

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 2906 of 2016

Jayita Kole

VS

The State of West Bengal & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Ekramul Bari, Adv.,

Mr. Sk. Intiaj Uddin, Adv.,

----- for the petitioner.

Mr. Sougata Mitra, Adv.,

Mr. Subhadeep Maitra, Adv.,

----- for the State.

Mr. Biswabrata Basu Mallick, Adv.,

Mr. Biman Halder, Adv.,

Ms. Sucheta Pal, Adv.,

----- for the DPSC Hoogly.

Hearing concluded on :

03.04.2024

Judgment On :

12.04.2024

M.V. Muralidaran, J.:

Heard Mr. Ekramul Bari, learned counsel for the petitioner; Mr. Sougata Mitra, learned counsel for the respondent State and Mr. Biswabrata Basu Mallick, learned counsel for the respondent District Primary School Council.

2. This writ petition has been filed by the petitioner to set aside the order/memo of the sixth respondent dated 18.1.2016 and to direct the respondents to grant appointment to the petitioner under compassionate ground to the post of Assistant Teacher in Primary School.

3. The mother of the petitioner died in harness while she was in service in the capacity of Assistant Teacher. An application was made by the petitioner before the District Inspector of Schools on 25.1.2008. Under memo dated 19.11.2009, the sixth respondent rejected the application by citing paragraphs 20, 21 and Schedule 5 of the Government Order dated 9.7.2009. Challenging the memo, the petitioner has filed a writ petition and, by the order dated 31.3.2011, the said writ petition was disposed of thereby setting aside the memo and directed the

District Inspector of Schools to consider the petitioner's prayer for appointment on compassionate ground on the basis of the rules which were in existence on the date of the death of the deceased teacher.

4. Under memo dated 1.7.2011, the District Inspector of Schools (SE) forwarded the matter to the Director of School Education and, under letter dated 4.7.2012, the Chairman of the Council forwarded the proposal to the Commissioner of School Education and the Commissioner of School Education asked the Council for suppression of certain documents and the Council was also requested to resubmit the financial pro-forma after appropriate modification. However, under memo dated 18.1.2016, the prayer for compassionate appointment has been rejected by the Council on the ground that the family income of the petitioner has been found to be more than the salary of the Group D employee. Challenging the memo dated 18.1.2016, the petitioner has filed the present writ petition.

5. The learned counsel for the petitioner submitted that the decision of the Chairman is nothing but a nullity in the eye of law, as the order passed by this Court in the earlier round of litigation has been by passed and that the Chairman has reiterated the earlier view which was turned

down by this Court. While calculating the family income of the petitioner, the pension amount has been taken into account and the said course adopted by the respondent authority is impermissible in law.

6. The learned counsel for the petitioner further submitted that despite recording the name of the petitioner under die-in-harness category, the District Inspector of Schools again rejected the prayer of the petitioner on the ground that the petitioner has not been suffering from any financial hardship and her income including family pension exceeds that of the income of the Group D employee.

7. The learned counsel urged that the consideration of family pension in the income of the petitioner is contrary to law as has been decided by this Court in various judicial pronouncements and after recording the name of the petitioner in die-in-harness category, the concerned authority has wrongly rejected the prayer of the petitioner. Such an act of the respondent authority is liable to be quashed.

8. The learned counsel appearing for the respondent State and the learned counsel appearing for the respondent Hooghly District Primary School Council submit that the total family income is Rs.9118/- which

comprises the pension of Dinabandhu Koley, husband of the deceased and the income from other source is Rs.200/- per month. Thus, the total income is more than sufficient to provide a square meal and other essentials to the two family members and the family cannot be considered financially distressed. The aforesaid income is even more than the salary of Group D employee at the material point of time. Therefore, there is no ground to interfere with the impugned memo. Thus, a prayer has been made to dismiss the writ petition.

9. This Court considered the rival submissions and also perused the materials available on record.

10. The present writ petition has been filed challenging the memo/order dated 18.1.2016 passed by the fourth respondent.

11. The mother of the petitioner, who was an Assistant Teacher of D.D. Bharati Vidyalaya Girl's Section, died in harness on 1.11.2007. After the death of the deceased, her daughter, the petitioner herein, applied for appointment on compassionate ground on 25.1.2008. Since her prayer for appointment on compassionate ground was rejected by the concerned District Inspector of Schools, she has filed W.P. 7058(W) of

2018 before this Court. This Court, by the order dated 31.3.2011, disposed of the writ petition by observing/directing as under:

"On perusal of the order of the said District Inspector of Schools, this Court finds that the petitioner's prayer for appointment on compassionate ground was rejected by the concerned authority by applying the provision contained in West Bengal School Service Commission (Selection of Persons for appointment to the post of Non-teaching Staff) Rules, 2009.

In this Context, a question has come up for consideration before this Court as to whether the concerned authority was justified in rejecting the petitioner's prayer for appointment on compassionate ground by applying the said Rules of 2009 which was not in existence at the time when the petitioner's father died.

It has already been held by the Division Bench of this Hon'ble Court in the case of State of West Bengal-vs-Bina Debnath, reported in 2009(2) CLJ, Page 512, that the claim of the dependent for appointment on compassionate ground should be considered on the basis of the law prevalent as on the date of death of the deceased teacher.

The said principle has not been followed in the instant case. On the contrary, the concerned authority

rejected the petitioner's claim for appointment on compassionate ground by applying the provision of the Rules of 2009 which was not in existence at the time of the death of the said deceased teacher.

Accordingly, this Court holds that the impugned order contained in annexure 'P-3' to this writ petition at page 16 cannot be retained on record. The said order passed by the concerned District Inspector of Schools stands quashed.

The concerned District Inspector of Schools is, thus, directed to consider the petitioner's prayer for appointment on compassionate ground on the basis of the Rules which were in existence as on the date of death of the deceased teacher concerned. Such consideration should be made positively within a period of eight weeks from the date of communication of this order.

The concerned authority is also directed to intimate his decision to the petitioner within two weeks thereafter.

The writ petition is, thus, disposed of."

12. It appears that pursuant to the order of this Court in W.P. 7058(W) of 2018 dated 31.3.2011, the District Inspector of Schools

forwarded the claim of the petitioner to the Director of School Education. The name of the petitioner was recommended by the District Inspector of Schools to the Council and the Chairman of the Council on 4.7.2012 also forwarded proposal to the Commissioner of School Education. However, under memo dated 15.3.2013, the Commissioner asked the Council for suppression of certain document and it further transpires from the memo dated 8.1.2014 issued by the Director of School Education that the Council was requested to resubmit the financial pro-forma after appropriate modification. Under the impugned memo dated 18.1.2016, after two years from the date of memo dated 8.1.2014, the Chairman of Hooghly District Primary School Council rejected the prayer of the petitioner. The impugned memo reads thus:

"In reference to the above, the undersigned has to inform that prayer of Smt. Jayita Koley, daughter of deceased teacher Late Amita Koley for appointment under compassionate ground has not been considered favourably and it was observed in the above referred memo that the total family income is Rs.9118/- only which comprises with pension of Mr. Dinabandhu Koley, husband of the deceased and income from other source Rs.200/- per month only, Total family income is more than sufficient (even more than salary of Gr.'D' employee at the material point of time) to provide to square meal and other essentials to the two

family members and the family cannot be considered financially distressed.”

13. It is pertinent to note that the Chairman of Hoogly District Primary School Council ought not to have rejected the claim of the petitioner by holding that the family cannot be considered financially distressed. When in the earlier round of litigation, the same ground was raised by the respondent authorities, this Court clearly held that the concerned authority rejected the petitioner's claim for appointment on compassionate ground by applying the provision of the Rules of 2009 which was not in existence at the time of death of the deceased teacher and directed the District Inspector of Schools to consider the petitioner's prayer for appointment on compassionate ground on the basis of the Rules which were in existence as on the date of death of the deceased teacher. Such consideration should be made positively within a period of eight weeks from the date of communication of the order. It appears that no appeal has been filed by the respondents therein and allowed the said order dated 31.3.2011 to attain finality.

14. When the direction of this Court is positive in nature to consider the prayer of the petitioner for appointment on compassionate ground, it is the bounden duty of the concerned authority to consider the claim of

the petitioner. Failure to obey the order of this Court is amounting to contempt of court.

15. It is pertinent to point out that the petitioner had applied for appointment on compassionate ground on 25.1.2008. Till date, her claim has not seen the light of the day. On flimsy grounds the concerned authority rejected the claim of the petitioner, which is unacceptable.

16. It is also not in dispute that the petitioner's name was already incorporated in the die-in-harness register maintained for the post of Primary Teacher upon being satisfied about the financial condition of the petitioner. However, surprisingly, thereafter, the petitioner's claim has been rejected on a ground that the total family income of the family is sufficient.

17. Under the impugned memo dated 18.1.2016, the prayer of the petitioner for appointment on compassionate ground has been rejected by the Council on the ground that the family income of the petitioner has been found more than the salary of the Group D employee. While calculating the family income of the petitioner, the pension amount has been taken into account by the authority. Such course adopted by the

concerned authority is not sustainable in the eye of law, as the family pension received by the family of the deceased employee cannot be taken into account while determining the financial condition of the family.

18. This Court, time and again, held that family pension received by the family of the deceased employee cannot be taken into account while determining the financial condition of the family. When such being the judicial pronouncement in various judgments and operating in the field, the finding of the Council in the impugned memo dated 18.1.2016 cannot have any legs to stand.

19. It is reiterated that when the order of this Court in the earlier writ petition is positive in nature to consider the claim of the petitioner for appointment on compassionate ground, it is the duty of the respondent authorities to obey the order unless the same is set aside by the higher court. The non-compliance of the direction issued in W.P. 7058(W) of 2018 is amounting to contempt of court. The petitioner under bona fide impression has not initiated any contempt proceedings and she waited for the decision of the authority positively considering her claim. On the other hand, after a period of nearly 5 years from the date of passing such

positive order, the respondent Council rejected the claim of the petitioner.

20. That apart, when the application was made by the petitioner there was no such government order and/or circular debarring the petitioner from getting employment under compassionate appointment under the yardstick of calculation of quantity of family income in comparison to the income of Group D employee of the Council. Thus, the respondent authorities have clearly disobeyed the order of this Court and they ought to have considered the claim of the petitioner for appointment on compassionate ground. The respondent authorities cannot withhold the legitimate claim of the petitioner for granting compassionate appointment for an indefinite period. The claim made by the petitioner in the instant writ petition merits consideration and the petitioner has made out a case for interference. Thus, the impugned memo dated 18.1.2016 is liable to be quashed.

21. In the result,

(i) The writ petition is allowed.

- (ii) The impugned memo dated 18.1.2016 (Annexure-P/17) issued by the Chairman, Hooghly District Primary School Council is set aside.
- (iii) The respondent authorities are directed to grant compassionate appointment to the petitioner.
- (iv) Such consideration should be made positively within a period of twelve weeks from the date of receipt of a copy of this order.
- (v) No costs.

(M.V. Muralidaran, J.)