

17.05.2024
sayandeep
Sl. No. 246
Ct. No. 04

CPAN 746 of 2022
In
FMA 506 of 2021

Smt. Lakshmi Maiti & anr.
-Versus-
Prof. Jayasri Ray Chaudhuri

Mr. T.P. Halder
..... for the applicant
Mr. Amitava Chaudhuri
Mr. N. Roy
..... for the alleged contemnor

This is a contempt application at the behest of the petitioner alleging willful and deliberate violation of an order dated 16.12.2021 passed in connection with FMA 506 of 2021. A writ petition being WP No. 4288 (w) of 2017 was taken out assailing an order dated 23rd November, 2015 whereby and whereunder claim for compassionate appointment on the death of the father at the behest of the present petitioner was rejected. The writ petition was dismissed on 18.02.2020 with the categorical finding that, the document produced by the petitioner do not establish the dependency of the petitioner upon her father as she was married four years prior to his death. The said order was assailed in a mandamus appeal being FMA 506 of 2021 before this Court. This Court set aside the said order and directed the Director of Public Instruction, Government of West Bengal who was arraigned as respondent No. 2 therein

to reconsider the application on other aspects than one which has been taken in the impugned order and if the petitioner is found otherwise eligible in terms of Statute 163 and the relevant laws applicable thereto, the same would be disposed of within a time frame by recording proper reasons. Indubitably, in compliance of the solemn order passed by the Division Bench, a reasoned order is passed by the authority on 22nd October, 2022 which the petitioner perceived to be an act in gross violation of the order passed by the Division Bench on 16.12.2021.

It is sought to be contended that while disposing of the mandamus appeal, this Court unequivocally held that the married daughter is entitled for compassionate appointment under the first Statute and there was a categorical finding in the penultimate paragraph of the said Judgment that such point shall not be taken at the time of reconsideration of the said application.

At the first blush, we were impressed with the stand of the petitioner for the simple reason that the moment the Court has expressly directed the authority not to consider a particular fact or the point, the foundation of a subsequent Judgment based upon such point, tantamounts to a willful and deliberate violation of the order and may be regarded as a contumacious act but after perusing the materials, we notice the following.

Though Statute 163 of the first Statute contained the provision relating to the compassionate appointment, the explanation appended thereto does not imbibe within itself the married daughter but included unmarried or the widowed daughter with further qualifying condition that they must be solely dependent upon the deceased employee. While passing the order on 16.12.2021 the Division Bench recorded that none of the counsel raised any dispute on entitlement of a married daughter to be considered on compassionate ground but the University took the stand that all the appointments are to be made by the Governing Body in terms of the statute 160 in accordance with Rules to be framed by the State Government. It was further argued by the University that since the Government has not framed a scheme for appointment on compassionate ground, the claim of the petitioner in this regard is inadmissible and liable to fail.

The Division Bench did not accept the stand of the University, on conjoint reading of the various provisions contained in the first Statute and noticing that the Statute 163 contemplates an appointment on compassionate ground and precisely such reason the Director of Public Instruction, Government of West Bengal was directed to reconsider the said application in terms of Statute 163 of the first Statute.

It admits no ambiguity that the moment the parties abandoned their right to raise objection over the entitlement of the married daughter which was consciously not included within the Statute 163, it would not be proper for the authority to take such plea as the entire decision rendered by the Division Bench was founded thereupon. Taking such stand and treating that the married daughter is otherwise eligible for being considered for compassionate appointment, the Statute 163 is required to be understood and the import and purport thereof should be highlighted. Though the said Statute containing an explanation does not include the married daughter but even the persons who have been included therein cannot seek employment on compassionate ground unless they are found dependent upon the deceased employee. The order dated 22nd October, 2022 passed by the authority has to be meticulously read in order to ascertain whether there is any willful and deliberate violation of the order dated 16th December, 2021. We are not unmindful of the proposition of law that if the order or the directions are capable of two interpretations, the one adopted by the authority does not *ipso facto* expose such authority liable to be punished under the contempt of Courts Act. It is only in case of an unambiguous order not capable of any further interpretation as the same being explicit, clear and lucid in all sense, any defiance by an

authority may be rendered as contemptuous act, liable to be punished under the Contempt of Courts Act.

Our attention is sought to be drawn by the learned advocate for the petitioner that the point of consideration framed by the authority shall vividly reflect the mindset to the effect that the consideration was restricted to the entitlement of a married daughter which the Division Bench in the said order in express terms restricted such point to be taken into consideration. It is thus contended that the order is an outcome of malice and in clear violation of the order/direction of the Division Bench. Though there is no such reflection in the point of consideration but the decision has to be read in its entirety and not in piecemeal. The authority though indicated that Statute 163 does not include the married daughter, yet it proceeded to hold that in absence of any cogent evidence and/or document that she was dependent upon her father at the time of his death, it cannot be presumed that she is entitled to a compassionate appointment under Statute 163. The authority have further proceeded to ascertain the income of the family and held that the quantum of the family pension and the other financial benefits extended to the widow and the mother of the deceased are sufficient enough to cater their daily needs and it cannot be presumed that the family is in penury. Since one of the conditions enshrined in the Statute 163 is that the persons

included therein must be dependent upon the deceased employee at the time of his death and if the authority does not find the dependency of the present petitioner, mere observation that the married daughter is not included in Statute 163 does not expose the authority liable to be punished under the contempt of Courts act.

The application is dismissed. The contempt is dropped.

However, it will not prevent the petitioner from assailing the order dated 22nd October, 2022 before the appropriate forum in accordance with law.

None of the observations made hereinabove shall have any persuasive impact or create any legal bar in deciding the same on merit.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)