of the respondent No. 6 it reveals to this Court further that such report dated 03.03.2016 has been submitted in a hasty manner and without asserting any reason whatsoever the Chairman of the respondent No. 6/authority have come to a conclusion that the present writ petitioner has failed to produce relevant documents to substantiate her contention that she is in extremely financial hardship.

14. As rightly pointed out by Mr. Chatterjee that from the annexures to the affidavit-in-opposition as has been filed by the writ petitioner against the report dated

03.03.2016 and the supplementary affidavit filed by the writ petitioner before this Court it would reveal that the present writ petitioner has furnished sufficient documents to prove her assets and at the same time she is successful in establishing that her husband has also got no static and sufficient income to support his family members.

15. This Court is not in agreement with the argument of the learned Advocate for the respondent No. 6 that since the Bank balance of the account of the present petitioner as on 06.08.2021 is about Rs. 9,00,000/- it cannot be said that she is in financial distress condition.

16. In view of the circumstances as discussed above, this Court has every reason to believe that the Chairman of the respondent No. 6 has miserably failed to perform his duty in obedience of the order dated 08.09.2015 as passed in WP 21008(W) of 2015 and on the contrary the present writ petitioner is successful in establishing with supportive documents that her financial condition is not up to mark and for which she is entitled to the relief as prayed for in the instant writ petition.

17. In view of the discussion made hereinabove, the instant writ petition succeeds. As a result whereof the impugned order as passed by the Chairman of the respondent No. 6 under cover of Memo No. 771/1(1) dated 10.12.2015 is hereby quashed and set aside.

18. The respondent authorities; more specifically the respondent Nos. 2 and 6 are hereby directed to offer compassionate appointment to the writ petitioner which

is suitable according to her academic qualification within two months from the date of communication of this order.

19. With the aforementioned observation the instant writ petition being WPA 1210 of 2016 is hereby disposed of on contest.

20. Parties to act on the server copies of this order.

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

(Partha Sarathi Sen, J.)