Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

MAT 156 of 2024
With
CAN 2 of 2024

Tanusree Mazumdar
Vs.
The State of West Bengal & ors.

Appearing as *Amicus Curiae*	:	*Mr. L. K. Gupta,* Sr. Advocate *Mr. Partha Sarathi Sengupta,* Sr. Advocate *Mr. Pratick Dhar,* Sr. Advocate
For the appellant	:	*Mr. Biswarup Biswas,* Advocate *Mr. Md. Mojnu Sk.,* Advocate *Ms. Nupur Chowdhury,* Advocate
For the State	:	*Mr. Supriyo Chattopadhyay,* Ld. A.G.P. *Mr. Sabyasachi Mondal,* Advocate
Heard on	:	*20.09.2024, 30.09.2024, 05.11.2024, 19.11.2024 & 25.11.2024.*
Judgment on	:	25th *November, 2024.*

Harish Tandon , J:

1. A piquant situation arose in the instant appeal on the definition of "financial hardship" assigned by way of explanation appended to a statutory Rule in relation to the compassionate appointment in the event of the death of an employee while in service and an

employee becoming permanently, incapacitated on medical ground to render services.

2. At the very outset, we must record that the Rule applicable in this regard from its nomenclature is indicative of its applicability to a non-teaching staff and not to a teaching staff. West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 was promulgated in exercise of the Rule making power enshrined from Section 17 of the West Bengal School Service Commission Act, 1997.

3. Apparently, the nomenclature of the Rule is restricted to a non-teaching staff but by virtue of Rule 21 of the said Rules, it is extended to a teaching staff so far as the compassionate appointment is concerned. Schedule-V appended to the said Rule contained an exhaustive provision relating to compassionate appointment in case the teacher died while in service or becomes medically incapacitated. Para 1 of the said Schedule postulates the right to appointment on compassionate ground in case the teacher dies-in-harness; on the other hand, such right is also extended in case the teacher becoming permanently incapacitated on medical ground before attaining 58 years of age and discontinues to attend his duty for the reasons of such incapacitation.

4. In both the situations, the "financial hardship" are defined differently while inserting an explanation thereat with variance manifesting the intention of the legislators. The appointment on compassionate ground is conceptualized to provide succor to a family who is put in penury either on the death of a bread earner or incapacitation of a bread earner on medical grounds. Ordinarily, the appointment on compassionate ground offends the core value of Articles 14 and 16 of the Constitution of India but if the employers have framed a scheme for compassionate appointment for survival of the family who suddenly put into a

financial hardship, such benevolent piece of scheme is within the folds of the Constitution.

5. In such eventualities, it has been recognized as valuable right and an exception is carved out from the rigor of Articles 14 and 16 of the Constitution of India. It is regarded as a welfare and benevolent piece of the legislation and, therefore, the provisions contained therein should be interpreted in a manner which is in consonance with the object and the purpose underlying framing of such scheme. The framers of the law were conscious at the time of appending Schedule-V to the said Rules and the eventualities have been treated differently though it aimed to achieve the common destination. It would be preposterous if both the eventualities are infused though it leads to a common goal for the simple reason that the financial hardship in case of a death while in service of an employee stands on a different footing than an employee who becomes permanently incapacitated on medical grounds to discharge his duties for rest of his service tenure. Probably for such reasons, the financial hardship being a common thread, is defined differently in both the eventualities.

6. We have invited Mr. L. K. Gupta, Mr. Partha Sarathi Sengupta and Mr. Pratick Dhar, learned senior advocates to assist the Court as Amicus Curiae in order to decipher the distinction having shown in the definition of a “financial hardship” appearing in different paragraphs contained in Schedule-V of the aforesaid Rules. All the Amicus Curiaes are unison in their approach that there does not appear any real distinction to be brought in the definition of the financial hardship in the different paragraphs of the said Schedule for the simple reason that the object is one and the same. According to them, an employee who becomes permanently incapacitated to render services for the rest period of the service tenure stands on a more disadvantageous position than the employee who dies while in service. According to them,

there is no rational in not including the portion of the pension which the employee who becomes permanently, incapacitated within the exclusion portion of the said definition as the family has to incur sizable amount of an expenditure for a biological existence of the said bread earner whereas in case of a death while in service, 40% of the family income was kept outside the income of the family in financial hardship.

7. It is further sought to be contended by Mr. Gupta that in view of such apparent inconsistency which does not augment the real object behind the recognition of a right to appointment on compassionate ground, the financial hardship as defined for medically incapacitated employee should be ignored.

8. Our attention is drawn by the Amicus Curiae to the words and the expressions used in financial hardship appended to paragraph 2 of the said Schedule that the legislators while incorporating the said provision had, in fact, committed a grave error in using an expression “deceased teacher”. Probably, such word has been taken as a ground where the said definition should not apply to a teacher who becomes permanently incapacitated for medical reasons.

9. There is no dispute to the aforesaid contention as it is apparent from the bare reading of the definition assigned to “financial hardship” in paragraph 2 containing the word “deceased teacher” when in fact the said teacher is biologically alive and has not departed the world. Whether such discrepancy or using the word which appears to be inappropriate would eventuality effaced the very core applicability of the said definition is required to be understood.

10. It is a trite law that the Court while adopting an interpretative tool in ascertaining the meaning, object and the language of a statutory provisions should firstly take endeavour to make the provisions workable rather to render its otiose or redundant.

Secondly, the Court may apply well settled principles of interpretation of statute to harmonize the provisions in order to uphold the seminal object and the purpose for which it is so incorporated. Mere one word or an expression should not be viewed jealously so as to render the entire provisions unworkable or, in other words, to not apply in such eventuality for which it is so incorporated. The object of putting an explanation to a statutory provision is to bring the intention of the makers of the law and if such omission does not impact adversly to such intention, there is no fetter on the part of the Court to interpret the same in a meaningful and harmonious manner.

11. Undoubtedly, the expression "financial hardship" is differently defined in the above two eventualities and, therefore, it is to be construed in a meaningful manner in the perspective of a particular eventuality in order to uphold and further, the intention of the legislators. We do not find any impediment on the part of the law maker to define the same words or the expressions in different sections or the Rules, differently as such definition is restricted to a specific eventuality and, therefore, has to be construed in the manner which would be befitting with the substantive provisions for which such definition is assigned.

12. We appreciate the endeavour of the Amicus Curiae that there is no rational or reasonability ascribed to the omission of a portion of the pension from the definition of a financial hardship, more particularly, in case of an employee becoming permanently, medically incapacitated to render services till the age of superannuation. Since the writ petitioner/appellant did not challenge the vires of the said provision on the test of a reasonability, we do not delve to go into the aforesaid aspect as an appellate Court, more particularly, in absence of any pleading having made in the writ petition filed before the Trial Court.

13. In order to buttress the issue, it would be apposite and profitable to quote the provisions contained in paragraphs 1 and 2 of Schedule-V of the said Rules which runs thus:

> ***"1. When a Teacher or non-teaching staff 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 District Inspector of Schools (Secondary Education), 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-***
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> ***(i) Spouse;***
> ***(ii) Son;***
> ***(iii) daughter***
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> ***of the deceased Teacher or non-teaching staffs family who is possessing required educational qualifications as laid down in Schedule I for the posts of Clerk or Group 'D' staff and unemployed and not below 18 years of age and not above 45 years of age may, within two years from the date of such death, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-teaching staff 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.***
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> ***Explanation-The expression "financial hardship", in relation to income of a deceased Teacher or non-teaching staff consisting of 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 State Government 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 40% of Family Pension of the first seven years or upon the attainment of sixty seven 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:***
>
> ***Provided that if the family of the deceased teacher exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the initial stage at the material point of time."***
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> ***"2. When a Teacher or non-teaching staff applies to the District Inspector of Schools (Secondary Education) for being declared permanently incapacitated on medical ground before attaining 58 years of age and discontinues to attend his duty for the reason of such incapacitation, the District Inspector of Schools (Secondary Education) may direct him for appearing before the Medical Boards set up for the purpose according to the procedure laid down in the relevant rules or order of the time being in force, and after receiving the report from the Medical Board, if the Medical Board declares him permanently incapacitated to continue in further service, he may be allowed by the District Inspector of Schools (Secondary Education) to retire on and from the date of submission of such application and by virtue of his early retirement if his family is in such extreme financial hardship that it fails to***

provide two square meals and other essentials to the family members of the retired Teacher or non-teaching staff, the-

(i) Spouse;
(ii) Son;
(iii) daughter

of the prematurely retired Teacher or non-teaching staff, who is possessing required educational qualifications as laid down in Schedule I for the post of Clerk or Group D staff and unemployed, and not below 18 years of age and not above 45 years of age, may make within two years from the date of such retirement, a prayer in writing to District Inspector of Schools for appointment as non-teaching staff on compassionate ground:

Provided that only one member of the family of the retired teacher may be appointed under the provisions of the sub-rule:

Provided further that if the Medical Board shall not declare the teacher to be permanently incapacitated, the District Inspector of Schools (Secondary Education) may allow him to rejoin the duty and the period of his absence, if any, shall be regularized as per existing leave rules applicable to him.

Explanation. - The expression "financial hardship", in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family for consideration of appointment under this sub-rule, shall mean an amount of income less than the initial gross salary of Group D staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned from any other sources by each family member than Provident Fund. Gratuity at the material point of time, shall be taken into account:

Provided that if the family of the Teacher or non-teaching staff exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the initial stage at the material point of time."

14. It is manifest from the language used in the aforesaid paragraphs, barring the explanation, the right to claim compassionate appointment in both the eventualities, i.e., in case of a death while in service or the teacher becoming permanently, medically incapacitated provided the family has suffered an extreme financial hardship failing to provide two square meals and other essentials to the surviving members of the teacher are conferred. It further provides that any of the family members as indicated therein may be appointed on compassionate ground depending upon the requisite educational qualifications provided the income of the family does not exceed the initial gross salary of Group-D staff of the State Government at a material point of

time. Up to that stage, there is no difference or distinction seen in the definition of a financial hardship in both the eventualities. However, the stark distinction can be seen when the computation part is to be resorted by the authority in relation to the income of the family of a teacher. In case of a death of a teacher while in service, the computation shall be made on the basis of the income of each family members from any other sources and while determining so the amount on account of provident fund, gratuity and 40% of the family pension of the first seven years should be excluded or kept outside the purview thereof. However, in case of a teacher becoming permanently, medically incapacitated apart from determining the income of each of the family members from any other sources, the exclusion can only be made to an amount received on account of provident fund and gratuity.

15. Apparently, the income of a teacher becoming permanently, medically incapacitated by way of a pension is kept outside of the exclusion clause and, therefore the authorities have taken into account the amount of pension within the folds of an income of the family and if such amount exceeds the initial gross salary of Group-D staff at a relevant point of time, such right is denied to a family member.

16. On a bare look at the definition of a financial hardship given in both the eventualities and going strictly by a literal interpretation, the amount on account of a pension received by a medically incapacitated teacher would still be regarded as an income of the family for the purpose of arriving at the conclusion whether the same exceeds the initial gross salary of a Group-D staff of the State Government at a relevant point of time.

17. The rationality and reasonability test if applied to decipher the intention of a law maker in not excluding the amount of pension in case of medically incapacitated employee, one should ponder upon that in such case the expenditure incurred by the family to

provide a sustainable support for biological existence would be more in comparison to a case of death of a teacher in service where the family members suddenly suffered the financial loss putting them in penury. We leave it to the wisdom of the law maker to re-think and re-visit the above aspect.

18. Be that as it may, since the vires has not been assailed before us and going by the literal meaning of the expressions used therein, we proceed on the basis of the meaning ascertained therefrom and having applied in the present case.

19. Admittedly, the authorities after determining the income of the family have included the component of the pension received by the medically incapacitated teacher in terms of the definition appended in such situation and the amount exceeds the initial gross salary of the Group-D staff at a relevant point of time which cannot be said to be infirm and/or illegal.

20. We thus do not find any illegality in the impugned order rejecting the writ petition upholding the decision of the authority that the appellant could not satisfy the definition of a financial hardship assigned in paragraph-2 of Schedule–V of the said Rules.

21. The appeal and application are dismissed without any order as to costs.

22. We extend our appreciation to Mr. L. K. Gupta, Sr. Advocate, Mr. Partha Sarathi Sengupta, Sr. advocate and Mr. Pratick Dhar, Sr. Advocate for rendering assistance in the instant matter.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)