

13.09.2023
SL No. 6
Court No.8
(gc)

MAT 1844 of 2012
CAN 1 of 2012 (Old No: CAN 11410 of 2012)

Arup Kumar Khan
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. S.S. Mondal,
Sk. Intiaj Uddin
...for the Appellant.

Mrs. Tapati Samanta
...for the State.

1. The appellant is the son of the Head Teacher of Baragangohali Primary School situated in the district of South 24-Parganas. His mother died while in service on 15th July, 2007. He applied for appointment on compassionate ground under the died-in-harness category. The said application was rejected. Initially, the writ petitioner approached this Court challenging the decision taken by the concerned authorities not to approve such appointment upon taking into consideration the Government Order of the Education Department, bearing No. 85 SE(Pry), dated 15th February, 2008. The writ petition was disposed of on 15th September, 2009 by Justice Soumitra Pal by directing the Director of School Education to consider the matter afresh by passing a reasoned order after giving

an opportunity of hearing to the petitioner and after taking into consideration the report and/or proposal prepared by the concerned District Primary School Council. The memo bearing No.249/2 dated 1st December, 2008 was, thus, set aside in W.P. No.12019(W) of 2009.

2. Pursuant to the said order on 15th September, 2009, the Director of School Education, West Bengal considered the matter afresh and vide memo dated 12th November, 2010, rejected the prayer of the petitioner for appointment on compassionate ground for reasons stated therein. The said memo dated 12th November, 2010 was challenged in a writ petition being W.P. No.1057(W) of 2011 that had culminated in the impugned order dated 29th September, 2011.
3. Mr. Ekramul Bari, learned Counsel appearing on behalf of the appellant has submitted that the Director of the School Education could not have decided the matter in terms of the notification No.85-SE(Pry) dated 15th February, 2008 as the mother of the petitioner/appellant died in the year 2007. The learned Counsel cited the decision of the Hon'ble Supreme Court in this regard, namely,

State of Madhya Pradesh & Ors. Vs. Ashish Awasthi reported in ***(2022) 2 SCC 157***.

4. Mr. Bari has also referred to the decision of a Coordinate Bench in ***Tapan Kumar Barman Vs. State of West Bengal & Ors.*** reported in ***2008 SCC Online Cal 52: (2009) 1 CHN*** to argue that the Director has not set out any provision of law as to how on receipt of the aforesaid amount, the applicant is debarred from getting any appointment. He relied upon the following observation of the Coordinate Bench in Paragraph 9 which is stated below:-

“9. The Director has not set out any provision of law as to how on receipt of the aforesaid amount, the applicant is debarred from getting any appointment. The payment which had been received is an earned and assured amount which includes Provident Fund and Gratuity and Provident Fund and Gratuity is the amount earned by the deceased employee and as far as the family pension is concerned, this is also one kind of deferred payment and earned by the deceased. In our view, compassionate appointment is given with an idea to compensate the family for the loss of income because of sudden death of the employee who would have earned in future. The money which has been received was earned by the employee, which he might have received had he been alive.”

5. The State has filed a comprehensive report giving brief summary of the matter and the

views. The report has been filed by the Commissioner of School Education, West Bengal dated 7th September, 2023. The Commissioner has given a brief background of the amendment made in 15th February, 2008. The appointments are regulated by the West Bengal Primary School Teachers Recruitment Rules, 2001 published vide Notification No.57-SE(Pry) dated 15th January, 2002. Rule 14(1) of the statutory Rules regulating recruitment of primary teachers in West Bengal prior to its amendment on 15th February, 2008, laid down as follows:-

“14. Appointment on compassionate ground. – The Council may appoint primary teachers, with the approval of the Director of School Education, West Bengal or his authorized officer, on compassionate ground in the following cases where, in the opinion of the Council, the cases deserve compassionate consideration: -

(1) when a teacher dies in harness before the date of his superannuation i.e. at the age of 60 years, leaving a family which, in the opinion of the Council, is in extreme financial hardship that is it falls to provide two square meals and other essentials to the surviving members of the deceased teacher’s family, the following members of the deceased teacher’s family, viz. the

(a) widowed wife, or

(b) widower, or

(c) son, or
 (d) unmarried daughter, or
 (e) divorcee dependent daughter –
 divorced before the date of death of
 the teacher,
 possessing required educational
 qualifications as laid down in clause
 (a) and (c) of sub-rule (1) of rule 6 and
 unemployed, and not below 18 years
 of age and not above 45 years of age
 and found eligible to teacher, may
 make within two years from the date
 of such death, a prayer in writing to
 the Council for appointment as
 primary teacher on compassionate
 ground, provided that only one
 member of a deceased primary
 teacher's family may be appointed on
 compassionate ground”.

6. However, the expression “financial hardship”
 was not defined and criteria not laid down on
 the basis of which the authority can decide on
 the financial hardship of the family. This was
 noticed by Hon’ble Justice Indira Banerjee, as
 her ladyship then was in WP 2375(W) of 2004
 (Mir Md. Samim Vs. State of West Bengal &
 Ors.) decided on 17th January, 2006 in which
 her ladyship made certain observations and
 gave certain directions. The relevant
 observations and directions are stated
 hereinbelow:-

*“In the absence of any fixed criteria for
 determining economic hardship there is*

scope for manipulation and discrimination. In the case of one deceased teacher, an application may be rejected on the ground that Rs.1,000/- per month is sufficient. In another case the same amount may be held not to be sufficient.

In the process, families of deceased teachers otherwise similarly circumstanced might be subjected to discrimination just because their cases are considered by different District Inspectors with different views. For example, of two identically circumstanced candidates the candidature of one could be rejected, but the other accepted, just because the candidatures were considered by different incumbents to the same office with different views on hardship.

In any case there would have to be a uniform yardstick for determining what was essential for basic standard of living with dignity and whether the family was in a position to supply two square meals and other essentials to all its member or not. In the absence of any criteria fixed as aforesaid, the impugned order cannot be sustained and the same is set aside and quashed. As observed above absence of a fixed criteria gives rise to arbitrariness and discrimination.

The State Government shall forthwith formulate a fixed criteria for determining extreme financial hardship and inability to provide two square meals and essential and reduce the same in writing in the form of written rules. Such rules should be framed three months from date. ”

7. It seems that on the basis of the aforesaid decision, the State Government has formulated certain criteria for determining extreme financial hardship and inability to provide two square meals and essentials and reduce the same in writing in the form of written rules by way of amendment being Notification No.85-SE(Pry) dated 15th February, 2008.

8. The relevant portions of the amended Rule 14 are reproduced below:-

“14. Appointment on compassionate ground – (1) When a teacher dies in harness before the date of his superannuation, i.e. the age of 60 years, leaving a family which is, in the opinion of the Council, in such extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher’s family, the – (i) spouse; (ii) son; (iii) daughter of the deceased teacher’s family who is possessing required educational qualification as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach, may within two years from the date of such death make a prayer in writing to the Council for appoint as primary teacher on compassionate ground:

Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule.

Explanation – The expression “financial hardship”, in relation to income of a deceased teacher consisting up to five members in his family, shall mean an amount of income less than the initial gross salary of Group-D staff of the Council at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than provident fund, gratuity and 20% of family pension of the first seven years or upon the attainment of sixty five years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into account.”

9. The School Education Department, Government of West Bengal vide notification no.331-SE(P) dated 26.06.2009 further amended the provision as follows:-

“2(b) in the Explanation, for the words and figures “and 20% of family pension of the first seven years or upon the attainment of sixty-five years of age of the deceased teacher had he been alive”. Substitute the words and figures “and 40% of family pension of the first seven years or upon the attainment of sixty-seven years of age of the deceased teacher or the non-teaching staff, as the case may be, had he been alive.”

10. The monthly salary of a Gr-D employee at the material point of death of the mother of the petitioner (15/07/2007) was Rs.5326/- (Basic Pay = Rs.2600 + Dearness Pay @ 50% of Basic Pay = Rs.1300 + Dearness Allowance @ 24% of

(Basic Pay + Dearness Pay) = Rs.936 + HRA @ 15% Basic Pay = 390 + Medical Allowance = Rs.100/-) whereas the monthly income of the deceased family at that material point of time was much greater than Rs.5326/- as the father of the petitioner being a retired secondary school teacher was getting pension amounting to Rs.10000/- per month and was also receiving the family pension on account of the death of his wife who was a Primary School Teacher.

11. The said amendment only laid down the objective criteria to be followed in deciding the application in the died-in-harness category following the direction passed by Justice Indira Banerjee.
12. It is contended on behalf of the appellant that the then Director of School Education, West Bengal did not decide the financial hardship solely on the basis of the notification dated 15th February, 2008 rather, other grounds were also considered and it was clearly held that the family of the deceased teacher was not in “so financial distressed condition” that the petitioner may be favoured with appointment on compassionate ground.
13. In deciding the matter under the unamended provision, the Director has

categorically observed that such appointments could be considered in the family of the deceased had fallen in “so financially distressed condition” that it was unable to arrange for providing two square meals and other essentials for its members. In fact, this was one of the relevant considerations and factors required to be taken in terms of the unamended Rule 14(1) of the West Bengal Primary School Teachers Recruitment Rules, 2001.

- 14.** The argument on behalf of the appellant that the Director cannot act as an appellate authority relying upon the decision of a Coordinate Bench presided over by one of us (Soumen Sen, J.) in ***MAT 1770 of 2015 (The State of West Bengal & Ors. Vs. Pravat Kumar Pal & Ors.) dated 31st July, 2023*** would not be relevant in view of the fact that by the order dated 15th September, 2009, Justice Soumitra Pal directed the Director of School Education to consider the matter afresh and decide the issue after making necessary enquiry and after taking into consideration the report and/or proposal prepared by the concerned District Primary School Council.

15. This clearly negated the submission made on behalf of the appellant as such issue was made wide open by reason of the order dated 15th September, 2009 that had culminated in the order under appeal. Moreover, the said judgment is distinguishable as in the said decision we observed that there is a clear finding of the Chairman of the District Primary School Council that the deceased teacher's family is in acute financial hardship.
16. It is now well-settled that appointment on compassionate ground cannot be treated as a back door entry as a means of recruitment. It is not a source of recruitment. It is an exception to the general rule as the recruitment to public services should be on the basis of merit by giving an equal opportunity to all eligible persons to participate in the selection process. The subsequent notifications only laid down the criteria that are required to be taken into consideration in deciding the financial hardship in matters relating to compassionate appointment. The dependents of the employees, who died in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or

by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. Unless the financial condition is entire penurious, such appointments cannot be made. In the present case, the Commissioner of School Education has observed that the financial condition of the respondent's family is not one of destitution, the father of the petitioner being a retired secondary school teacher was getting pension amounting to Rs.10,000/- per month. In addition to that, the father of the petitioner was also receiving the family pension on account of the death of his wife who was a Primary School Teacher.

17. The Director has taken into consideration the aforesaid two criteria in deciding the application for compassionate appointment. On the basis of the financial details it cannot be said that the family is "in extreme financial hardship that is it fails (sic.) to provide two square meals and other essentials to the surviving members of the deceased teacher's family".

18. The learned Single Judge has considered the aforesaid aspects of the matter and also the decisions of the Hon'ble Supreme Court in ***Umesh Kumar Nagpal Vs. State of Haryana & Ors.*** reported in ***(1994) 4 SCC 138, Life***

Insurance Corporation of India Vs. Asha Ramchhandra Ambekar (Mrs.) & Anr. reported in **(1994) 2 SCC 718** and **General Manager (D&PB) & Ors. Vs. Kunti Tiwari & Anr.** reported in **(2004) 7 SCC 271**.

19. The relevant observations of the learned Single Judge in this regard are:-

*“It must always be remembered that grant of compassionate appointment is an exception carved out of the general rule of appointment which is invariably on the basis of open invitation of application and merit. Such exception is to be resorted only in cases of penury where dependents of an employee are left without any means of livelihood and unless some source of livelihood is provided, a family will not be able to make both ends meet. Consideration for such employment is never a vested right which can be exercised at any time in future. This principle of law as laid down by the Supreme Court in **Umesh Kumar Nagpal** has been restated in **General Manager (D & PB) and Ors.** (supra).*

Before concluding, it may be apt to quote some observations made by the Supreme Court in Life Insurance Corporation of India (supra):

“.....

.....
Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High

Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice":

"The quality of mercy is not strain'd;

It droppeth, as the gentle rain from heaven

Upon the place beneath it is twice bless'd;

It blesseth him that gives, and him that takes;"

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

At this juncture we may usefully refer to Martin Burn Ltd. v. Corporation of Calcutta at page 535 of the Report the following observations are found:

"A result flowing from a statutory provision is never an evil. A court has not power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not."

The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

*Disregardful of law, however, hard the
case may be, it should never be done.*
.....
.....
.....”

- 20. The decision in **Tapan Kumar Barman** (supra) is clearly distinguishable as the matter appears to have been heard ex parte and does not appear that the facts are identical.
- 21. We concur with the judgment rendered by the learned Single Judge.
- 22. The appeal fails.
- 23. Accordingly, the appeal and the application stand dismissed.
- 24. However, there shall be no order as to costs.
- 25. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.) (Soumen Sen, J.)