04 **23.09. 2024**

Ct. No. 08

Ab

MAT 1183 of 2024
IA No. CAN 1 of 2024

Soumabrata Nandi
Vs.
The State of West Bengal and others.

Mr. Syed Shamsul Arefin,
Ms. Nadira Abedin.
... for the appellant.

Mr. Biswabrata Basu Mallick, Ld. AGP,
Mr. Biman Halder.
... for the State.

Mr. Suman Dey.
... for the respondent no. 6.

An application for compassionate appointment was rejected by the Single Bench upholding the decision of the authorities whereby and whereunder the claim was rejected on the ground that the total income of the family exceeds the gross monthly salary of a Group-D staff.

Though there is a reference of Rule 20 of G.O. No. 190-SE/EE/10M-06/2009(Pt) dated 2nd March 2016 read with G.O. No. 656-SE(EB)/10m-06/09(Pt V) dated 23rd September 2016, but our attention is drawn to the notification vide Memo No. 697-ES/S/JS-18/08 dated 9th July 2009, by which the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 (in short "said Rules") was introduced.

At the first blush we gathered an impression that the said Rules have no manner of application to the teaching staff, but after perusing the Rule 20 and 21 of the said Rules, we find that the aforesaid provisions have its equal applicability to a primary teacher.

Pursuant to the aforesaid provisions, Schedule-V was appended to the said Rules providing the modalities and the manner of exercise of powers by the authorities in relation to a claim for appointment on compassionate ground. The authorities took note of the method of computation in order to arrive at the decision whether the family of the deceased suffers financial hardship or not and found that the total income of the family is Rs. 25,331/- per month, whereas the gross salary of a Group-D staff at the relevant point of time was Rs. 12840/-.

Mr. Syed Shamsul Arefin, learned Advocate appearing on behalf of the appellant, submits that the pension cannot be included within the folds of the family income of the deceased and, therefore, the decision of the authorities in this regard needs interference.

The reliance appears to have been placed upon a judgment of the Division Bench of this Court rendered in case of **Rupali Chowdhury vs. State of West Bengal and others**, reported in **2000 SCC Online Cal 745**. The Division Bench was of the view that the paltry amount of family pension cannot be regarded as sufficient enough to cater the need of the family members of the deceased employee and, therefore, the authorities have to take a pragmatic view bearing in mind the purpose and object behind incorporation of the scheme for appointment on compassionate ground.

The judgment so relied upon does not reveal any Rules or the Regulations, but has proceeded on the basis of the fact that the object and purpose of appointment on compassionate ground is to be borne in mind having basically founded upon a notion that the family, who received a jerk because of the untimely demise of the sole bread-earner, to be provided the appointment to sustain the said family. Even a delay in the hands of the employer was considered to be unwarranted as it would frustrate the very purpose of providing the appointment on compassionate ground to save the family, who suffered a financial jerk. It has been held in the said judgment that the scheme for appointment on compassionate ground indirectly offends the core value of Article 16 of the Constitution of India where the equal opportunity should be given to all persons having qualification in the public employment yet the pious nature of the said scheme was saved and, therefore, the model employer, who framed the scheme relating to the appointment on compassionate ground, must adhere the provisions contained therein.

The moment the Court finds that there is a Rule, regulation and/or the scheme, which has statutory flavor, the authorities or even a person claiming appointment on compassionate ground has to pass the muster of provisions contained therein. Since the said appointment is to be made, bearing in mind the object, the authorities must take a pragmatic view in interpreting the provisions contained in the scheme so as the purpose behind it is not rendered otiose.

Schedule-V of the said Rules defines the family members, which includes spouse, son and daughter. It further provides that any member of the family may be appointed on a compassionate ground depending upon the educational qualification provided the family of the deceased suffered financial hardship. The explanation appended thereto defines "financial hardship" in the following:

> "Explanation. – The expression "financial hardship", in relation to income of a deceased Teacher or n on-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 :
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> 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."

It is, thus, apparent from the aforesaid provision that while computing income of the family of the deceased, the authorities shall take into account the earning of an individual member of the said family from any other sources than the Provident Fund, Gratuity and 40 percent of the family pension of the first seven years.

We have seen the calculation made by the authorities in the said impugned communication and find that apart from the other income from agriculture, the computation is made in terms of the said Rules. The moment the statutory Rule provides the computation to be done in a particular manner, the authorities cannot deviate therefrom and adapt a method, which is not contemplated therein. The authorities cannot transgress its powers beyond the circumference of the statutory provision and, therefore, have to squeeze itself within the peripheral thereof.

We are conscious that the agricultural income is variable in nature and depends upon the various factors; even a time the amount as shown may not be earned by the family members. After discounting the amount towards agriculture income shown in the said order derived by the family yet the total amount exceeds the gross monthly salary of the Group-D staff, which was prevalent at relevant point of time at Rs. 12840/- and, therefore, we do not find any ambiguity and/or infirmity in the judgment of the authorities as well as the judgment of the Single Bench rejecting the writ petition. The appeal is, thus, dismissed.

In view of the dismissal of the appeal, the connected application being CAN 1 of 2024 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)