

WPA 11325 of 2019

Priti Prasun Dingal
Vs.
State of West Bengal & Ors.

Mr. Biswarup Biswas,
Mr. Kamal Mishra,
Mr. Pratap Sanfui.
... for the Petitioner.

Mr. Pinaki Bhattacharyya.
... for Respondents.

The writ petitioner is the son of an erstwhile, Assistant Teacher of Contai Hindu girls' School, and is aggrieved with the inaction on part of the respondent authorities that while dismissing petitioner's prayer for compassionate appointment the said respondent has not done any fact finding inquiry and also that breakup of alleged income of family of the writ petitioner has not been shown, in its order.

The factual background in brief in this case would be that, the mother of the petitioner had expired on 17.12.2010, while working as the Assistant Teacher of the above named school. At that point of time she was in service and had left behind her husband and two sons. After demise of his mother the petitioner had applied for appointment on compassionate ground.

Initially the petitioner's prayer as above was rejected by the respondent authority vide order dated 06.09.2012.

Thereafter however, pursuant to an order of this Court dated 21.12.2016, the said order of rejection was quashed and directions were made upon the respondent authority to reconsider petitioner's application for compassionate appointment, within a stipulated period.

As a consequence the writ petitioner submitted representation dated 04.07.2018, but to no avail.

A further order of this Court came in line, i.e, dated 27.09.2018, directing the respondent authority, i.e, District Inspection of Schools (Secondary Education), Purba Medinipur, to consider and dispose of the said representation of the petitioner.

Hence, the order of the said respondent dated 13.12.2018, which is impugned in the present writ petition. By dint of the said order the concern respondent, i.e, District Inspection of Schools (Secondary Education), Purba Medinipur/ respondent No. 3, has rejected petitioner's prayer for compassionate appointment, for the reason, firstly, that the writ petitioner was not dependent of the deceased Assistant Teacher and secondly that the family income of the writ petitioner was higher than initial monthly gross salary income of one Group-D staff under the State Government. The writ petitioner has prayed for appropriate order upon the concerned respondent authority, for redress of his grievance.

According to Mr. Biswas, learned Advocate appearing for the writ petitioner, the impugned order suffers from gross non-application of mind and also illegality. He says that before passing the order dated 13.12.2018, of rejection of prayer of the petitioner as above, the respondent No. 3 has not undertaken any fact finding inquiry, to inquire about the facts relevant for determining the question of the petitioner's eligibility for compassionate appointment. The decision of the said respondent vide its order dated 13.12.2018 having not been based upon report of any fact finding enquiry, the same is simply on the basis of conjecture and guess work by the concern respondent, to the detriment and jeopardy of the petitioner's vital rights under the statute, Mr. Biswas says. He has submitted further that the impugned order dated 13.12.2018 not being founded on the report of any fact finding authority, the same is also de hors the empowerment and capacity of the said respondent under the statute, hence, illegal and not maintainable. It has further been submitted that the respondent No.3 had no authority under the law to determine the question of eligibility of the writ petitioner as regards compassionate appointment in place of his deceased mother, unless the same is based on a fact finding enquiry report as to the relevant facts and circumstances. Mr. Biswas has sought for necessary order for petitioner's redress.

Mr. Bhattacharyya, learned advocate appears for the respondent State, who represents respondent No.3, too. He has,

however, conceded to the fact that the impugned order dated 13.12.2018 is the result of decision of the respondent No.3, without any foundation of the same, being based on any fact finding enquiry done for the said purpose. For the rest he has left it to the discretion of the Court.

On perusal of the record it appears that after death of his mother on 17.12.2010, the writ petitioner applied for compassionate appointment before the respective authority on 08.09.2011, i.e, within a period of one year from the date of death. Since thereafter, on one plea or other, the application as above of the present writ petitioner has been rejected by the respondent authority. The latest of an order of rejection is dated 13.12.2018, which is under challenge in this writ petition.

It is a trait that an enquiry is imperative to find out incumbent's legitimacy as to the claim for compassionate appointment, which otherwise falls beyond the purview of constitutional mandate of equal treatment to all who are equals. In this case, however, the respondent authorities, respondent No. 3 in particular, has not complied with such a mandatory requirement of law while passing its order dated 13.12.2018. Instead, pursuant to the order of the Hon'ble Court as mentioned above, the respondent No. 3 has dealt with the application of the petitioner by itself, by disposing it of by the said impugned order. The same has been done beyond scope and authority of the respondent No. 3, who is not empowered under the law to unilaterally decide, petitioner's

application, as above. The mode and manner in which the petitioner's application is disposed of, would not confirm with the settled legal principles. The decision of the respondent authority should be based upon a duly instituted fact finding enquiry as to assess if the requirements, to be eligible for an appointment on compassionate ground are fulfilled by the writ petitioner or not. Unless the same is done, the order of the respondent authority like the order impugned in this case dated 13.12.2018, would not be a legal and proper one.

It is further noted that the respondent authority/respondent No. 3 as above has not provided in the impugned order any breakup of the amount of monthly income of the petitioner, as it has come to perceive in this case. This has also allowed scope for lack of transparency in the action of the said respondent authority and is thus not maintainable.

For the reasons as above, in the considered opinion of this Court, the impugned order dated 13.12.2018, passed by the respondent No.3/ District Inspection of Schools (Secondary Education), Purba Medinipur, should be set aside. Hence, the same is set aside.

The respondent No.3 shall take all necessary steps in accordance with law and assess if the writ petitioner would be eligible for compassionate appointment as prayed for vide his application dated 08.09.2011 on the basis of a fact finding enquiry report. The said

respondent, there upon shall pass a reasoned order as regards the petitioner's prayer for compassionate appointment considering about his eligibility.

The entire exercise as above by the said respondent, shall be concluded within a period of 90 days from the date of communication of this order.

Writ petition no. WPA 11325 of 2020 is disposed of with the observation as above.

(Rai Chattopadhyay, J.)