

06.01.23
SI-04
Ct.32
(S.R.)

CPAN No.632 of 2018
Sri Atinmoy Ghosh
Versus
Sri Mrinal Kanti Singha Roy
in
WPA 14597 of 2017

Dr. Debabrata Karan
Mrs. Sabita Khutia (Bhunya)
Mr. Debopriyo Karan ... for the petitioner.

Mr. Supriyo Chattopadhyay, Sr. Govt. Adv.
Mr. Sabyasachi Mondal
... for the alleged contemnor.

The present contempt application has been preferred by the petitioner alleging violation of an order dated 23rd August, 2017 passed by this Court in WPA No.14597 (W) of 2017.

The writ petition was preferred by the petitioner alleging inaction on the part of the authorities to consider his application dated 14th July, 2016 for grant of compassionate appointment in place and stead of his father, who died-in-harness on 29th February, 2012, while working in the post of a Clerk in Alaipur Manorama Sikshaniketan. Initially, the petitioner's mother applied for grant of compassionate appointment in place and stead of her husband on 3rd February, 2014. At that juncture, the petitioner was a minor since he was born on 23rd November, 1997. The application submitted by the petitioner's mother was kept pending and she

unfortunately expired on 23rd March, 2016. The petitioner attained majority on 23rd November, 2015, i.e. prior to the death of his mother.

In the order dated 23rd August, 2017, the Court after observing *inter alia* that '*in the backdrop of such peculiar facts, the petitioner's claim needs to be considered and it also needs to be determined as to whether there is any source to provide two square meals for survival*', disposed of the writ petition directing the respondent no.3 consider the petitioner's representation dated 14th July, 2016 and to pass a reasoned order.

The respondent no.3 thereafter passed an order on 30th November, 2017 rejecting the petitioner's prayer. Alleging that the said order had not been passed in consonance with the order passed by this Court on 23rd August, 2014, the petitioner preferred the contempt application.

The Court directed the parties to exchange their affidavits in the contempt application. The alleged contemnor filed an affidavit-in-opposition annexing a memo dated 19th July, 2022. In the said memo it was observed that '*as the other source of income was not reported. So, family income assumed Rs.7353/- which is less than the income of a Gr-D staff of the state Govt., WB, So financial hardship existed in the family at the material*

point of time.' Considering the said memo, this Court passed an order in the contempt application on 2nd September, 2022 observing, *inter alia*, that '*it appears that the alleged contemnor did not consider the issue of financial hardships, as directed by this Court while passing the order dated 30th November, 2017 and that as such the said order has been passed in violation of the order passed by this Court in the writ petition*'. By the said order, the alleged contemnor was directed to close the breach by taking a fresh decision in the light of the observations made in the order dated 23rd August, 2017.

Pursuant to such direction, an order dated 26th September, 2022 has been passed by the alleged contemnor observing, *inter alia*, that '*there was financial hardship in the family at the time of death of the father of the petitioner at the material point of time and the financial hardship is still existing in one man family but there is no expressed provision in the existing rule for appointment of the petitioner only on the basis of financial hardship during the minority of an incumbent petitioner. As rule abiding government official, it is hardly possible for the undersigned for consideration of appointment of the petitioner on compassionate ground though the petitioner is in dire financial hardship*'.

Dr. Karan, learned advocate appearing for the

petitioner submits that it had been admitted by the authorities that there was financial hardship in the petitioner's family at the time of death of his father and that such hardship is still existing. In view of such finding and the observations made in the order of this Court dated 23rd August, 2017, the authorities ought to have granted compassionate appointment to the petitioner. By refusing to grant such appointment, the alleged contemnor had acted in wilful and deliberate violation of the order passed by this Court.

He further argues that the order dated 23rd August, 2017 has attained finality and as such, the authorities, in compliance with the said order, ought to have granted compassionate appointment to the petitioner. The recruitment rules do not stand in the way towards grant of compassionate appointment to the petitioner in view of the peculiar facts that he attained majority prior to consideration of her mother's application for compassionate appointment and prior to the death of her mother. By not considering such facts, the alleged contemnor had acted in deliberate violation of this Court's order. In support of his argument Dr. Karan has placed reliance upon the judgement delivered in the case of *Prithawi Nath Ram v. State of Jharkhand & Ors.*, reported in (2004) 7 SCC 261 and in the case of *T.R. Dhananjaya v.*

J. Vasudevan, reported in *AIR 1996 SC 302*.

Mr. Chattopadhyay, learned advocate appearing for the alleged contemnor submits that the petitioner's mother at the time of submission of application was age barred having exceeded 45 years of age and at that material point of time, the petitioner was also a minor. The issue of age bar was not decided by this Court in the order dated 23rd August, 2017. In terms of the recruitment rules, they were ineligible to be considered for compassionate appointment and that as such, the allegation that the alleged contemnor had acted in violation of the order of this Court is unfounded. The alleged contemnor, however, tenders his unqualified apology for any unintentional violation of the order passed by this Court.

Heard the learned advocates and considered the materials.

The alleged contemnor has considered the petitioner's claim and even after arriving at a finding that the deceased's family was suffering from financial crisis could not grant compassionate appointment since in terms of the relevant rules, the petitioner could not fulfil the age criterion at the material point of time.

In the said conspectus, I am of the opinion that there had been no deliberate or wilful violation of the

order dated 23rd August, 2014 passed by this Court in the writ petition. The judgments upon which reliance has been placed on behalf of the petitioner are also distinguishable on facts.

From the contents of the memoranda dated 19th July, 2022 and 26th September, 2022, it is clear that there was financial hardship in the family at the time of the death of the petitioner's father and such financial hardship is still existing. Existence of such financial crisis is of paramount importance in cases of compassionate appointment. Unless there is a financial crisis in the family arising out of the death, there can be no valid claim requiring examination. It is only after such financial crisis is established, it needs to be scrutinized whether the applicant falls short of any other rider, particularly, in a case like the present one involving peculiar facts where the petitioner's father expired after prolonged treatment of cancer, for which a huge amount was expended and the initial application of the deceased's widow was submitted within 2 years of her husband's death but prior to consideration of such claim, she expired on 23rd March, 2016 and the petitioner herein attained majority prior to the death of her mother and applied for compassionate appointment. However, the Court, in exercise of contempt jurisdiction, cannot

conduct such scrutiny and give any additional direction or travel beyond the four corners of the order alleged to have been flouted. It is also well-settled that once an order has been passed by a party to a proceeding on the basis of the direction issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum.

For the reasons discussed above, the contempt application is dismissed. However, it will be open to the petitioner to assail the correctness of the order passed by the alleged contemnor before the appropriate forum.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Tapabrata Chakraborty, J.)