

22.02.2023
Item No. 24
Crt.No.11
b.r.

FMA 901 of 2021
with
CAN 1 of 2021

Haji Matiur Rahaman Mallick & Anr.
-vs-
The State of West Bengal & Ors.

Mr. Subhasish Panchal
..... for the appellants.

Mr. Pinaki Dhole
Ms. Ananya Neogi
..... for the State/Respondents.

Party/parties is/are represented in the order their name/names as printed above in the cause title.

Under challenge in this appeal is the order of the Hon'ble Single Bench dated 9th December, 2020 in the writ petition being WPA 8466 of 2020. The essential point in the writ petition and also in this appeal relates to the prayer of the writ petitioner/the present appellant for grant of employment under the Exempted Land Loser Category.

The essential facts of this appeal are found in the Order impugned dated 9th December, 2020. Admittedly the land of the Writ Petitioner no.1 (for short, WP-1)/the father was acquired sometime in the year 2007. Admittedly again, the WP-1 was found eligible for enrolment under the Exempted Category by the Enquiry

Officer on the 28th October, 2008. *WP-1* was enrolled for employment in the year 2009.

Since no steps were taken by the Respondents/the State Authorities, *WP-1* filed WP 9047(W) of 2009 which was disposed of by an Order dated 8th June, 2009. By the said order, the District Magistrate (for short, DM), Howrah was directed to consider the representation of *WP-1* within a prescribed period. The DM, Howrah recommended the case of the *WP-1* with the recommendation that the age limit for employment be considered sympathetically in respect of *WP-1*.

However, since inspite of the recommendation of the DM, Howrah, the Land and Land Reforms Department did not take steps to provide employment to *WP-1*, so the second writ petition being WP 6806(W) of 2010 came be filed. It was the second writ petition which was decided on 17th November, 2011 with a direction upon the Land and Land Reforms Department to consider the recommendation of the DM, Howrah(*supra*).

By a communication dated 10th February, 2012, the Joint Secretary, Land and Land Reforms Department rejected the prayer of *WP-1* for employment on the ground that *WP-1* had crossed the age limit. The

said rejection was challenged by way of WP 13802(W) of 2012.

During the pendency of WP 13802(W) of 2012, the instant writ petition being WPA 8466 of 2020 came to be filed by both WP-1, the father of and Petitioner No.2, (WP-2), his daughter. In WP 8466 of 2020 a prayer was made for granting employment in favour of the daughter since, in the meantime, the daughter had attained majority and WP-1, the father, had crossed the age limit for grant of employment.

The Hon'ble Single Bench by the Order impugned dated 9th December, 2020 was of the view that the right of WP-1 to be considered for employment is still *sub-judice* by way of WP 13802(W) of 2012. The Hon'ble Single Bench found that in view of the *sub-judice* nature of the prayer of WP-1 for employment, the prayer in the instant writ petition being WPA 8466 of 2020 for employment of WP-2/the daughter cannot be simultaneously considered.

Accordingly, relief was denied in WPA 8466 of 2020.

Mr. Panchal, Learned Counsel, appearing for the appellants/ writ petitioners submits that the writ petitioners are victims of inaction on the part of the State-Respondents.

It is pointed out that *WP-1*/the father applied and was enrolled for employment at a period when he was within the age limit. It is iterated that the DM, Howrah had also recommended the case of *WP-1*/the father for employment upon condonation of the prescribed age limit.

It is submitted that due to such inaction, *WP-1*/the father had crossed the age limit for employment. At this stage, since the Scheme for grant of employment of Land Losers provides for employment to a member of the family of the Land Losers, the writ petitioners have applied for employment of *WP-2*/the daughter, who is now major and eligible for employment.

Per contra, Mr. Dhole, Learned Counsel appearing for the State-Respondents with Ms. Neogi, Learned Advocate, draws the attention of this Court to the Notification of the Labour Department governing grant of employment to Exempted Category candidates. The specific attention of this Court is drawn to the Notification No. 303 dated 21 August, 2002.

Clause-3 thereof provides the procedure for consideration for grant of employment. Learned State Counsel submits that the mere enrolment of *WP-1* does not subscribe to the fact that *WP-1* is eligible for employment under the Exempted Category. Therefore, the Joint Secretary, Land and Land Reforms

Department has correctly noticed that *WP-1* is over age for employment. Further, the prayer for grant of employment to the *WP-2*/the daughter has been filed after a long gap in 2020 and deserves therefore not to be considered.

Having heard the parties and considering the materials placed, this Court finds that there is no dispute regarding the fact that *WP-1*/the father is a Land Loser who is eligible to be covered by the Labour Department's Notification No. 301 dated 21st August, 2002. There is admittedly no dispute with regard to the fact that *WP-1*/the father was enrolled for employment way back in 2009 and recommended for employment by the appropriate authority, who is the DM, Howrah.

There is also no dispute with regard to the fact that being a Land Loser, the family of *WP-1 /the father* is eligible to claim employment in respect of one of his members.

In the facts of this case, this Court finds that the rejection of the prayer of *WP-1*/the father by the communication of the Joint Secretary, Land and Land Reforms Department dated 10th February, 2012 was pending a challenge thrown in WP 13802(W) of 2012(*supra*). It is the view of the Hon'ble Single Bench that two simultaneous applications for employment from the same family cannot be considered in view of

pendency of two writ petitions, being WP 13802(W) of 2012 and the instant writ petition, being WPA 8466 of 2020.

This Court finds from the above stated facts that the substratum of granting employment is the categorisation of WP-1/the father and his family as a Land Loser family. WP-1/ the father along with his family continues to enjoy the category of Land Losers under the Notification No. 301 dated 21st August, 2002.

This Court further finds that WP-1/the father has become over age due to the failure on the part of the State-Respondents to act on the basis of the enrolment granted in 2009 as well as the recommendation of the DM, Howrah following an adjudication by this Court in WP 9047(W) of 2009.

Accordingly, at this stage, this Court is persuaded to consider favorably the claim of WP-2/the daughter for employment.

Considering the view expressed by the Hon'ble Single Bench regarding pendency of two writ petitions, this Court disposes of WP No. 13802(W) of 2012 and allows this appeal filed in connection with WPA 8466 of 2020 by directing the DM, Howrah to take positive steps in terms of Clause-3 of the Labour Department Notification No. 301 dated 21st August, 2012 connected

to the employment of WP-2/the daughter under the Exempted Land Loser Category.

Steps shall be taken to act in terms of the order of this Court within a period of twelve weeks from the date of communication of this order.

FMA 901 of 2021 with its connected application being **CAN 1 of 2021** stand accordingly **allowed**.

There shall be no order as to costs.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)