

04 & 11
03.09.2024
Ct. No. 11
Jayanta

WP.ST 106 of 2024

Sk. Firoj

-Versus -

The State of West Bengal & Ors.

With

WP.ST 150 of 2024

The State of West Bengal & Ors.

- Versus -

Sk. Firoj & Anr.

Mr. Biswaroop Biswas

Mr. Prabir Rai

Ms. Nupur Chaudhuri

.....For the petitioner in WP.ST. 106 of 2024

&

For the respondent No.1 in WP.ST. 150 of 2024

Ms. Sonal Sinha

Ms. Ashmita Chakraborty

.....For the Petitioners/State

in WP.ST. 106 of 2024.

Mr. Tapan Kumar Mukherjee, Ld. AGP

Ms. Ashmita Chakraborty

.....For the State/Respondents

in WP.ST. 150 of 2024.

Mr. Uttiya Ray,

Mr. Arnab Mandal

.....For the Respondent No5

in WP.ST. 106 of 2024

&

For the Respondent No.2

in WP.ST. 150 of 2024.

Affidavit-of-service, as filed, be kept on record. As both the writ petitions have been preferred challenging the order dated 25th April, 2024 passed by the learned Tribunal in the original application being OA 534 of 2019, the writ petitions are taken up analogous hearing, with the consent of the parties.

Mr. Biswas, learned advocate appearing for the petitioner in WP.ST 106 of 2024, namely, Sk. Firoj (in short, Firoj) submits that the West Bengal Scheme for Compassionate Appointment, 2013 (in short, the said Scheme), provides *inter alia* an incumbent would be considered for compassionate appointment subject to grant of an undertaking that he/she would be looking after other members of the family. Firoj is ready and willing to furnish such undertaking and as such there is no mandatory requirement towards production of ‘*no objection certificate*’ from the other members of the family. The denial of his brother, namely, Sk. Muzid (in short, Muzid) towards grant of a no objection certificate could not have been a ground towards rejection of his claim more so when, he is the elder son of the deceased.

He argues that the fact that he is living separately and was not dependent upon the income of the deceased have not been established by the three men screening-cum-inquiring committee (in short, the enquiry committee), upon granting an opportunity of hearing to him. In view thereof, the report of the enquiry committee ought not to have been granted any weightage by the learned Tribunal while rejecting Firoj’s claim.

He further contends that Muzid is not even qualified to be considered for compassionate appointment since he has not passed Class VIII examination, as would be explicit from the certificate issued by the concerned school. The learned Tribunal passed the impugned order

being oblivious of such fact and issued a specific direction upon the respondents to approve the employment of Muzid on compassionate ground and such direction is, thus, not sustainable in law.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents, who are the petitioners in WP.ST. 150 of 2024, submits that the order impugned suffers from a jurisdictional error in as much as the learned Tribunal could not have passed any specific mandate upon the respondents to approve the employment of Muzid on compassionate ground.

He argues that the learned Tribunal passed the impugned order being oblivious of the fact that on the basis of the enquiry committee report follow up steps were taken by the authorities and Muzid's application was sent for police verification and upon investigation it was ascertained that Muzid had not passed Class VIII examination and accordingly, for furnishing such false information, a specific complaint was lodged and the same was registered as F.I.R. No. 529 of 2024, dated 14th June, 2024. Muzid was also arrested in connection with the said proceeding and was subsequently released on bail. Such conduct disentitles Muzid from availing compassionate appointment.

Mr. Ray, learned advocate appearing for Muzid, the private respondent in both the writ petitions, submits that Firoj was not dependent upon the income of the deceased and he was residing separately along with his

wife and children, as would be explicit from the declaration submitted by the mother and also from the report of the enquiry committee. In view thereof, Firoj is not entitled to be considered for grant of compassionate appointment. In view thereof, the learned Tribunal rightly did not exercise any discretion in favour of the Firoj.

He further argues that Muzid's claim was strongly recommended by the enquiry committee and on the rudiments of the same, the learned Tribunal rightly issued direction upon the State authorities to approve Muzid's employment on compassionate ground and more so when under the said Scheme the competent authority is bound to give effect to the recommendation of the enquiry committee. In view thereof, there is no infirmity in the order of the learned Tribunal dated 25th April, 2024, warranting interference of this Court.

Answering our query, Mr. Ray submits that a criminal complaint has been lodged against Muzid alleging that he had wrongly stated his educational qualification to be Class VIII pass. He was arrested in connection with the said proceeding, however, subsequently he was released on bail. Under the said Scheme the respondents have even been conferred an authority to consider grant of relaxation in educational qualification.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that challenging an order dated 6th May, 2022 passed initially by the learned Tribunal in Muzid's application being OA 534 of 2019 directing the Joint Secretary, Public Works Department to give appointment to Muzid, a writ petition was preferred by Firoj and the same upon contested hearing was disposed of by an order dated 09th February, 2023 setting aside the order impugned and directing the learned Tribunal to consider and dispose of the OA. Pursuant to such direction, the learned Tribunal heard the OA afresh and disposed of the same by the order impugned in the present writ petitions.

The learned Tribunal has rejected Firoj's claim upon arriving at a finding that he was not dependent upon the income of the deceased and that he was residing separately from the family of the deceased. Such finding stands fortified by his mother's declaration and the contents of the enquiry committee report. We do not find any infirmity in such direction of the learned Tribunal.

As regards the claim of Muzid, we are of the opinion that the learned Tribunal ought not to have straightway issued direction upon the respondents to approve the employment of Muzid on compassionate ground. Such direction prevents the competent authority from completion of police verification and other formalities mandatorily required to be fulfilled prior to grant of such compassionate appointment. In course of police verification it was ascertained that the Muzid has

wrongly declared his educational qualification to be Class VIII pass and accordingly a police complaint was registered in connection with which Muzid was even arrested. Thus, there exists a serious dispute as regards the eligibility of Muzid towards grant of compassionate appointment. In the said conspectus, the direction of the learned Tribunal to approve Muzid's compassionate employment is not sustainable and accordingly, his prayer is rejected at this stage.

Firoj also, in our opinion, is not entitled to grant of compassionate appointment more so when compassionate appointment is not a vested right and cannot be claimed as a matter of right and the idea of compassionate appointment is also not to provide for endless compassion. The claim for compassionate appointment of Firoj is, accordingly, dismissed.

Needless to observe in the event Muzid is acquitted in the criminal proceeding and if he fulfils the eligibility criteria prescribed under the said Scheme and if the element of immediacy survives, Muzid may approach the authorities thereafter for consideration of his claim.

With the above observations and directions, the writ petitions being WP.ST 106 of 2024 and WP.ST. 150 of 2024 are disposed of.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)