

WPA 19850 of 2015

11.11.2024

ct.25, sl. 51

sk

Azharul Islam

vs

The State of West Bengal & Ors.

Mr. Srikanta Datta

Mr. P.K.Roy

...for the petitioner.

Mr. Pinaki Dhole

Mr. Sayan Datta

....for the State.

The father of the petitioner, i.e. the erstwhile and deceased non-teaching staff of the respondent school, has been governed by the West Bengal School Service Commission (Selection of persons for appointment to the post of non-teaching staff), Rules 2009. After his demise on March 20, 2010, the petitioner had applied for appointment on died-in-harness category, in place of his deceased father.

Petitioner's prayer has been turned down by the respondent/District Inspector of Schools (Secondary Education), Birbhum, by dint of his order dated February 12, 2014, for the reason that the existing family income of the petitioner, exceeds the statutory limit for being eligible to be considered and granted appointment on compassionate ground.

In the said impugned order, the said respondent had held that the petitioner would not be eligible for employment on compassionate ground, as the gross salary income of his family is higher than

the salary of a Group “D” staff, at the material point of time.

Being aggrieved by the said decision of the District Inspector of Schools (Secondary Education), Birbhum, the petitioner has moved the instant case.

Mr. Datta, learned advocate is appearing for the State respondent. However, he is not present in Court today. An accommodation has been sought for on his behalf.

In view of the facts and circumstances of the case and very well settled provisions of law, the Court does not find it proper to postpone the matter any further.

Pursuant to the impugned order as above, it appears that the said respondent has taken into consideration the monthly pension amount/family pension received by the legal heir of the deceased, to ascertain the monthly earning of the family of the deceased and “financial hardship” thereof. It has also considered “other income” to the tune of Rs. 1,000/- along with other components of income, while considering the gross salary income of the family of the deceased person.

Needless it is to mention that the Courts have time and again decided and settled the law that “pension” cannot be considered and included under gross salary income of the family, in order to consider the “financial hardship”, in case of a compassionate

appointment. In this regard the Court is inclined to mention the case of ***Canara Bank vs. Mahesh Kumar*** reported in ***(2015) 7 SCC 412***, where the Supreme Court has categorically held that while determining eligibility for compassionate appointment, terminal benefits received on account of death of employee cannot be taken into consideration. The right of compassionate appointment is independent from retiral or terminal benefits received on account of death of an employee.

Hence, the law is well settled that receipt of family pension cannot be a ground to deny compassionate appointment.

Mr. Datta, learned advocate appearing for the petitioner has also submitted that the “other income” as held by the said respondent, in the said impugned order, is based on no materials and unfounded, in so far as the petitioner or his family would not have any “other income”, to their credit.

As discussed, the impugned order dated February 12, 2014 appears to be in gross violation of the settled law and also the relevant factual materials.

Considering the same to be prejudicial to the interests as well as legal rights of the writ petitioner and being illegal, the Court is inclined to set aside the same.

Hence, the present writ petition is allowed with the following directions:-

- i) The impugned order dated February 12, 2014 is set aside.
- ii) The concerned respondent i.e. the District Inspector of Schools (Secondary Education), Birbhum is directed to initiate the fact finding enquiry afresh, as regards the “financial hardship” of the writ petitioner in accordance with law, as discussed above.
- iii) In the process the writ petitioner shall be given an opportunity of hearing. The said respondent shall conclude the entire proceedings within a period of six weeks from the date of communication of copy of this order.
- iv) In case the writ petitioner is found to be entitled considering his “financial hardship”, in accordance with law, the said respondent shall issue an order of appointment of the writ petitioner on compassionate ground, immediately thereafter.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)