

02 21.9.2023

Ct-08

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MAT 1092 of 2015
with
I.A No. CAN 1 of 2015(Old CAN No. 7797 of 2015)

State of West Bengal & Ors.
Vs.
Avradipta Sinha & Ors.

Mr. Rezaul Hossain
... For the Appellants

Mr. K.M. Hossain
... For the Writ Petitioner/
Respondent no. 1

Mr. Kamal Misra
... For the Respondent nos. 2 & 3

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order dated 2nd June, 2015 passed in a writ petition in which the order passed by the Commissioner of School Education dated 4th March, 2014 refusing the claim of the petitioner for giving employment in died-in-harness category was under challenge. Learned Single Judge set aside the said order on the ground that once the writ petitioner was recommended by the Ad hoc Committee, Medinipur District Primary School Council on 30th January, 2021, the Commissioner of School Education would not exercise an appellate authority in not accepting the said recommendation. Learned Single Judge has relied upon the decision of the coordinate benches in the case of **Soumik**

Dandapath vs. State of West Bengal, reported in **2012(1) CHN (Cal) 60** and in the case of ***Satyagopal Mishra & Ors. Vs. State of West Bengal & Ors.***, reported in **(2011)2 W.B.L.R (Cal) 757**. Learned Single Judge has also relied upon the decision of the Hon'ble Supreme Court in ***V. Sivamurth Vs. State of Andhra Pradesh & Ors.***, reported in **(2003)13 SCC 730** in paragraph 18 where the law was summarized. The said decision was referred to paragraph 31 of the impugned judgment. The said paragraph is reproduced below:-

“18. The principles relating to compassionate appointments may be summarized thus:

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointments is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well-recognised contingencies which are carved out as exceptions to the general rule are:

(i) appointment on compassionate grounds to meet the sudden crisis

occurring in a family on account of the death of the breadwinner while in service.

*(ii) * * * * **

*(c) ******

*(d) * * * * **

31. Once we have had a grasp of the entire situation, we find here the Appellate lost his Father who was still in service. He had duly made a representation for absorption on the category of compassionate appointment. His representation was kept pending for well over seven years when it was turned down in the fashion that we have seen - without any cogent reason or supporting materials.

33. Rule provide the compassionate appointment (See: Rule 14 of the said Rules).

34. Question of receipt of terminal benefit (see: PPO order in the proposal sent on 04.12.2008 by the respondent No. 5) cannot be a governing factor to conclude that the family of the deceased is no longer in distress (See: the Division Bench decision in Tapan Kumar Barman v. State of West Bengal and Others, (2009)1 Cal HN 23 and the decisions of the Supreme Court in Balbir Kaur and Another v. SAIL, (2000)6 SCC 493 and Govind Prakash Verma v. LIC of India & others: (2005)10 SCC 289)."

3. In the instant case the Commissioner of School Education has rejected the recommendation of the Ad hoc Committee on two fold grounds. Firstly, the writ petitioner cannot be considered for

appointment as Primary Teacher in terms of Rule 2(M) read with Rule 14 of the Recruitment and Leave Rules of Teachers in Primary School, West Bengal dated 22nd November, 1991. The Ad hoc Committee appears to have overlooked this matter while making the recommendation. Had there been a recommendation for any other post the question would have been different. The recommendation of the Ad hoc Committee for the said post in view of Rule 14 of the 1991 Rules can only be for the post of Primary Teachers on compassionate ground. As the writ petitioner has made a prayer for appointment suitable to his academic qualification in view of 1991 Rules, he could not have been recommended for any post except for the post of Primary Teachers.

4. The learned Advocate for the writ petitioner has relied upon Education Department's Circular being Memo No. 457 - Edn. (P)
4.1 - 50/93 dated Calcutta, the 12th October, 1987, in which under sub-rule(ii) of Rule 2 it provides that if the ward of a Primary school teacher who dies in harness does not possess the requisite qualification for appointment as a primary school teacher, or if the ward of a Primary school teacher who dies in harness possesses the requisite qualification for

appointment as a teacher in a Junior High/Secondary/Higher Secondary School etc. and opts for being appointed as such, the name of the ward in either case, should be forwarded by the concerned District Inspector of Schools(P.E)/District School Board, as the case may be, to the District Inspector of Schools(Secondary Education) concerned for providing him/her with employment on compassionate ground commensurate with his/her qualification.

5. However, it is not made clear to us whether this Rule is applicable after the 1991 Rules came into operation as on a plain reading of Rule 14 of 1991 Rules compassionate appointment can be given for the post of Teacher in a primary school with the approval of the Director. In the event it appears that the recommendation is *ex facie* contrary to rules we are of the view that Commissioner has jurisdiction to interdict that finding. The recommendation *de hors* the provision of the Rules cannot be accepted. No authority can be directed to act contrary to the Rules. However, in the event it is found that under any scheme a ward not qualified for primary teacher is still entitled to for consideration commensurate with his

qualification the same could have been considered.

6. The Ad hoc Committee being aware of the difficulties made a recommendation, which is contrary to the Rules and the Commissioner was justified in rejecting the said recommendation on the interpretation of the aforesaid provision and held the writ petitioner to be ineligible. The Commissioner has also in obedience to the direction passed by Justice Kar Gupta considered the matter.

7. The financial position of the family would need to be evaluated on the basis of the provisions contained in the relevant scheme. 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 Government employee [See ***State of H.P. v. Prakash Chand; 2019(4) SCC 285***]. The said decision considered and distinguished in ***Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.*** reported in ***(2005) 10 SCC 289*** in paragraph 8 of the judgment. However, in the event the scheme in express terms require that the family pension received by the dependants of the deceased employee is required to

be taken the writ petitioners cannot object to it as the application needs to be considered on the basis of the scheme. Moreover, **Govind Prakash Verma** (supra) was held to be per incurium in **State Bank of India & Ors. vs. Surya Narain Tripathi** reported in **(2014) 15 SCC 739**.

8. In the instant case as the fact reveals the mother of the petitioner was an Assistant Teacher in a primary school and she had retired in 2007. The financial need assessed during the aforesaid time does not show any immediate financial need of the family.

9. On such consideration, we do not find any reason to interfere with the order passed by the Commissioner.

10. In view of the aforesaid, the appeal succeeds.

11. The appeal being MAT 1092 of 2015 stands disposed of.

12. In view of disposal of the appeal nothing remains to be decided in the application for Stay being CAN 7797 of 2015 and the same is accordingly disposed of.

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

14. Urgent Photostat certified copy of this

order, if applied for, be given to the parties on usual undertaking.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)