

ML 96
02.05.2023
Court. No. 19
GB

WPA 18396 of 2022

Saraswati Hazra
Vs
The State of West Bengal & Ors.

*Mr. D.N. Chatterjee,
Mr. P.C. Podder,
Mr. R.K. Biswas*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata*

...for the State.

Mr. Zafirul Islam

...for the Respondent No.5.

The petitioner, as the wife of the deceased Kanu Hazra, has filed this writ petition for a direction upon the respondent authorities to terminate the respondent no.5, from his service.

The respondent no.5 was employed in place of late Kanu Haza who had been rendered permanently incapacitated due to 100% blindness. The respondent no.5 is the nephew of the deceased Kanu Hazra.

C.O. 1659(W) of 1996 was filed by the deceased employee (Gram Panchayat Karmee) and the respondent no.5 herein, for a mandamus upon the respondent authorities to allow late Kanu Hazra to retire on the ground of permanent disablement and to appoint the respondent no.5 in his place, in accordance with the service rules.

The writ petition was disposed of by a coordinate bench by directing the Chief Medical Officer of Health, Murshidabad to consider the contentions of the petitioner by constituting a board. In case it revealed that Kanu Hazra was

actually disabled, the matter was directed to be referred to the appropriate authority for consideration of the prayer for retirement of late Kanu Hazra and appointment of the respondent no.5 in his place, as per the service conditions.

It is the contention of the petitioner that such belated claim is being made as she had only recently come to know how the respondent no.5, in a surreptitious manner, had secured the employment.

Heard the parties. First and foremost, the coordinate Bench had not directed that the respondent no.5 be appointed. The coordinate Bench directed the authorities to take necessary action and to consider the case upon examination of Kanu Hazra and upon satisfying itself of the fact that due to permanent disablement, Kanu Hazra would not be able to work. The authorities, upon considering the entire matter, employed Bishnupada Hazra as per rules and allowed Kanu Hazra to retire. The appeal filed by the petitioner from the order of the coordinate bench was dismissed on the ground of raising a stale claim.

On and from 1996 Bishnupada Hazra, has been serving. Until now, the petitioner had remained silent. It is also a fact that the petitioner had received the death benefits of her deceased husband and is enjoying the family pension. The contention of the petitioner that although she was a estranged wife, her daughter should have got an opportunity instead of the respondent no.5, is rather belated and farfetched.

This Court does not entertain the writ petition for the following reasons:-

- a) The death certificate annexed to the writ petition which is Annexure-P/3 at Page 21, indicates that Kanu Hazra died on July 16, 1997. The writ petition has been filed seeking cancellation of the appointment of the respondent no.5 on the ground of misrepresentation, on August 11, 2022. The grounds for such inordinate delay has not been explained. It is not accepted by the Court that the petitioner came to know of her husband's death only recently. The petitioner has been enjoying all the death benefits since the death of Kanu Hazra, who died in 1997 and the death certificate was handed over to the petitioner at the relevant time. She remained silent all through.
- b) The appeal Court had dismissed the petitioner's challenge, by an order dated March 27, 1996.
- c) Whether the daughter of the petitioner was at all eligible for appointment at the relevant point of time, that is in 1996, is also not available from the records.

Under such circumstances, the Court does not find any reason to pass any orders directing the employer to terminate the respondent no.5, when there are no grounds for such termination. The feeling of deprivation of the petitioner which has subsequently found expression in this writ petition, cannot be a ground for dismissal or termination of an

employee who was employed by the concerned respondent in accordance with law and as per the rules.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)