

02.02.2023
Court No. 19
Item No.03
Sn/ Cp

W.P.A. No. 27364 of 2022

Basirul Islam

Vs.

The State of West Bengal & Ors.

Mr. Shuvro Prakash Lahiri
Md. Habibur Rahaman
Mr. Rajesh Naskar

.....for the petitioner.

Mr. Rajarshi Basu
Mr. Kapil Guha

.....for the State.

The matter is taken up for final hearing on the basis of the records and the report filed by the Additional Secretary to the Government of West Bengal, Panchayats and Rural Development Department. Necessary documents have been annexed to the report and filed through Mr. Basu, learned advocate for the State respondents.

The status report categorically indicates the reasons as to why the State Government is not willing to grant compassionate appointment to the petitioner. Such reason has also been intimated to the District Panchayat & Rural Development Officer, Uttar Dinajpur by Memo dated December 29, 2022 issued by the Assistant Secretary to the Government of West Bengal, Panchayats and Rural Development Department.

The petitioner's father died in harness on February 4, 1998 while he was serving as a permanent employee in the Daspara Gram Panchayat. On March 30, 1998, the petitioner claims to have applied in the prescribed format supplied by the pradhan of the concerned gram panchayat with all supporting documents before the Block Development Officer. At the block level, necessary formalities were completed. The District Magistrate, Uttar Dinajpur forwarded the filled in applications of similarly situated candidates including the petitioner, with full particulars required as per the check memo, for approval of appointment of such persons to Group-D posts under the PRI bodies, on compassionate ground. The petitioner's name appeared at Sl No. 9 of the list of candidates.

The applications for appointment under the die-in-harness category were sent to the Commissioner, Panchayats and Rural Development Department, West Bengal by a covering letter dated January 24, 2011. The Joint Director, Panchayats and Rural Development Department, West Bengal issued a recommended proposal for appointment of the petitioner on compassionate ground. The seriality of the petitioner was at Sl No.351. Such proposal was sent to the Joint Secretary to the Government of West Bengal, Panchayat and Rural Development Department. The information

given along with the recommended proposal are quoted below:-

Whether proforma application : YES
submitted
Whether three men committee : YES
report submitted
Whether dependents' NOC : YES
submitted
Whether Attested copy of death : YES
certificate submitted
Whether initial prayer within 6 : YES
month of death submitted
Whether identity proof document : YES
submitted
Whether 2 copies of Attested PP size : YES
photographs submitted
Whether Attested Copy of Ed : YES
Qualification submitted
Whether Attested copy of Caste : NA
Certificate submitted

Such recommended proposal was sent on May 25, 2011. W.P. 22291(W) of 2016 was filed before this court seeking directions upon the respondent authorities to grant appointment to the petitioner on the basis of the recommended proposal. W.P. 22291(W) of 2016 was disposed of by a Coordinate Bench of this court by an order dated February 23, 2017. The Coordinate Bench was pleased to pass the following order:

“Considering the submission as advanced by the learned Advocates for the respective parties and after perusing the records, I direct the respondent no. 2, the Joint Secretary, Department of Panchayat and Rural Development, Government of West Bengal, to take a decision in respect of the recommended proposal already sent by the Joint Director, Panchayats Rural Development, West Bengal on 25th May, 2011 within a period of six weeks from the date of

communication of this order after giving an opportunity of hearing to the petitioner or his authorised representative and thereafter communicate the decision to the petitioner within one week.

With this direction, this writ petition is disposed of.”

In compliance with the order of this court dated February 23, 2017, the Special Secretary, Panchayats and Rural Development Department, Government of West Bengal passed an order on July 28, 2017. The prayer of the petitioner was rejected on the ground that the three men committee did not consider the question of eligibility of the petitioner on the basis of the financial condition of the family by taking into consideration the death-cum-retirement benefits which were available to the family on the death of the employee (petitioner’s father). The recommended proposal dated May 25, 2011 was not accepted and the petitioner’s claim was rejected. The relevant portion of the said order is quoted below:

“** ** ** It is seen from the records that the report of 3 men committee did not speak specifically about the amount of Family Pension, Death Gratuity, GSLI and encashment of leave etc. Incomplete calculation is not in consonance of the eligibility criteria (based on monthly income of the dependent family) as envisaged in notification no. 433/PN/O/III/2E-70/07 (Part-I) dated 03.02.2009 of the Panchayat & Rural Development Department.

ORDER

Hence in the light of above stated incompleteness in the three men committee report, this Department is not in a position to

accept the observation/recommendation of the three men enquiry committee and letter of recommendation issued by the Joint Director, Panchayat & Rural Development Department vide Memo. No. 1376/III/DP/2A-16/96(Pt-I) dated 25.05.2011 and is liable to be rejected.

Hence, the petition is rejected.”

Such order was challenged by the petitioner before this court in W.P. No. 24615(W) of 2017. The writ petition was disposed of by another Coordinate Bench of this court with the observation that the order impugned dated July 28, 2017, was no longer relevant in view of a report that was filed before the court dated January 8, 2018. Learned advocate for the State respondents submitted before the Bench that further recommendation of the respondent no.6 in the said writ petition which appeared from the report dated January 8, 2018 should be considered at the level of the respondent no.2, that is, the Special Secretary of the department concerned.

His Lordship, on the basis of the report and submissions made by the respective parties remanded the matter to the respondent no.2 so that the matter could be re-visited and a reasoned order could be passed in accordance with law. Pursuant to the directions of His Lordship, the Special Secretary to the Government of West Bengal, Panchayats & Rural Development Department passed the following order:-

“It is pertinent to note that appointment on compassionate ground is offered in favour of a dependent & adult family member of the deceased employee of PRI who is in need of immediate financial assistance. The offer for appointment on compassionate ground can never be a matter of right and such appointments are made without rigorous or any competitive process. This is worth noting that this department had prepared a provisional list of eligible candidates of died-in-harness category district wise.

The name of the petitioner has been enlisted in the provisional list at Serial No. 06 as prepared by this Department as per the date of receipt of the proposal for appointment on compassionate ground from the Jt. Director, P & RD for the district of Uttar Dinajpur. Hence, I order that an appointment in Group-D post in a suitable vacancy in Uttar Dinajpur district will be considered in favour of Basirul Islam subject to approval of the competent authority in P & RD Department and urgency of the District to fill up the vacancy in exempted category as and when his turn comes.”

The authority held that the provisional enlistment of the petitioner at serial no. 6 which was prepared by the department as per the date of receipt of the proposal for appointment on compassionate ground from the Joint Director, Panchayat & Rural Development Department, Uttar Dinajpur, would result in appointment of the petitioner in a Group-D post, in a suitable vacancy in Uttar Dinajpur, subject to the approval of the competent authority of the Panchayats & Rural Development Department and the urgency of the District to fill-up the vacant post under exempted category, as per his turn.

This writ petition has been filed with the allegation that persons who were placed below the

petitioner in the provisional list in which the petitioner was placed at serial no. 6, had been granted appointment.

Mr. Basu, learned advocate for the State respondents has filed a detailed report with documents. The Additional Secretary to the Government of West Bengal has categorically stated in the report that as the prayer of the petitioner for grant of compassionate appointment had been rejected, so persons lower in the rank in the said provisional list, had been given appointment in the district.

The records which have been submitted reveal that the Assistant Secretary to the Government of West Bengal, Panchyat & Rural Development Department intimated the District Panchayat & Rural Development Department, by a letter dated December 29, 2022 that the petitioner's case could not be considered as the petitioner applied for compassionate appointment after more than 13 years from the date of death of his father. Such letter has also been placed before this Court. The letter was in reference to a memo dated July 27, 2017 issued by the District Panchayat and Rural Development Department.

Mr. Basu, relies on the circulars issued from time to time with regard to grant of compassionate

appointment and submits that as the application was found to have been made after more than five years from the date of death of the employee, no concession could be given to the petitioner. At best, the delay could have been condoned had the petitioner applied within five years and it was found by the three men committee that the family was under financial distress for the entire period.

It is submitted that the need for appointment on compassionate ground did not exist. Compassionate appointment was neither heritable nor a vested right. It is an exception made to the general procedure followed in respect of grant of public employment. Mr. Basu further submits that only in very serious cases of financial hardship, if the dependent had persuaded his right diligently and promptly, a deviation from the normal rule of appointment can be made by the employer. The delay in making the application cannot be condoned and the authority has rightly rejected the case of the petitioner.

This Court finds that there are serious discrepancies in the approach of the employer in this matter.

Records reveal that the application of the petitioner seeking compassionate appointment was filed before District Panchayat Officer through proper

channel and the same was received on March 30, 1998. The application form has been annexed to the writ petition. The Pradhan recommended the case of the petitioner. The Block Development Officer recommended the case of the petitioner. All the documents along with the application as required by the “Check Memo” was forwarded by the District Magistrate, Uttar Dinajpur to the Commissioner of Panchayat & Rural Development Department on November 24, 2011. The authority found that the petitioner had applied in the prescribed form and also submitted the documents as per the Check Memo. Thereafter, the Joint Director of Panchayats & Rural Development Department sent the recommended proposal with necessary documents in respect of the petitioner to the Joint Secretary to the Government of West Bengal, Department of Panchayat & Rural Development Department. In the portion marked “Enclosed documents” it has been categorically stated that the initial prayer was made within six months from the date of death. When the case of the petitioner was turned down by the Special Secretary to the Government of West Bengal, Department of Panchayat & Rural Development Department, by an order dated July 28, 2017, the only ground for rejection was that the eligibility criteria was not based on the calculation of the

death-cum-retirement benefits available to the family of the deceased employee.

The recommendation of the three men committee was found to be defective and the recommended proposal dated May 25, 2011 was found liable to be rejected. Subsequently, this order was challenged by the petitioner and on the report of the authorities dated January 8, 2018, the Co-ordinate Bench observed in W.P. 24615(W) of 2017 that the order dated July 28, 2017 should be permanently stayed as the lacuna pointed out by the authority in the said order had been properly dealt with in the fresh report.

The State respondents prayed that the matter should be decided by the respondent no.2 in the writ petition, that is, the Special Secretary to the Government of West Bengal, Department of Panchayat & Rural Development.

The Special Secretary by an order dated August 5, 2019 recognizing that the petitioner was placed at serial no. 6, held that the petitioner be appointed in a Group-D post in a suitable vacancy in Uttar Dinajpur as per his turn, subject to the approval of the competent authority. Such order was passed on the direction of the Court.

The petitioner was placed in the provisional list at serial no. 6. The authority did not find any defect

in such enlistment. The authority, upon considering all the facts and figures arrived at the conclusion that the petitioner should be employed in a Group-D post against a suitable vacancy in the died in harness category as per his turn, that is, as per serial number in which he had been placed. The matter reached its finality with the order. Only a formal approval to the appointment was to be given.

The policy of 2013 vide 251 EMP dated December 3, 2012 issued by the Labour Department provides in paragraph 3 thereof, that respective appointing authorities for Group-C and Group-D employees shall be the appointing authorities of eligible candidates under the died in harness category. However, approval of the Minister-in-Charge or Minister of the State would be necessary for all such cases. This scheme came into operation in December, 2013 in supersession of an earlier scheme published by the labour department with regard to appointments under the died in harness category.

By no stretch of imagination, the meaning of the expression of “approval by the competent authority” in the order dated August 5, 2019 would mean further revisit of the issue by the Assistant Secretary to the Government of West Bengal, Department of Panchayat & Rural Development. The

Special Secretary, as directed by the High Court had already decided the issue and ordered that the petitioner was entitled to be appointed in a Group-D post under the died in harness category, as per his turn.

A third case has been made out by the Assistant Secretary to the Government of West Bengal, Panchayat & Rural Development Department. The order submitted with the report dated December 29, 2022, cannot be sustained in law. After the Special Secretary had decided the matter as per directions of the Court, the Assistant Secretary could not sit in appeal over the same. In the earlier rounds of litigation, the authorities have never raised the point of delay, rather the recommendation of 2011 categorically stated that the initial prayer was made within first six months from the date of death.

It is an admitted position that persons lower in rank than the petitioner in the provisional list, were appointed. Thus the fact that the petitioner's turn had come, is not in dispute. His candidature was rejected on the ground of delay. The ground of delay for rejecting the claim of the petitioner was not available to the authorities after the order passed by this Court and the subsequent order of the Special

Secretary to the Government of West Bengal,
Department of Panchayat & Rural Development.

Records speak otherwise. The Assistant Secretary to the Government of West Bengal could not have issued the letter dated December 29, 2022.

The impugned letter dated December 29, 2022 and the decision taken by the said authority are quashed and set aside.

The concerned department is directed to implement the order of the Special Secretary to the Government of West Bengal, Panchayat & Rural Development Department dated August 5, 2019, by appointing the petitioner in the immediate available vacancy that is either existing or shall be available in the exempted category (died in harness), in the district of Uttar Dinajpur. Such order is being passed as it is an admitted position that the petitioner was wrongly left out by the order of the Assistant Secretary and persons below the petitioner in the provisional list had already been appointed.

The approval contemplated would be a formal approval subject to police verification and medical fitness of the petitioner. The same cannot be interpreted to mean a further determination of the issue.

The status report and the documents have been treated as the written objection of the

respondents and the same are taken on record. The petitioner will be initiated about the compliance of this order by the Assistant Secretary to the Government of West Bengal, Panchayats and Rural Development within four weeks from date of communication of this order.

This writ petition is disposed of.

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

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

(Shampa Sarkar, J.)