

19.10.2023

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Sl. No. 02-17

Ct. No. 12

FMA 708 of 2019

West Bengal Essential Commodities Supply Corp. Ltd.

& anr.

-Versus-

Jaitra Acharya & ors.

with

FMA 697 of 2019

with

FMA 698 of 2019

with

FMA 699 of 2019

with

FMA 706 of 2019

with

FMA 707 of 2019

with

MAT 1578 of 2018

with

MAT 553 of 2020

with

CAN 1 of 2020, CAN 2 of 2020

with

MAT 554 of 2020

with

MAT 555 of 2020

with

CAN 1 of 2020, CAN 2 of 2020

with

MAT 556 of 2020

with

CAN 1 of 2020, CAN 2 of 2020

with

MAT 560 of 2020

with

MAT 561 of 2020

with

MAT 562 of 2020

with

CAN 1 of 2020, CAN 2 of 2020

with

MAT 563 of 2020

with

CAN 1 of 2020, CAN 2 of 2020

with

MAT 565 of 2020

Mr. Susovan Sengupta

Mr. Sanjoy Saha

..... for the appellants

Mr. Puspall Chakraborty
 Mr. Prasanna Ganguly

.....for the respondents

The issue involved in all the appeals are similar and facts in all the appeals are one and the same and therefore disposed of by this common Judgment. It is sufficient to refer to the facts in appeal No. 708 of 2019 to dispose of all appeals.

The first respondent's mother sought for appointment on compassionate ground for first respondent. The Committee constituted by Board of Directors of the appellant recommended and appointed first respondent as Assistant Grade-II on temporary basis on daily wages on 11th March, 2004. The first respondent worked up to 2013. During the year 2011-2012, the appellant advertised for appointment to various posts including Assistant Grade-II. On application seeking information under Right to Information Act, the appellant by the reply dated 02.05.2012 furnished the information that 15 persons engaged/appointed as that of first respondent on compassionate ground up to 2003 were absorbed in regular basis in the year 2008. The appellant also informed that there is no specific rule for appointment on compassionate ground and only State Government Rules are followed for appointment. The first respondent and others sought for absorption as that of 15 persons and filed various writ petitions. In the writ petitions,

various orders were passed on different dates. On 10.06.2014, the appellant undertook that they will not take adverse action against the first respondent. Subsequently, the appellant filed affidavit-in-opposition and took a stand that engagement of 15 persons and their subsequent absorption were illegal, the first respondent has no vested right and there is no specific rule for appointment on compassionate ground and the first respondent cannot claim negative equality.

The learned Judge considered the averments in the affidavit-in-opposition and various Judgments relied on by both counsel appearing for appellant as well as first respondent, concluded that appointment and subsequent absorption of 15 persons were not illegal as the same was done by following the State Government Rules. On such conclusion and distinguishing the ratio in the Judgment relied on by the counsel for appellant, allowed all the writ petitions.

Against the said order, the present appeals are filed.

Learned counsel appearing for the appellant contended that there is no Scheme/specific Rule in the appellant Corporation with regard to appointment on compassionate ground and therefore the first respondent and others are not entitled to absorption. The learned Judge erred in holding that absorption of 15 persons were not illegal as it was done following the State Government Rules. The learned Judge further

erred in holding that first respondent is similarly placed person as that of 15 persons and entitled to absorption. With regard to contract workers working in the appellant, the Managing Director of the appellant has passed orders for granting consolidated salary to them. Unless impugned orders passed by the learned Single Judge are set aside all the other contract workers also will claim absorption. The learned Judge failed to consider the above facts and erroneously held that there is no financial burden for the appellant if first respondent and others are absorbed. As per notification being notification No. 142-EMP dated 01.11.2007 of the Labour Department, a draft Rules were framed by the appellant and sent to the Government for approval. Unless Rules are approved by the Government, the first respondent and others are not entitled to absorption and prayed for setting aside all the orders of the learned Single Judge and allowing the appeals.

Learned counsel appearing for the first respondent in all the appeals made submissions as per averments in the writ petition and in support of the orders of the learned single Judge. Learned counsel appearing for first respondent also submitted that by the order dated 23.04.2015 this Court moulded the relief for permanent absorption and called for the affidavit and prayed for dismissal of all the appeals.

Heard the learned counsel appearing for appellant and respondents and perused entire materials on record.

It is not in dispute that appointment of first respondent and others was as per the recommendation of the Committee constituted by Board of Directors of the appellant. The first respondent was working from 2004 up to 2013. The issue with regard to their continuation in service of the appellant arose during the year 2011-2012 when appellant had made advertisement for appointment of various posts including Assistance Grade-II. From the materials on record, it is seen that there is no rule in the appellant Corporation for appointment on compassionate ground. The appellant admittedly followed State Government Rule for granting appointment on compassionate ground. That appointment was made by the Committee consisting of Board of Directors constituted by the appellant. It is not the case of the appellant that first respondent and others are not eligible for appointment on compassionate ground as per the Rules of State Government. They were appointed only as per the recommendation of the Committee which was accepted by Board of Directors. In view of the same, now it is not open to the appellant to contend that all the appointments made on compassionate ground following the State Government Rules are illegal. The learned Judge has considered the fact that 15 others who were

appointed on compassionate ground were absorbed on regular basis and appointment of first respondent and others are not illegal based on the undisputed facts placed before him. In view of the fact that appointment of the first respondent and others are not illegal, the learned Judge rightly did not accept the contention of the counsel for appellant and Judgment relied on by him and accepted the ratio in the Judgment relied on by the counsel for first respondent. The reasons given by the learned Judge for allowing all the writ petitions are cogent, valid and legal and passed after properly appreciating the facts and law. There is no error or illegality warranting interference of this Court.

For the above reason, all the appeals are dismissed.

There shall be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)