

19 13.9.2023
Sc Ct. no.22

WPA 16525 OF 2017

Tanusree Mazumdar

Vs.

The State of West Bengal & Ors.

Mr. Biswarup Biswas

Md. Majnu Sk.

....For the petitioner

Mr. Sabyasachi Mondal

....For the Respondent

Nos. 1, 2 and 3

This is a hearing matter.

The office note dated January 17, 2018 shows that despite there being a direction for filing affidavits on August 16, 2017, no affidavit-in-opposition was filed.

Considering the issue involved in this writ petition and considering the fact that, the writ petition is pending since 2017, this Court is of the view that, no fruitful purpose will be served by keeping the writ petition pending. Hence, this Court proceeds to consider and dispose of the writ petition on the available records.

Through this writ petition the writ petitioner has challenged the impugned decision of the respondent no.3 dated **February 27, 2017, Annexure-P16 at page 51** to the writ petition under which the ***claim of the petitioner for compassionate appointment was rejected.***

The petitioner claimed to be the unmarried daughter of one ***Dhaneswar Mazumdar*** who was a ***Non-Teaching staff of Amarun Station Sikshaniketan***

(H.S.), District – Burdwan. Due to his **incapacitation**, he **retired on March 31, 2011.** The petitioner submitted her application being the unmarried daughter of the incapacitate employee. The petitioner and her mother were the dependents of the said teacher.

The **petitioner seeking a compassionate appointment in the post of “Group - C”** as a **Clerk**, filed a previous writ petition being **W.P. 29029 (W) of 2015.** The said writ petition was **disposed of** by a coordinate Bench by its order dated **December 21, 2015, Annexure – P12 at page 40** to the writ petition. The coordinate Bench directed the respondent no.3 to consider the case of the petitioner by passing a reasoned order within a time-frame.

Pursuant to the said direction the case was considered and the impugned order was passed on **February 27, 2017** whereby the claim of the petitioner for **Compassionate Appointment** was **rejected.**

Mr. Biswarup Biswas, learned counsel for the petitioner referring to the **impugned order, Annexure – P16 at page 51** to the writ petition submits that, the reasons provided for rejection thereunder were cryptic and without any details and particulars as required to be mentioned in the impugned order of rejection, in accordance with law.

Mr. Biswas then refers to the **West Bengal School Service Commission (Selection of Persons for**

Appointment to the post of Non-Teaching Staff) Rules, 2009 (for short the said 2009 Rules). With specific reference to **the Procedure, Manner of Application and Preparation of Panel for Appointment on Compassionate Ground** (for short the said Procedure) as provided under **Schedule V** to the said **2009 Rules** and **Rules 20 and 21 of the said 2009 Rules**, learned counsel submits that, the case of the petitioner since in place of an incapacitate non-teaching staff, who was compelled to retire due to his incapacitance, shall be governed under Clause 2 of the said Procedure.

Referring to Clause 1 from the said **Procedure** Mr. Biswas submits that, a specific provision has been made for calculating the “**Financial Hardship**” suffered by the family members of a deceased employee who died-in-harness. Similarly, for calculating the “**Financial Hardship**” for an incapacitate employee for granting compassionate appointment is also specified under **Clause 2 of the said Procedure** and the respondent no.3 while passing the impugned order has proceeded without complying the provisions laid down under **Clause 2 of the said Procedure**. He submits that, the dichotomy in said two provisions are also not permitted in law, while assessing the **Financial Hardship**.

Referring to the said impugned decision of the respondent no.3 Mr. Biswas submits that, merely a

statement that, the family income of the incapacitate staff was not less than the **Group – D staff** of the State Government would not do but the same must provide for the **detailed and break up of the family income** of a Group – D staff of the State Government and then the comparison would have to be shown whether the family income of the incapacitate staff is higher than that.

Learned counsel for the petitioner submits that, on a plain reading of the said impugned order it would be evident that, the respondent no.3 while passing the same has not applied its mind and did not follow the procedure laid down under **Clause 2 of the said Procedure** for compassionate appointment.

Mr. Biswas further submits that, the said impugned order should be set aside and the petitioner shall be granted the compassionate appointment as claimed by her.

In support of his contention, Mr. Biswas has relied upon a judgment of the Hon'ble Division Bench of this Court ***In the matter of : State of West Bengal & Ors. –vs.- Tania Ghosal & Ors.*** rendered in ***MAT 511 of 2019 with CAN 4310 of 2019*** and also a judgment of the Hon'ble Supreme Court ***In the matter of : Malaya Nanda Sethy –vs.- State of Orissa & Ors.*** rendered in ***Civil Appeal No.4103 of 2022 (Arising out of S.L.P. (Civil) No.936 of 2022).***

Mr. Sabyasachi Mondal, learned State counsel appearing for the respondent nos. 1, 2 and 3 referring to the said **2009 Rules** and with a specific reference to **Clause 2** of the said Procedure submits that, the impugned order ***clearly specifies the reason for rejection being the monthly earning of the family of the incapacitate staff was more than Rs.10,200/- being the gross initial salary of a Group – D staff at that material point of time.*** Mr. Mondal submits that, no further detail was required to be mentioned in the impugned order while rejecting the claim of the petitioner. He submits that, compassionate appointment is the result of the benevolent policy of the State and such policy is required to be considered in its strict sense and application.

Referring to **Column 11 and the sub-Clauses** thereunder from the impugned order dated **February 27, 2017, Annexure-P16** to the writ petition learned State counsel submits that, the reasons are amply clear in the impugned order of rejection and no further clarification is required to be there in the impugned order for rejection. He submits that, the writ petition is devoid of any merit and should be dismissed.

Mr. Biswas, learned counsel for the petitioner in reply places much stress upon the judgments referred by him and submits that, the consistent view of the Court is

that, the detailed reasons are required to be furnished while rejecting the claim for compassionate appointment.

Respondent nos. 4 and 5 are not represented.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court reiterates the ***principle of law*** already settled that in exercise of power in judicial review under Article 226 of the Constitution of India, this Constitutional Court has a limited authority and jurisdiction to assess the impugned order. The Constitutional Court shall only look into the decision making process of the authority while passing the impugned order and whether there is any glaring perversity on the face of the impugned order.

The facts are admitted insofar as the claim for compassionate appointment made by the petitioner.

Compassionate appointment for a non-teaching staff is governed under the said 2009 Rules. Rules 20 and 21 of the said 2009 Rules deal with such an appointment. Therefore, there is a clear policy of the State for compassionate appointment to the post of non-teaching staff. The policy has to be followed in its strict compliance.

On a harmonious reading of ***Clause 1 and Clause 2*** from the said ***Procedure*** as laid down under ***Schedule V*** in pursuance of ***Rules 20 and 21*** of the said ***2009 Rules***, this Court is of the firm opinion that, there are

two sets of independent modes and manners laid down under the said **Schedule V** to the said **2009 Rules**. **Clause 1** deals with compassionate appointment in case of a **died-in-harness** situation and the **Clause 2** of the **Procedure** deals with compassionate appointment in place of an **Incapacitate Non-teaching staff**. The said two procedures are independent of each other with their respective separate and independent applications. **Clause 2 of the said Procedure** under **Schedule V** is applicable in the fact of this case. **Clause 2 of the said Procedure** under **Schedule V** is very explicit and clear. **The writ petitioner has not raised any challenge to the validity of such clause in any manner neither has she contended in her writ petition that, the provisions under Clause 2 is in conflict with Clause 1 of the of the said Procedure under Schedule V.** In any event the two clauses being independent of each other in their respective independent field of application, there cannot be any conflict.

The provision relevant in the instant case under **Clause 2 of the said Procedure** is quoted below :

“Explanation. - The expression “financial hardship”, in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family for consideration of appointment under the sub Rule, shall mean an amount of income less than the entire gross salary of Group - D staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned from any other source by each family member than Provident

Fund, Gratuity at the material point of time, shall be taken into account:

Provided that if the family of the Teacher or non-teaching staff exceeds five members, the income so computed under this expression shall be reduced by 20% for each member exceeding five and the amount so arrived at shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the entire stage at the material point of time."

Admittedly, the family members of the incapacitate staff was not beyond five individuals. The expression "**Financial Hardship**" in relation to income of non-teaching staff consisting of **up to** five members in his family for consideration of appointment under the said 2009 Rule, shall mean an amount of income less than the initial gross salary of Group 'D' staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned from any other sources by each family member other than Provident Fund, Gratuity at the material point of time shall be taken into account subject to provisions made thereunder.

In the fact of the instant case, the respondent no.3 in the impugned order has disclosed under **Column 11(B)** that, the amount of gross family pension on the date of retirement due to incapacitation of the employee was **Rs.17,121/-**. Under **Column 11(C)** in the impugned order the income earned by family members from sources other than Provident Fund and Gratuity was also shown as **Rs.17,121/-**, meaning thereby, the only source of income

of the family was the gross pension amount. **Clause 11(D)** in the impugned order mentioned that, the gross initial salary of a Group 'D' staff at that material point of time was **Rs.10,200/-** as on **March 31, 2011**. Such disclosure in the reasoned order would sufficiently suggest that, **the income of the family being Rs.17,121/- was higher than the gross initial salary of a Group 'D' staff being Rs.10,200/-**. There was no requirement of any further disclosure of any reason or material or particular disclosing the niceties or break up of the gross initial salary of a Group 'D' staff. Inasmuch as, the petitioner has not confronted the said factual findings of the respondent no.3 by disclosing any material on record.

In the matter of : Tania Ghosal & Ors. (supra) a specific observation of the Hon'ble Division Bench was that, **"A mere statement by an authority that the income of the family exceeds the initial pay is not a sufficient disposal of the prayer of the writ petitioner."** The Hon'ble Division Bench further observed that, **"One whose application for compassionate appointment has been rejected on the ground of income status of the family has certainly a right to know the items of income which have been taken into consideration by the authority and based upon which the calculation has been made. The order impugned is not only an unreasoned one but is**

verily an incomplete one. The reason for rejection has been mentioned without giving the basis for the calculation.” In the instant case, the impugned order, **Annexure-P16 at page 51 to the writ petition** clearly speaks of the details of income of a Group ‘D’ staff and then the comparison was made with the family income of the incapacitate staff and on the basis thereof applying the provisions of the said **2009 Rules**, the application was rejected. Hence, the ratio decided by the Hon’ble Division Bench has no application in the fact of this case.

In the matter of : Malaya Nanda Sethy (supra), the Hon’ble Supreme court has mandated a time-frame within which the authority must consider and decide the application for compassionate appointment as per the policy prevalent. The ratio decided in the said judgment has no application in the facts of this case, as the impugned order rejecting compassionate appointment is in question before this Court.

In view of the foregoing reasons and discussions this court is of the firm view that, there is **no infirmity nor any perversity** in the said impugned order dated **February 22, 2017, Annexure- P16 at page 51** to the writ petition. The said order passed by the respondent no.3 stands **affirmed**.

The writ petition being **WPA 16525 of 2017** being devoid of any merit stands **dismissed**, without any order as to costs.

Photostat certified copy of this order, if applied for,
be furnished expeditiously.

(Aniruddha Roy, J.)