

WRIT APPEAL

Present: The Hon'ble Justice Pranab Kumar Chattopadhyay

And The Hon'ble Justice Md. Abdul Ghani

Judgment on 25.08.2010

F.M.A.507 of 2010

With

C.A.N.1977 of 2010.

Sagir Ahmed

-Vs-

State of West Bengal and Others

Points:

Compassionate appointment- Whether the authority can consider the rule which was not in vogue at the time of application for compassionate appointment – Whether the Authority can consider the pension of the deceased and/or can compare the income of an employee who is not comparable with the deceased- Service Law

Facts:

Writ petitioner, heir of a deceased teacher of a Madrasah, applied for appointment on compassionate ground which was refused by the State upon considering the family income of the deceased employee to the tune of Rs.5,800/- per month and observed that the total monthly income of the family of the deceased employee is higher than that of a salary of a group 'D' staff on the basis of the amended provision of Rule 14 of the West Bengal Primary School Teachers Recruitment Rules, 2001 which was notified by the Government of West Bengal in the Kolkata Gazette on January 30, 2008. Explanation to the amended provision of Rule 14

mentioned in the aforesaid notification defines the financial hardship. Learned Single Judge dismissed the writ petition.

Held:

The claim of the petitioner for appointment on compassionate ground cannot be rejected on the ground that the family of the deceased employee had a total monthly income of Rs. 5,838/- ignoring the fact that from the pension sources said family had monthly income of Rs.4,838/- out of the aforesaid total monthly income at the material point of time. Director of School Education illegally and erroneously compared the said monthly income with the monthly income of a Group 'D' employee without appreciating that the deceased employee was an Assistant Teacher of a Madrasah and not a group 'D' staff and the amended provision of Rule 14 was not in existence at the time of submission of the claim for compassionate appointment of the petitioner herein.

Para 14

Cases cited:

State of West Bengal & Ors. Vs. Bina Debnath & Ors., reported in 2009 (2) CLJ (Cal) 512; Govind Prakash Verma Vs. Life Insurance Corporation of India and Ors., (2005) 10 S.C.C. 289; Balbir Kaur and Anr. Vs. Steel Authority of India and Ors., reported in (2000) 6 S.C.C. 493

Mr. Ekramul Bari, Ms. Tanuja Basak. ...For the Appellant.

Mr. Saikat Banerjee. ...For the State.

Ms. Santi Das, Ms. Sumana Chakraborty. ...For the Council.

This application has been filed in connection with the appeal preferred from the judgment and order dated 7th January, 2010 whereby and whereunder a learned Judge of this Court rejected the claim of the petitioner

for employment on compassionate ground upon considering the family income of the deceased employee to the tune of Rs.5,800/- per month.

2. From the records, we find that the Director of School Education, West Bengal while considering the claim of the petitioner pursuant to the earlier order passed by this Court issued office memorandum dated 8th July, 2009 wherein the said Director specifically mentioned that the monthly income of the family of the deceased teacher was Rs.4838/- from the pension sources and Rs.1,000/- from the other sources.

3. The Director of School Education, West Bengal further observed that the total monthly income of the family of the deceased employee is higher than that of a salary of a group 'D' staff.

4. Undisputedly, the deceased employee was an Assistant Teacher of a Madrasah and his monthly income was not Rs.4,442/- at any point of time.

5. Mr. Saikat Banerjee, learned Advocate representing the State respondents, however, invited our attention to the amended provision of Rule 14 of the West Bengal Primary School Teachers Recruitment Rules, 2001 which was notified by the Government of West Bengal in the Kolkata Gazette on January 30, 2008.

6. Explanation to the amended provision of Rule 14 mentioned in the aforesaid notification defines the financial hardship.

7. The aforesaid amended provision of Rule 14 cannot have any manner of application in the case of the petitioner since the said petitioner claimed employment on compassionate ground immediately after the death of his father on 24th July, 2005 i.e. long before the issuance of the aforesaid notification amending the Rule 14.

8. Reliance may be placed on an earlier decision of this Court in the case of State of West Bengal & Ors. Vs. Bina Debnath & Ors., reported in 2009 (2) CLJ (Cal) 512 in this regard wherein this Court specifically observed;

“In any event, the claim of the writ petitioners for appointment on compassionate ground under the died-in-harness category cannot be decided in terms of the Notification dated 6th June, 2005 since the said notification was not in existence at the time of death of the deceased employee or even at the time of submission of the application by the writ petitioner No.2 claiming appointment on compassionate ground.....”

9. In the present case, claim for compassionate appointment of the petitioner was rejected upon considering the monthly income of the deceased family ignoring the fact that out of total monthly income of Rs.5838/-, income from the pension and other sources was Rs.4838/-.

10. It is well settled that the claim for compassionate appointment cannot be rejected on the ground that the family of the deceased employee received pensionary benefits.

11. In the case of Govind Prakash Verma Vs. Life Insurance Corporation of India and Ors., reported in (2005) 10 S.C.C. 289, Hon’ble Supreme Court specifically held:

“6. The Scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.”

12. In the subsequent decision, Hon'ble Supreme Court also observed in the case of Balbir Kaur and Anr. Vs. Steel Authority of India and Ors., reported in (2000) 6 S.C.C. 493 as hereunder:

“ But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lumpsum amount is made available with a compassionate appointment, the griefstricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.”

13. Considering the status of a teacher, the Chairman, Murshidabad District Primary School Council did not consider that the aforesaid monthly income to the tune of Rs.5838/- as the sufficient income for the deceased family to maintain themselves and, therefore, the Chairman, District Primary School Council by memo dated 26th February, 2008 recommended the name of the petitioner as qualified candidate for appointment as an Assistant Primary Teacher on compassionate ground under die-inharness category although such recommendation was not approved by the Director of School Education, West Bengal.

14. As we have already observed hereinbefore that the amended provision of Rule 14 cannot have any application in the case of the petitioner and in view of the aforesaid decisions of the Hon'ble Supreme Court in the case of Govind Prakash Verma (Supra) and Balbir Kaur & Anr. (Supra), we are also of the opinion that the claim of the petitioner for appointment on

compassionate ground cannot be rejected on the ground that the family of the deceased employee had a total monthly income of Rs. 5,838/- ignoring the fact that from the pension sources said family had monthly income of Rs.4,838/- out of the aforesaid total monthly income at the material point of time. Director of School Education illegally and erroneously compared the said monthly income with the monthly income of a Group 'D' employee without appreciating that the deceased employee was an Assistant Teacher of a Madrasah and not a group 'D' staff and the amended provision of Rule 14 was not in existence at the time of submission of the claim for compassionate appointment of the petitioner herein.

15. The respondent authorities particularly, the Director of School Education, West Bengal should not have compared the total monthly income of the deceased family with the monthly income of a group 'D' staff while rejecting the recommendation of the Chairman, Murshidabad District Primary School Council for appointment of the petitioner on compassionate ground ignoring the fact that the aforesaid recommendation was made by the Murshidabad District Primary School Council upon realising that the monthly salary of an Assistant Teacher was not at par with the group 'D' staff.

16. For the reasons discussed hereinabove, we are of the opinion that the Director of School Education illegally refused to approve the recommendation of the Chairman, Murshidabad District Primary School Council for appointment of the petitioner as an Assistant Primary Teacher on compassionate ground and thus the claim of the petitioner for compassionate appointment was wrongfully and illegally rejected by the Director of School Education, West Bengal.

17. For the aforementioned reasons, we quash the impugned decision of the Director of School Education, West Bengal as mentioned in office memorandum dated 8th July, 2009 issued by the said Director of School Education, West Bengal.

18. For the identical reasons, the impugned judgment and order under appeal passed by the learned Single Judge cannot be sustained and the same is, therefore, set aside.

19. Since a considerable time has already lapsed, we direct the Director of School Education, Government of West Bengal to accord necessary approval to the proposal of the Chairman, Murshidabad District Primary School Council for appointment of the petitioner as an Assistant Primary Teacher on compassionate ground under die-in-harness category without any further delay but positively within a period of two weeks from the date of communication of this order.

20. Needless to mention that the Chairman, Murshidabad District Primary School Council will take appropriate steps for issuing the letter of appointment in favour of the petitioner immediately after receiving the formal order of approval from the Director of School Education, West Bengal.

21. This application thus stands allowed.

22. The aforesaid order virtually disposes of the appeal. Therefore, the appeal is also treated as on day's list and allowed accordingly.

23. In the facts of the present case, there will be no order as to costs.

24. Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the learned Advocate of the appellant/petitioner on usual undertaking.

(Pranab Kumar Chattopadhyay, J.)

(Md. Abdul Ghani, J.)

