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2023**
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 131 of 2022

Kalyan Chandra Das
Vs.
The State of West Bengal and others.

Mr. Rudranil De,
Mr. Ziaul Haque,
Mr. Arup Bhowmick.
... for the petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Tuli Sinha.
... for the State.

Both the Additional Chief Secretary to the Government of West Bengal and the Home Secretary as well as the Tribunal have acted grossly contrary to the order of the Division Bench dated 17th August 2021 passed in WP.ST 89 of 2020 citing a reason, which is unacceptable and untenable.

The matter pertains to a compassionate appointment of the son of the deceased employee, who died in-harness on 1st February 2002. An application was made at a later point of time, though the initial application was made immediately after the death of the said employee while in service, at the behest of the widow and was processed by the competent authority.

It is no doubt true that the compassionate appointment is not a matter of right but to extend sustenance to the family of the deceased employee, who suffered the sudden financial jerk, by making a suitable scheme and/or Rule; when it relates to a public employment; although it is sometimes conceived to

offend to Article 14 of the Constitution of India yet bearing in mind the object and purpose the schemes and/or Rules are framed and support is given to the family, who has suddenly gone in penury.

Often such applications are jealously treated at the behest of the employer or the Officer in helm of such affair without realizing the true and actual meaning of compassion and the object and purpose of incorporating the schemes and the Rules in this regard.

Invariably, the unacceptable interpretative process is adopted with an intent to thwart the aforesaid applications and to find a minimal error and/or defect therein for the purpose of dismissal and/or rejection of the aforesaid applications.

The instant case reveals an brazen attempt on the part of the employer in securing the rejection of the said application in total disregard to the judgment and order passed by the Division Bench of this Court in an earlier round of litigation between the same parties. While disposing of the writ petition being WP.ST 89 of 2020, this Court set aside the order of the authority dated 19th July 2018 as well as the order of the Tribunal dated 18th December 2019 and directed the respondent authorities herein to proceed with the matter on the basis of 2008 circular from the stage after the interview and to consider the claim of compassionate appointment of the petitioner. It was further indicated that the entire process should be completed within eight weeks from the date of communication of the order.

Astonishingly, the Additional Chief Secretary to the Government of West Bengal and the Home Secretary being aware and conscious of the judgment and order passed by the Division Bench of this Court on 17th

August 2021 in WP.ST 89 of 2020 proceeded to decide the application as if it is a *de novo* consideration of the said application and rejected the same on the score that the moment the family is found to have survived for nearly seven years, it does not meet the requirement of immediate financial support/assistance and wrongly applied the observations of the judgment rendered by the Single Bench in Sri Bijon Mukherjee vs. The State of West Bengal & Ors. (WP No. 6389(W) of 2017).

Firstly, the authority failed to take into account that the moment the Division Bench has passed a direction to do a thing in a particular manner, the authority cannot assume the power beyond the aforesaid direction nor should be permitted to act in gross violation thereof. The Division Bench was conscious that the application filed by the petitioner was considered by the appropriate authority and ultimately a recommendation was made to consider the case of the petitioner on compassionate ground and, in fact, the authority proceeded to conduct an interview, but later on decided not to extend the benefit of compassionate appointment to the petitioner.

The Division Bench set aside the decision of the authority and once the direction is made to complete the exercise from the stage after the interview, it does not bestow power upon the authority to undertake a *de novo* process and decide a case, as if it has bestowed with the power independent of the order of the Division Bench.

The authority cannot act nor undermine the order of the Court and must respect the majesty and sanctity of the Court. Any action on the teeth of an order of the Court and that too in complete defiance thereof has to be seriously viewed and such an authority should not get any blessings from the Court for an action, which is

manifestly in derogation of the order. Any departure from the order passed by the Court cannot be permitted to withstand nor the authority can be bestowed with the power to act as a Court of Appeal over the judicial order and do whatever it feels. Such unbridled power will tarnish the reputation and image of the judicial system and will invite a chaotic situation and destroy the confidence and trust reposed by the society upon the Court. The executives cannot act in violation of the order of the Court and have to squeeze itself within the precincts thereof, as any attempt to travel beyond the peripheral thereof should be dealt sternly.

The present case set an example where the authority usurped the power and utilize the same, which frustrate the order of the Court and apparently seen to have been done in departure therefrom. The Division Bench directed the authority to proceed with the matter on the basis of 2008 circular from the stage after the interview and, therefore, taking an independent decision on the merit of the said application, which passed through the various tiers and reached the stage after the interview, is impermissible and in violation of the order of the Court.

Interestingly, the Tribunal also acted on the *ipsi dixit* of such authority, obviously when a tribunal application is decided on judicial side by an Administrative Member in absence of the Judicial Member. The nuances of law and its applicability including the separation of the powers and the orders of the judiciary to be respected. The decision appears to have been made lopsided obviously at the instance of the Member having no legal framework in the mind and an inclination to support the decision of the executives.

We, therefore, set aside the impugned order. As a

consequence whereof, the order of the Additional Chief Secretary to the Government of West Bengal and the Home Secretary dated 19th July 2018 is also set aside.

The said respondent is directed to consider the case strictly in the light of the observations made by the Division Bench in the order dated 17th August 2021 passed in WP.ST 89 of 2020 and the entire exercise shall be completed within two weeks from the date of communication of this order.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)