

S/L 44
03.04.2024
Court. No. 3
*Suwayan/
Sourav*

WPA 8478 of 2020
Bomkesh Mahato
Vs.
The State of West Bengal & Ors.

Mr. Rudranil De
Ms. Anwasha Halder
Mr. Subhronil Ghosh
Mr. Anirban Das

...for the petitioner.

Mr. Biswabrata Basu Mallick, AGP
Ms. Munmun Ganguly

...for the respondents.

1. Heard learned Advocate for the petitioner and learned Advocate for the State/respondents at length.
2. The instant matter is taken up for passing appropriate order.
3. In this writ petition, the writ petitioner has prayed for cancellation and/or quashing of the memo No. 76/ 01(04)/ LS/ RO-IC/ 817/ LS/10 dated 29.06.2020 as issued by Commissioner of School Education, West Bengal, whereby and whereunder the writ petitioner's prayer for appointment under die-in-harness scheme in place and stead of his deceased brother, Nimai Chandra Mahato has been turned up by the said Commissioner.
4. In course of hearing, Mr. De, learned Advocate for the writ petitioner draws attention of this Court to the impugned memo. It is contended that while issuing the impugned memo the respondent authority more specifically; the Commissioner of School Education, West Bengal did not at all

consider as to how members of the family of an unmarried deceased would be dealt with while considering a claim made by the brother of the said unmarried deceased.

5. Mr. De further submits that that from the impugned memo it would reveal that the relevant G.O. No. 697-ES/S dated 09.07.2009 deals with an employee who is married and, therefore, in the event of death of such married employee his spouse, son and daughter are considered as family members for giving appointment on compassionate ground subject to fulfillment of certain conditions as prescribed.
6. In course of hearing Mr. De, learned Advocate appearing for the petitioner also draws attention of this Court to the Schedule 5 of the West Bengal School Service Commission (Selection of Persons For Appointment to the Post of Non-teaching Staff) Rules, 2009. It is argued that the said schedule of the aforesaid rules is also silent in respect of a deceased employee who died as a bachelor. It is, thus, argued by Mr. De in absence of any specific provision in case of a deceased unmarried employee, the general rules of succession would apply.
7. It is thus contended on behalf of the petitioner that since the present petitioner being the brother of the said deceased unmarried employee comes within the purview of the Class – II heir within the

meaning of Section 8 of Hindu Succession Act an appropriate order may be passed upon the respondent authorities to give compassionate appointment to the present petitioner.

8. Mr. Basu Mallick, learned Advocate appearing on behalf of the respondents/State contended, however, that this Court in exercise of its writ jurisdiction cannot act as a rule framing authority and thus in absence of any specific rule for granting appointment to the brother of the deceased bachelor employee under die-in-harness scheme, no relief may be granted to the present petitioner. It is further argued on behalf of the respondents/State that since the decision regarding inclusion of legal heirs of a deceased employee within the meaning of 'family' for giving appointment under the die-in-harness scheme is an administrative decision, this writ court may be very slow in interpreting the definition of family within the meaning of the aforesaid rules.
9. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that it is undisputed that one Nimai Chandra Mahato who was a Group – D staff of Gouradag High School died as a bachelor.
10. Admittedly, in the aforesaid rules as well as in the relevant G.O. being G.O. No. 697-ES/S dated 09.07.2009 there is no provision for giving any

appointment to the brother of the said deceased employee in die-in-harness scheme. Admittedly an employment under die-in-harness cannot be claimed as a matter of right and it is undisputed that such a scheme is a benevolent scheme to prevent the family members of the deceased employee from vagrancy. The persons who will come under the purview of 'family' in considered view of this Court is purely an administrative decision and/or policy decision of the Government over which the writ court cannot interfere.

11. This Court is in respectful disagreement with the submission of Mr. De, learned Advocate for the writ petitioner inasmuch as the provisions of Hindu Succession Act does not have any effect in the instant lis since the subject matter of the instant writ petition is not relating to any matter of succession and it is equally a settled principle of law that an employment under die-in-harness cannot be claimed under the law of succession.
12. In view of the discussion made hereinabove, this Court finds no merit in the instant writ petition.
13. Accordingly, the instant writ petition being WPA 8478 of 2020 is dismissed.
14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)