25.09.2023
SL No.4
Court No.8
(gc)

MAT 974 of 2018
CAN 1 of 2018 (Old No: CAN 7710 of 2018)

Smt. Maitreyee Mukhopadhyay
Vs.
The District Inspector of Schools (S.E.),
Barrackpore & Ors.

Mr. Rabilal Maitra, Sr. Adv.,
Mr. Shiba Prasad Bhattacharya,
...for the Appellant.
Mr. Pinaki Dhole,
Mr. Avishek Prasad,
... For the State.

1. The appeal is arising out of an order dated 6th July, 2018 in a writ petition filed by the appellant for appointment on compassionate ground. The District Inspector of Schools (S.E.), Barrackpore, North 24 Parganas vide memo dated 2nd December, 2014 rejected the prayer of the writ petitioner indicating as follows:-

"In reference to the subject cited above, I have to state that following the notification No.697-ES/S/IS-18/08 dt. 9th July, 2009, Kolkata Gazette, Chapter – IV Schedule –V, it appears that the family pension of the applicant will be less than the initial gross salary of Group-D staff at the material point of time. The statements of determination of financial hardship of the candidates have been examined. As per statement "Family Pension" of Debabrata Mukhopadhyay is Rs.15,440.00/- and gross salary of Group-D at the material point of time was Rs.10,860.00/-. Hence the prayer of Smt. M.

Mukhopadhyay cannot be processed from this office."

2. This order of rejection was the subject matter of challenge in the writ petition. Briefly stated, the father of the appellant, Debabrata Mukhopadhyay, since deceased, was an Assistant Teacher of Kanchrapara Harett High School (H.S.). He died in harness due to cardiac respiratory failure on 28th October, 2012 while in service. The appellant applied for compassionate appointment with the required papers through the Headmaster of the School. The Headmaster recommended the case of the appellant twice, last of which was sent on 18th September, 2014. The father of the appellant was the only bread earner of the family and due to his premature death, the family consisting her mother fell in pecuniary distressed condition.
3. The District Inspector of Schools, however, taking into consideration Schedule –V, Rule 20 and 21 read with the admissible family pension was of the view that the amount received towards admissible family pension is higher than the initial gross salary of the Group-D staff. This finding of the D.I. was challenged in the writ petition. In the impugned order, the D.I. relied upon a notification dated 9th July, 2009 in order to ascertain the financial hardship of the family.

The learned Single Judge accepting the submission made on behalf of the Government Pleader appearing for the State that in view of the criteria laid down in the notification being No.697-ES/S/IS-18/08 dated 9th July, 2009 appointment cannot be given to her refused the prayer as the family pension of the deceased teacher is more than gross salary of Group-D staff and further the petitioner has received lump sum money on account of provident fund and gratuity being the retiral benefits of the deceased teacher.

4. Mr. Rabilal Maitra, learned Senior Counsel appearing on behalf of the appellant submits that there is a distinction between family pension and enhanced family pension. The family pension is to be computed on the basis of the basic pay. The enhanced pension amount receivable by the legal heirs of the deceased consequent upon the death of the bread earner cannot be taken into consideration as the rule does not refer to any enhanced family pension.

5. In order to appreciate the argument, it is necessary to refer to Schedule-V of 2009 Rules. The said Rule is stated below:-

"SCHEDULE V"

(See rules 20 and 21)

PROCEDURE, MANNER OF APPLICATION AND PREPARATION OF PANEL FOR APPOINTMENT ON COMPASSIONATE GROUND

When a Teacher or non-teaching staff dies in harness before the date of his superannuation, i.e. the age of 60 years, leaving a family which is, in the opinion of the District Inspector of Schools (Secondary Education), in such extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the –

(i) Spouse;

(ii) Son;

(iii) Daughter

of the deceased Teacher or non-teaching staffs family who is possessing required educational qualifications as laid down in Scheduled I for the posts of Clerk or Group 'D' staff and unemployed and not below 18 years of age and not above 45 years of age may, within two years from the date of such death, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-teaching staff on compassionate ground:

Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule.

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, 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 by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into consideration."

6. The conditions that are required to be fulfilled is that consequent upon the death of the bread earner, the family is in extreme 'financial hardship' which would mean that the family is not in a position to have too square meals and other essentials for their survival. The explanation has laid down the income criteria to be taken into consideration in deciding the "financial hardship". It clearly states that financial hardship would mean an amount of income less than the initial gross salary of the Group-D staff of the State Government at the material point of time. The 60% of the family pension of the deceased employee computed by the District Inspector of Schools shows that the family had received and is receiving Rs.13,613/- which is more than the gross salary of the Group-D staff, that is, Rs.10,860/-.

7. The aforesaid Rules clearly provide that for computation of income of such family, an income of an amount earned by each family member from any other sources than provident fund, gratuity and 40% of family pension of the first seven years or upon the attainment of 67 years of age of the deceased teacher, had he been alive, whichever is earlier at the material point of time shall be taken into account.
8. This enhanced family pension is primarily to enable the family to tide over the immediate financial crisis. If 40% of that family pension of the first seven years were not paid to the members of the deceased family in that case, the income receivable by the family would be less than the initial gross salary of Group-D staff. This income cannot be ignored in order to finding out the family is in a position to have too square meals and other essentials for their survival.
9. In terms of Government of West Bengal Notification No.251-Emp. Dated, Kolkata, the 3rd December – 2013, under paragraph (6) relating to eligibility, it is stated that total family pension per month is included Basic Pension and Dearness Relief, Medical Allowance.
10. Enhanced family pension is mentioned in memorandum No.136-Edn. Dated 15/05/1985, the West Bengal Recognized Non Government

Educational Institution Employees (Death-cum-Retirement-Benefit) Scheme was notified. In Chapter VII of the Memorandum No.136-Edn, dated 15.05.1985 under paragraph 25 lays down family pension at enhanced rate. In paragraph 25 under the head "Family Pension at enhanced rate" it provides inter alia –

25. Enhanced Family Pension-

(a) In the event of death of an employee while in service, the rate of family pension will be 50% of the pay last drawn subject to a maximum of twice the family pension ordinarily admissible at the rates shown above, provided the employee concerned has put in not less than 7 years' continuous service prior to his death. The family pension at enhanced rate is payable for a period of 7 years' from the date following the date of death or till the date on which the employee concerned would have attained the age of 65 years had be survived, which ever period is less.

(b) In the event of death after retirement the family pension at enhanced rate shall be payable up to the date on which the deceased employee concerned would have attached the age of 65 years had he survived or for 7 years, whichever period is less; but in no case the amount of enhanced fmily pension shall exceed the pension sanctioned to the employee concerned at the time of retirement. However, in cases when the amount normal family pension exceeds the amount of pension sanctioned at the time of retirement, the enhanced family pension shall not be less than the amount of normal family pension. The pension sanctioned at the time of retirement shall the pension inclusive of the part of pension which the retired employee may have commuted before death.

After the period for payment of family pension at enhanced rate is over, family pension at normal rate will commence.

Subsequently, paragraph 25 of the 1981 Scheme was modified vide No.28-SE(B)/1M-13/08 dated 2/02/2009. The said notification lays down the following:-

"At present the amount of family pension at enhanced rate as contemplated in Para 25 of Scheme 1981 is payable (a) in the event of death of an employee of Government aided school (other than D.A. getting School) while in service for a period of 7 years or up to the date on which the deceased employee would have attained the age of 65 years had he survived, whichever period is less and (b) in the event of death after retirement, the family pension at enhanced rate shall be payable up to the date on which the deceased pensioner would have attained the age of 65 years had he survived or for a period of seven years whichever period is les, but in no case the amount of enhanced family pension shall exceed the pension sanctioned to the employee at the time of retirement.

In view of partial modification of para 25 of the 1981 Scheme the payment of family pension at enhanced rate will be payable for 7 years or till the employee/pensioner would have attained the age of 67 years whichever period is less.

11. In terms of the extant provision as mentioned above in this case, family pension will be calculated at enhanced rate and the amount of family pension will include basic pension at enhanced rate, Dearness relief and medical allowance/miscellaneous allowance at the relevant date of death of the deceased employee.

12. In ***Indian Bank Vs. Promila*** reported at ***2020 (2) SCC 729*** it has been observed:-

"4.It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassiionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away."

13. The dependents of the teacher who died in harness do not have any special claim or right to

claim appointment except by way of concession that may be extended by the employer under the Rules or by a separate scheme to enable the family of the deceased to get over the sudden financial crisis. Unless the financial condition is abject and penurious, such appointments cannot be claimed as a matter of right.

14. The D.I. has, in our view, rightly taken into consideration the enhanced pension receivable by the writ petitioner for the first seven years in deciding the financial hardship of the petitioner.

15. The principles of compassionate appointment are encapsulated in Paragraph 2 at Pages 139 and 140 of ***Umesh Kumar Nagpal Vs. State of Haryana*** reported in ***(1994) 4 SCC 138***, which reads as follows:

"The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice

and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.

What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class-Ill and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other *posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."*

16. It is well-settled that compassionate appointment is not a matter of right but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased employee. ***(see State of H.P. v. Prakash Chand; 2019 (4) SCC 285)***

17. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

18. The appeal fails,

19. Accordingly, the appeal and the application stand dismissed.

20. However, there shall be no order as to costs.

21. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.) **(Soumen Sen, J.)**