

05. 18.01.2024
bd. Ct.15

W.P.A. 30795 of 2014

Uttam Kumar Nayak

-vs-

State of West Bengal & Ors.

Mr. Ashis Kumar Chowdhury

Mr. Rajib Ghosh

Mr. Babhru Bahan Bera ... for the Petitioner.

Mr. Arijit Dey

... for KMC

In the writ petition, inter alia, challenge has been thrown to order dated 4th August, 2014 passed by the Chief Manager (personnel) of the Kolkata Municipal Corporation (hereinafter referred to as “KMC”) whereby prayer of the petitioner to appoint him being the son of prematurely retired employee was spurned upon application of a circular dated 17th January, 2009.

Learned advocate representing the petitioner submits that his father was an employee of KMC who retired prematurely on being found medically incapacitated with effect from 15th July, 1997 and subsequently died on 20th January, 1999 leaving behind his wife and five sons, petitioner is one of them. Petitioner made an application for appointment on compassionate ground under Special Regulations on 4th November, 1997. In addition thereto it has been submitted on behalf of the petitioner upon placing reliance on the recommendation of the concerned authorities of KMC made in the month of November 1997 for appointment of the petitioner on compassionate

ground which is at page 36 of the writ petition. It has been submitted that it was duly recorded in the recommendation made on behalf of the concerned authority of KMC that case of the petitioner deserves due consideration by the authorities for being appointed on compassionate ground. It is contended on behalf of the petitioner that in spite of favourable recommendation being made in favour of the petitioner no steps were taken by the concerned authority of KMC for providing appointment to the petitioner which triggered a writ petition being WPA 504 of 2014 and the same was disposed of vide order dated 22nd January, 2014 by a coordinate Bench directing the Deputy Municipal Commissioner (Personnel), KMC to take decision in accordance with law. Ultimately, decision has been taken by the Chief Manager (Personnel) negating the prayer of the petitioner.

Mr. Dey, learned advocate appearing for the KMC has strenuously made submission to defend the decision of the Chief Manager (Personnel) dated 4th August, 2014 on the score that one of the two conditions as contained in the circular letter dated 17th January, 2009 was not found to be fulfilled therefore petitioner was not found fit to be appointed on compassionate ground. It is also clarified on behalf of KMC in stead of Deputy Municipal Commissioner (Personnel), Chief Manager (Personnel) took decision since at the material point of time the charge of Deputy Municipal Commissioner (Personnel) was handed over to one Bijoy Biswas, Chief Manager (Personnel & SW & UPA). In support of the same release order dated

30th September, 2013 was also placed before this Court. Therefore, according to the KMC there is no flaw in the order dated 4th August, 2014 impugned in this writ petition.

Having considered the submissions made on behalf of parties and on perusal of the impugned order dated 4th August, 2014 it appears that the petitioner is the son of employee who retired prematurely on medical ground following the recommendation of the Medical Board with effect from 15th July, 1997. Petitioner being one of the sons of the retired employee made prayer for appointment on compassionate ground under Special Rules on 4th November, 1997 but surprisingly, while deciding the application of the petitioner the concerned authority of KMC applied the circular dated 17th January, 2009 which was not in existence at the time of retirement of the father of the petitioner on 15th July, 1997 neither the same was applicable on the date of application was made by the petitioner for being appointed on compassionate ground i.e., on 4th November, 1997. Whether the conditions contained in the circular dated 17th January, 2009 are fulfilled or not in the case of the petitioner is immaterial since such circular dated 17th January, 2009 has no manner of application while deciding the application of the petitioner on compassionate ground for which application was made on 4th November, 1997. It also transpires on perusal of the impugned order dated 4th August, 2014 that the contemporaneous recommendation made by the concerned authorities of KMC in the month of November 1997 was not

taken into consideration while decision was taken against the petitioner vide order dated 4th August, 2014.

In the above conspectus the order dated 4th August, 2014 stands set aside.

The Special Municipal Commissioner (Personnel) of KMC being the added respondent is directed to take decision on the application of the petitioner dated 4th November, 1997 seeking appointment on compassionate ground taking into consideration the recommendation made in favour of the petitioner in the month of November 1997 as well as the circulars which were existing at the material point of time.

Such decision to be taken by the Special Municipal Commissioner (Personnel) within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or his representative and the order to be passed by the Special Municipal Commissioner (Personnel) shall be communicated to the petitioner within one week thereafter.

With the aforesaid direction and observation the writ petition stands disposed of.

The learned advocate for the petitioner is granted leave to amend the cause title of this writ petition and add Special Municipal Commissioner (Personnel) as additional respondent in course of this day.

Service of notice upon the Special Municipal Commissioner (Personnel) KMC stands waived since KMC is represented by learned advocate.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)