

25.06.2024
Court No.13
Item No.4
AP

WPA 26727 of 2023

**Nilam Lala and Anr.
Vs.
The State of West Bengal and Ors.**

Mr. Pritam Choudhury

... For the Petitioners.

Mr. Supriyo Chattopadhyay
Ms. Sayantanee Bhattacharjee

... For the State.

1. Leave is granted to the advocate on record for the petitioners to add the District Inspector of Schools (SE), Kolkata and the West Bengal Central School Service Commission as party respondents to the instant writ petition.
2. Let service be effected of a copy of this order along with a copy of the writ petition to the added respondents.
3. The petitioner No.2, Vishal Lala, has produced his original Higher Secondary Certificate before this Court indicating that he has passed the higher secondary examination in the year 2017. A copy of his Higher Secondary Certificate is taken on record.
4. Admittedly, the petitioner No.2 was a minor at the time, when the petitioner's mother's application for compassionate employment was being considered.

5. This Court, however, notes that a Division Bench of this Court in ***MAT 815 of 2022 (Nilam Lala & Anr. Vs. The State of West Bengal and Ors.)*** has held as follows:-

“9. We direct the District Inspector of School, Kolkata to revisit the issue and in the event, on the basis of the medical report, it is found that the writ petitioner cannot be given a suitable post commensurate with her education, the son of the deceased shall be considered for compassionate appointment commensurate with his qualification as we are of the opinion that the delay had occurred at the end of the authorities. There has been laches on the part of the authorities concerned in processing the application in time. They have a duty to speak and respond to the application filed within a reasonable time. By reason of their conduct they cannot make the writ petitioner ineligible.”

6. Learned counsel for the State, Mr. Supriyo Chattopadhyay has placed a decision of a Division bench of this Court in ***WPST 35 of 2018 (Arindam Choudhury Vs. The State of West Bengal and Ors.)*** dated 4th February, 2019. A copy of the same is taken on record. He has placed reliance on the paragraphs 32, 37, 38 and 39 of the said decisions, which are set out hereinbelow:-

“32. In the light of the guidance we draw from the afore-quoted passage, the Court in ***Syed Khadim Hussain*** (supra) appears to us to have moulded the relief claimed in favour of the appellant and, therefore, such decision clearly falls in the category of a decision where directions were made in exercise of the Court’s power to do complete justice in a given case, recognized by Article 142 of the Constitution. ***Syed Khadim Hussain*** (supra) does not, thus, constitute a binding precedent within the meaning of Article 141 of the Constitution.

.....

37. Our attention has not been drawn to any provision of the notifications which preserves the right of a minor applicant to obtain an appointment on compassionate ground till he attains majority. From the principles summarized in paragraph 5 (supra), it is clear that an applicant for compassionate appointment does not acquire a right of appointment only upon providing the distressed condition of the family members of the employee who has died-in-harness. An aspirant for a post must have other necessary qualifications which, inter alia, would include being of the required age for entry in service, possessing the minimum educational qualifications and bearing good moral character as well as health. Financial crisis would not automatically guarantee an appointment. If there is any deficiency, such deficiency can be relaxed by the Government but not by any direction of Court. Needless to observe, a Court by issuing a mandamus cannot direct the Government to act contrary to law.

38. In **Life Insurance Corporation of India v. Asha Ramchandra Ambekar**, reported in (1994) 2 SCC 718, the Supreme Court has sounded caution in the following words:

10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in '*Merchant of Venice*'.

'The quality of mercy is not strain'd;

It droppeth, as the gentle rain from heaven

Upon the place beneath it is twice bless'd;

It blesseth him that gives, and him that takes;'

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It would be remembered that 'law is the embodiment of all Wisdom'. Justice according to law is a principle as old

as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

11. At this juncture we may usefully refer to *Martin Burn Ltd. v. Corporation of Calcutta*, AIR 1966 SC 529. At page 535 of the Report the following observations are found:

‘A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.’

The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. ... The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.

12. Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. ...

13. It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside.”

39. Our sympathies are with Arindam and Anirban, both of whom lost one of their parents at a very young age. However, in the absence of any provision in the statutory notifications (which owe their origin to the Act) creating any source of legal right in favour of the petitioners to claim compassionate appointment, we are unable to grant them any relief on these writ petitions.”

7. Indeed it is true that a case of compassionate employment must be considered strictly in terms of the scheme, therefor, framed by the State and/or the

authority concerned. The observations of the Hon'ble Supreme Court referred to in the ***Arindam Choudhury (supra)*** are, in fact, the principles that are followed throughout the country and more so by this Court in particular.

8. In the peculiar facts and circumstances of the case, this Court however notices that the mother, who is 56 years old has been otherwise found to be eligible for compassionate employment in terms of the Division Bench decision dated **30th August, 2023** in ***MAT 815 of 2022 (supra)***, which has been set out hereinabove, the respondent authorities were directed to give compassionate employment to the mother first if she is eligible and if not found fit, then give compassionate employment to the son of the deceased i.e. Vishal Lala, respondent No.2.

9. The records clearly indicate that the mother is suffering from Osteoarthritis in both knees along with hypothyroidism. The mother would have at best four years of service that would not even be pensionable.

10. The observations of the Division Bench in its judgment dated **30th August 2023** in ***MAT 815 of 2022 (supra)*** in no uncertain terms indicate that the family of the deceased is in dire financial status and on the verge of penury and starvation.

11. The deceased has two other daughters, who are studying. It is unlikely that any effective purpose would be served in giving compassionate employment to the petitioner No.1, whose ability to discharge duties effectively are doubtful. A person with Osteoarthritis of both knees along with Hypothyroidism at the age of 56 has often seen decline in health.

12. In view of the above and the observations of the Division Bench in the decisions dated **30th August 2023** in **MAT 815 of 2022 (supra)** this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India is inclined to direct as a special case to give compassionate employment to the petitioner No.2, Vishal Lala in a 'Group C' post in the Secondary section in Kolkata.

13. This Court directs the petitioner No.2 to make a formal application afresh in addition to the one already made last year on 20th September, 2023 to the District Inspector of Schools (PE), Kolkata/respondent No.2 herein, for compassionate employment in terms of this order.

14. The District Inspector of Schools (PE), Kolkata shall forward the same to the District Inspector of Schools (SE), Kolkata.

15. Upon receipt of the application the District Inspector of Schools (SE), Kolkata shall forward the

same to the regional School Service Commission at Kolkata for issuing necessary orders of appointment to the petitioner No.2, Vishal Lala in any 'Group C' post within the city of Kolkata or any of the nearby districts.

16. Let the aforesaid exercise be carried out by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

17. An undertaking shall be obtained by the District Inspector of Schools (SE), Kolkata from the petitioner No.2, Vishal Lala that he shall take care of the petitioner No.1 and all other family members, which shall be enforceable during the service career of the petitioner No.2.

18. The present order has been made in the special facts and circumstances of the case and shall not precedent.

19. With the aforesaid direction, the writ petition is disposed of.

20. There shall be no order as to costs.

21. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)