IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 531 of 2021

Dipankar Banik
Vs.
The State of West Bengal & Ors.

For the Petitioner : Mr. Debdutta Basu

For the Respondent Corporation : Mr. Niladri Bhattacharjee
: Ms. Deblina Chattaraj
: Ms. Angana Dutta

Judgment on : **23/05/2025**

Rai Chattopadhyay, J. **:-**

(1) The petitioner's father has been a permanent employee of the respondent Corporation, who died in harness on ***April 24, 2017***. Hence an application dated ***June 5, 2017*** was filed by his mother to seek appointment of the petitioner, being the first son of the deceased, on compassionate ground. The same was followed by another application by the petitioner himself, that is dated ***April 17, 2019***.

(2) In this regard the Enquiry Committee [in short "the EC"] has made decision vide its report [in short "the ER"] dated ***December 11, 2020*** and the Managing Director of the Corporation [in short "the MD"] has passed its order on the basis of the said report on ***February 3, 2021***. Both the above are challenged by the writ petitioner in this case.

(3) According to the finding of the EC in its report, the MD has passed an order that the family of the said deceased person, consisting of his wife and two sons shall be paid an amount of Rs. 3,66,386/- as one time compensation due to death of the sole earning member of the family in-harness, following the provisions under the ***notification No. 144-WT/1E(D)-1/2008 dated January 13, 2011*** [in short "No.144"]. The writ petitioner's challenge is with regard to the said decision and order of the respondent Corporation.

(4) Mr. Basu has represented the writ petitioner in this case. The petitioner has made out a case that the respondent, after having found the family of the deceased to be in need of immediate financial assistance after death of the sole earning member of the family, should have considered the writ petitioner for being appointed permanently against a sanctioned vacant post on compassionate ground. According to Mr. Basu the scheme of compassionate appointment as provided vide notification No.144, is only the same. He says that the scheme has provided for "appointment or one time financial assistance on compassionate ground". Hence, in case the dependent legal heir of the person died in-harness is otherwise eligible and there are suitable vacancies available against which appointment can be made, it is the mandate of the scheme itself that the Corporation should appoint such legal heir of the deceased person. He says that the petitioner is duly eligible for being appointed in a suitable post and also that ample vacancies are available with the respondent Corporation to accommodate him. In such circumstances and following the scheme as provided in the notification No.144, he should have been given appointment. It is submitted that the Corporation, by not doing that and in stead granting the family of the petitioner a meagre and insufficient amount of money as one time compensation has violated the very essence and purpose of the scheme itself.

(5) The petitioner's further grievance is that he has been dissimilarly treated with the other persons, similarly situated like him, thereby jeopardizing and violating his constitutionally protected right of equality. Mr. Basu has elaborated that since long the respondent Corporation has been giving contractual and casual appointments on compassionate ground. In this regard he has referred to a 'Notice' issued by the MD on September 1, 2005, by dint of which the MD invites applications for compassionate appointment. He has also referred to the 'Note-sheet' of the MD dated November 2, 2010 in which names of the contractual appointees were mentioned who were appointed on compassionate ground. According to the writ petitioner some of these contractual appointees were regularized subsequently. In this regard Mr. Basu has referred to letters issued by the Chief Operating Manager dated February 8, 2016, thereby regularizing some of those contractual appointees. According to Mr. Basu, this clearly shows two things, firstly that, persons who are on similar footing like that of the writ petitioner have been given appointment and regularization in service and secondly that there exist sanctioned vacant posts against which the writ petitioner should have been appointed. Otherwise dissimilar treatment of the petitioner and treating him to be a separate class within the class of similar persons would not be maintainable in the eye of law, said Mr. Basu. He says that after the financial indigency of the family having been found, grant of one time financial assistance to the family of the deceased is not only irrational and disproportionate but also being in contravention of the spirit and object of notification No.144, is also illegal and not maintainable.

(6) An order of MD dated May 25, 2023 has also been mentioned by Mr. Basu for the petitioner, by dint of which the MD has granted appointment to one person on compassionate ground, in compliance with the order of this Court dated May 19, 2023 in WPO No. 1240 of 2021. The petitioner has sought for a similar order.

(7) Strong objection has been raised by the respondent Corporation, represented by Ms. Chattoraj learned advocate. The respondent has put forth a reason of extreme financial crunch of the same disabling it any further to afford fresh appointment on permanent basis. It is submitted that as a matter of policy, the respondent appoints contractual or casual employees to discharge its functions. It has further been submitted that the scheme of compassionate appointment followed by the said respondent that is, vide notification No.144, has provided for grant of one time compensation. Therefore, in case of the writ petitioner, neither any improper nor illegal decision has been taken by the same, which could have been termed as in contravention or violation of the prevailing notification. According to the said respondent the letter of the MD dated September 1, 2005, inviting applications or regularization of any other employee, should bear no relevance with the case of the writ petitioner and the same is to be adjudicated in accordance with its own merit. And the merit of the case the respondent has pleaded that in terms of notification No. 144, there has not been any error, impropriety or illegality in the report of the EC and the order of the MD, which are impugned in this case. The respondent has also denied the allegation of the petitioner about the insufficiency of the compensation proposed to be paid to his family. It is submitted that the quantum of compensation has been determined in accordance with the rules as prescribed in this regard. Ms. Chattoraj has very strenuously argued that the respondent is no further so financially viable to take up the liability of additional employee than are presently on roll or appointment of more permanent employees.

(8) According to the respondent the impugned order has been passed after affording opportunity of hearing to the writ petitioner and in accordance with the policy frame work of the respondent. Hence the same is in accordance with law and not violative of either the constitutional rights of the writ petitioner or the comparatively weak right of him to be appointed on compassionate ground. The respondent has sought for dismissal of the writ petition.

(9) The respondent firstly tries to justify the ground of its financial stringency. The Court finds that financial stringency is not a valid reason to withhold benefits that are already owed, especially when those benefits are considered a means of sustenance. Simply stating that the state is facing financial difficulties is not a valid reason to deny what accrues in favour of a person as per law. If a benefit is legally or contractually obligated, the state cannot use financial constraints to avoid its obligations, excepting fraud practice or misconduct being proved.

(10) The importance of upholding the constitutional, statutory or contractual right of a person over and above the economic health of a state instrumentality have time and again been propagated by the Supreme Court in various judicial pronouncements.

(11) In ***All India Imam Organization and others v. Union of India and others (1993) 3 SCC 584***, the Supreme Court has held :

> ***" ... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different State would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."***

(12) In ***State of H.P. v. H.P. State Recognized & Aided Schools Managing Committees and others (1995) 4 SCC 507***, it was opined :

> ***"16. The constitutional mandate to the State, as upheld by this Court in Unni Krishnan case - to provide free education to the children up to the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity."***

(13) In ***Kapila Hingorani v. State of Bihar*** reported in ***(2003) 6 SCC 1*** the Supreme Court has observed as follows :-

> ***"65. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises."***

(14) Therefore in this regard we find the law to be well settled that financial stringency would not be a cogent or forceful ground for the respondent, to deny the petitioner his right in terms of the Rules. In this regard the respondent has submitted that the right of the petitioner for being appointed on compassionate grounds is not a vested right but is subject to proof of various contingencies. In case of the petitioner, it is submitted that the petitioner has not been able to prove with sufficient evidence regarding those contingencies, particularly with regard to the indigence of the family, it's ardent need for financial assistance, in so far as the petitioner himself is engaged in some job, which earns him income. The respondent has also contended that the petitioner has not been deprived altogether, but the family has been provided with the financial assistance in the form of compensation, which is the other alternative of one person of the family being appointed in the Corporation on compassionate grounds, as provided in the Rules.

(15) Clause 4. of the notification No.144, is important in this regard. Let that be extracted as herein bellow:

> ***"4. One of the dependants of an employee, who dies-in-harness or who retires prematurely on being declared permanently incapacitated may be offered appointment or one time financial assistance on compassionate ground if the family of the deceased or the retired employee, as the case may be, is in need of immediate assistance."***

(16) The provision for offering appointment to the dependent of an employee precedes the provision for offering one time financial assistance to the family of the deceased, in the Rules. Hence, there can be no scope of any doubt that while providing for those Rules, the makers had kept in mind the necessity for providing a support system to the dependent family of the deceased, the sole bread earner of which has left for heavenly abode and only untimely and suddenly. According to Mr. Basu, the vacancies being available and the dependent legal heir of the deceased person being eligible for being appointed in the said vacancy, that should be the first and foremost option undertaken by the Authorities, while supporting the family in need of immediate assistance, after death of the predecessor. The Court finds force in such submission. One time financial assistance may not always be equivalent of the dependent being appointed, as in the later case the family is supported for its sustenance whereas in case of the former, it is only a measure for the time being.

(17) It is pertinent to note that the EC in its report dated December 11, 2020, has recorded its finding that the family of the deceased person is in need of immediate financial assistance. The result of fact finding enquiry by the EC and its decision is that in spite of the same, the petitioner's family would be eligible for grant of one-time compensation instead of any appointment. The reason has been said to be that the petitioner himself is engaged in a job, which earns him a per day remuneration to the tune of ₹200. Also that since after 2014, there has not been any appointment made in the respondent Corporation on compassionate ground and the respondent only appoints on contractual basis through the outside agency.

(18) Firstly, that a job, if any, which earns a per day remuneration, cannot be held to be sufficient for financial assistance of a family, which has lost its bread earner untimely. It is of temporary nature and not sufficient to fulfil the need of the family for sustenance in a coherent manner. Hence, this cannot be considered as a substantive source of earning of the dependant or the family of the deceased.

(19) Further, the Court notices that there are vacancies available in the respondent Corporation. This fact, as established by the petitioner in the affidavit-in-reply, has not been confronted or defied by the respondent with adequate material. It is also necessary that note-sheet of the MD dated November 2, 2010 thereby appointing persons temporarily on compassionate ground and subsequent order of the Chief Operating Manager dated February 8, 2016, may also be mentioned, by dint of which service of those persons have been regularised. Hence, the petitioner cannot be discriminated on these grounds particularly when financial stringency of the respondent would not be a valid ground in accordance with law, not to give appointment to an eligible person, who is also entitled under the Rules. Reasons assigned by the respondent/Corporation to deny the petitioner appointment and instead to grant him one time compensation, that the respondent has not been appointing persons on compassionate ground for years together, is found to be baseless, irrational, unreasonable, and of course without any sanction of law. A State instrumentality, has to act as per the settled principles of law and within the bounds of the statute. Its decision cannot be the result of its whims and without foundation. The respondent has cited the reason as to why it may not have appointed any person on compassionate ground to be the financial ill health of the Corporation, which would also not be maintainable in the eye of love as discussed earlier in this judgment.

(20) Lastly, the Court is inclined to referred to the earlier order passed in WPO 1240 of 2021 and the follow-up order passed by the MD dated May 25, 2023, as referred to on behalf of the writ petitioner. Pursuant to order of the Court passed in the said writ petition, the Corporation, by dint of the said order, has appointed the incumbent as against a sanctioned vacant post as regular employee of the Corporation. There is no ground for which the petitioner may not be treated similarly by the respondent Corporation.

(21) For the reasons as discussed above, the impugned report by EC dated December 11, 2020 as well as order of the MD dated February 3, 2021 are found to be based on unreasonableness and irrationality. Therefore, those are not eligible to be sustained. Hence, this writ petition is allowed with the directions as follows:-

i) The impugned report of EC dated December 11, 2020 is set aside excepting the finding of requirement of immediate financial need of the petitioner and his family;

ii) The impugned order of MD dated February 3, 2021 is set aside;

iii) The petitioner is eligible for being appointed on compassionate ground in terms of provisions in Notification No. 144;

iv) Hence, respondent no. 2 is directed to issue an order of appointment of the writ petitioner as a regular employee of the Corporation immediately and positively within a period of 4 weeks from the date of communication of copy of this order.

(22) This writ petition is disposed of.

(23) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

RAI CHATTOPADHYAY

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(Rai Chattopadhyay, J.)