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Ct. 2023
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WPA 11321 of 2016

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Swagata Roy
Vs.
The State of West Bengal & Ors.

Mrs. Pampa Dey Dhabal,
Mr. Nikhil Kr. Gupta.

.... For the petitioner.

Mr. Sk. Md. Galib,
Ms. Tanwishree Mukherjee.

... for the State.

The petitioner's prayer for compassionate appointment has been negated by the Chairman, District Primary School Council, Bankura *vide* order dated 18th May, 2016 on the premise that as per G.O. dated 19th February, 2016, the married daughter is not the member of the family of the deceased employee.

The facts as unfurled in the writ petition are that the petitioner's father, who was an Assistant Teacher of Narrah Primary School (hereinafter referred to as the "School"), died-in-harness on 26th October, 2015 leaving behind the petitioner's mother, the petitioner and her youngest sister. In 2013, the petitioner tied matrimonial chord with one Asit Baran Roy who maintained his family by running one small 'Pan Stall'. Owing to the disputes cropped up in her nuptial life, the petitioner had been forced to take shelter in her parents' house along with her children and till the date, she has been spending her

days on earnings of the family of the deceased employee. Since due to sudden demise of her father, who happened to be the sole bread earner of the family, the entire family plunged into penury, the petitioner made an application for compassionate appointment before the Chairman, District Primary School Council, Bankura. The petitioner passed the secondary and the higher secondary examinations in 1991 and in 2001 respectively and she is duly qualified for being appointed in the post of Assistant teacher of primary school or in any suitable post but by an order dated 18th May, 2016, the petitioner's prayer for compassionate appointment has been turned down.

Mrs. Pampa Dey Dhabal, learned advocate representing the petitioner arduously contends that by passing a non-speaking and/or cryptic order, the Chairman, District Primary School Council, Bankura rejected the petitioner's prayer for compassionate appointment solely on the ground that the prayer for compassionate appointment made by a married daughter of the deceased employee cannot be entertained.

Placing reliance upon the judgment delivered by the Hon'ble Special Bench of the court in case of *The State of West Bengal & Ors. -vs- Purnima Das & Ors.*, reported in 2017(4) CHN (Cal) 362(FB), Ms. Dhabal strenuously contends that the Hon'ble Special Bench has ruled that the married daughter is entitled to get compassionate appointment. She submits that the order impugned is

cryptic and such order cannot be sustained. She further prays for a direction upon the concerned respondent to appoint the petitioner on compassionate ground.

Mr. Sk. Md. Galib, learned advocate appearing on behalf of the respondents vociferously contends that only to get the appointment on compassionate ground, the petitioner has tired her best to cook a story of strained relationship with her husband but by making contrary statements in the paragraphs 5 and 13 of the writ petitioner, the petitioner has miserably failed in such mission. The order under challenge in the writ petition was sought to be justified by Mr. Galib contending that the issued has been decided by the Hon'ble Supreme Court holding that a married daughter cannot be considered for compassionate appointment. To buttress his argument, he placed reliance upon a judgment delivered in the cases of *State of Maharashtra and Another versus Madhuri Maruti Vidhat*, reported in 2022 SCC OnLine SC 1327 and *Director of Treasuries in Karnataka and Another versus V. Somyashree*, reported in (2021) 12 SCC 20.

Heard the learned advocates and perused the materials on record.

Indisputably, the petitioner's father while rendering his service as an Assistant Teacher in the school died-in-harness on 26th October, 2015. The petitioner knotted marital tie in 2013. The petitioner claims that disputes

surfaced in her conjugal life and she was constrained to take shelter in her parents' house along with her children and till the date, she has been spending her days on the benevolence showered upon her by her parents and hence, she became a member of the family of the deceased employee. She claims that her father happened to be sole bread winner for his family and owing to sudden demise of the deceased employee, his family has plunged into poverty and hence, to tide over the sudden financial crisis of the family, she applied for compassionate appointment.

It is axiomatic that the claim of compassionate appointment of any person shall be considered as per the norms and/or rules prevailing on the date of death of the employee. The petitioner's father died in 2015 but relying upon a G.O. dated 19th February, 2016 i.e. by giving retrospective effect to that Government Order of 2016, the petitioner's prayer for compassionate appointment has been turned down. The issue whether or not a married daughter would be entitled to be considered for compassionate appointed has been decided in the case of *Purnima Das & Ors. (supra)* wherein it has been ruled that a married daughter is entitled to get compassionate appointment if she fulfills the eligibility criteria including the 'financial distress' criterion i.e. if she can prove that she is not looked after by her husband, she has been forced to take shelter in her parents' house and she

survives on the benevolence showered by her parents and owing to sudden demise of the deceased employee, the family of the deceased employee has plunged into penury.

This aspect has not been considered by the Chairman concerned and by passing a cryptic order, the Chairman has turned down the prayer for compassionate appointment solely on the ground that the petitioner is a married daughter.

There is no scintilla of doubt regarding the binding effect of the principles laid down in the judgments relied upon by Mr. Galib but those are distinguishable on fact.

Taking stalk of the chronological events and the principle of law laid down in the judgment of the Hon'ble Special Bench of the court in case of *Purnima Das & Ors. (supra)*, I am of the considered view that the order dated 18th May, 2016 passed by the Chairman cannot be sustained and consequently, the same is set aside.

The Chairman, District Primary School Council, Bankura is directed to reconsider the case of the compassionate appointment of the petitioner in the light of the judgment delivered in case of *Purnima Das & Ors. (supra)* after affording an opportunity of hearing to the petitioner and if the case is decided in favour of the petitioner, the Chairman shall take next follow up action but if he decides the case against the petitioner, he shall pass a reasoned order and communicate such order to the petitioner.

Such exercise must be completed within eight weeks from the date of communication of a copy of this order.

With the above observation and direction the writ petitioner stands disposed of.

No order as to costs.

(Partha Sarathi Chatterjee, J.)