(2011) 01 CAL CK 0057

Calcutta High Court

Case No: F.M.A. No. 686 of 2010

Sk. Anisur Rahaman		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: Jan. 21, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21

Citation: (2011) 4 CHN 80

Hon'ble Judges: Prabhat Kumar Dey, J; Amit Talukdar, J

Bench: Division Bench

Advocate: Animesh Majumder and Joynal Abedin, for the Appellant;

Final Decision: Allowed

Judgement

Amit Talukdar, J.
Seldom do we come across an instance where Justice remains a teasing mirage in the desert of inefficiency and indifference.

2. In such a trajectory, we will be required to hear the appeal of a person, who had the misfortune of losing his father way back on 07.06.1973.

3. He along with his other siblings, who were minors, was pursuing his studies and it is only in 1978 that he cleared his Higher Secondary Examination. Thereafter unable to provide few morsels of food and some square yards of yarn to the members of his family, he opted for the breadwinner''s scheme or popularly known as compassionate appointment in place of his deceased father, who worked as an Assistant Teacher in a Primary School.

4. Several round of representation and usual banging of head before the authority proved futile. Hence he approached the Writ Court on 17.01.1990 which directed the respondents to consider the application of the petitioner for appointment as Primary Teacher.

5. But as usual no result. This saw his second trip before this Court in connection with C.O. No. 9331 (W) of 1989. This time again there were directions for consideration of the representation for his empanelment as an Assistant Teacher in the Primary School from the died in harness category.

6. No cheers. Once again to the fore Court of Justice--this time in W. P. No. 2499(W) of 1998, where on the basis of which this Court on 08.09.1998 directed consideration of the order dated 22.08.1995 passed in connection with C.O. No. 9331 (W) of 1989 by way of passing a reasoned order.

7. Fate continued to play truant with this unfortunate appellant. Again the High Court in W.P. No..20145(W) of 2005. On 21.01.2008 another disposal order directing the respondent No. 5 to dispose of the representation filed on 07.12.2004.

8. Finally the same was disposed of by the respondent No. 5 on 28.03.2008 vide his Memo No. 5752/1/LA dated 28.03.2008, which is Annexure-P7 to the main writ petition.

9. Respondent No.5 held that the scheme for died-in-harness category was framed in 1977 effective from 01.04.1976 but since the father of the appellant passed away in 1973, long before the scheme was brought into existence--the appellant cannot get any benefit thereof.

10. The same was tested before the High Court for the fourth time in W.P. No. 7872(W) of 2004. On 26.03.2009 Hon''ble Trial Court by way of endorsing the findings by respondent No. 5 dismissed the writ petition, the order of which is under appeal.

11. We had noted in our order dated 05.01.2011 that since none appeared on behalf of the respondents even on second call, after having heard the submissions of the appellant we reserved our judgment. As such, we were left without their assistance and had to base our finding on the basis of the submissions made on behalf of the appellant and considering the materials.

12. We have carefully perused the entire set of materials in the light of the finding arrived at by the learned Trial Court. We have also taken note of the submissions made on behalf of the appellant.

13. It has been submitted by Counsel for the appellant that even though the appellant was a minor when the death took place--after attaining majority he applied for the post held by his father for which no wrong can be found. Ho also submitted that the respondent No. 5 concluded (Annexure-P4 of the writ petition) contrary to the finding of the District Inspector with regard to the claim for appointment of the appellant.

14. It was his further case that the order dated 22.08.1995 passed by this Court including that of the District Inspector still holds good and the respondents are duty

bound to carry out the same.

15. According to the learned Counsel, the finding of the learned Trial Court, which was practically based on the decision arrived at by respondent No. 5, cannot be sustained and should be set aside.

16. In our appreciation of the entire issue, neither there has been any forensic appreciation of the matter nor the final nuances have been gone into at any stage of the jinxed career of the appellant simply he was pushed like a unwanted child from one corner to another without addressing his woes.

17. As a Court of Law that too in equity, we are required to do conscionable justice. For this purpose we have to keep alive our sense of justice to its precision.

18. Pact remains that under fortuitous circumstances he lost his father in June 1973. He qualified in the Higher Secondary Examination in 1978. Thereafter he applied for compassionate appointment.

19. Let us pause here for a moment for a better understanding of the situation. Before the Forum earlier, which was traversed by the appellant, it was very much agog that when the appellant''s father passed away the scheme of died-in-harness category was not in existence. It came into effect in 1977 retrospectively from 01.04.1976. As such, the appellant was injuncted from such claim.

20. Little did the various stages anterior to the one which we are handling at present, bear in mind that when the appellant prayed for absorption in the died-in-harness category, the scheme was very much in existence.

21. The social philosophy behind enactment of the scheme, which provided for employment to the kith and kin of the departed soul who had served the Establishment for so long so as to enable them to tide over the crisis occasioned on account of his death was completely lost sight of.

22. In the prism of the entire paradigm we would see that the entire scheme was put into effect for amelioration of the plight of the employees, their near and dear ones, who were exposed to the vagaries of life on account of the loss of the breadwinner of the family.

23. An employment in the died-in-harness category, even though it cannot be claimed as a matter of right and is de hors the normal Rule of Recruitment, after all, is a special feature in the service jurisprudence, which has to be viewed on a case to case basis.

24. There are several instances operating in the field as to what would be the criteria and what would be the cut off date and what would be the licensure or the yardstick of the need of a distressed family.

25. Perhaps like Article 21 of the Constitution of India, the last word in its ever widening horizon is yet to be said.

26. Once we have found that all through there has been simple objective analysis of the claim of the appellant devoid of any clinical appreciation thereof, we feel thus far and no further and it would be our bounden duty to put an end to the protracted long agony of this poor appellant, who have suffered the distraught pain of losing his father, kept in animated tenterhooks in anticipation of an employment and faced stone walled response from a apathetic administration with no success before the various, stages of the Trial Court.

27. The situation, which can be summed up, shows that when there was a prayer for compassionate appointment, the scheme for died-in-harness category was very much in existence. Simply the same not being in vogue at the time of the death of his father--cannot preclude him from claiming employment in that category. As otherwise, if the Court abides by the views of respondent No. 5, it would veritably close clown the legislative intent behind initiation of such a scheme.

28. There cannot be any gainsay that time and passage of years has foreclosed the claim of the appellant and it can be argued that the immediate crisis is over. This would be simple guesswork as who can conclude as to how their lives have been since the loss of their father ?

29. Existence yes. Otherwise, he would not have left to crawl up in this appeal, but is it existence as known to the majestic splendor of Article 21 or else, simply an animal existence ?

30. These are hidden agendas and no conclusive opinion can be formed thereto.

31. Accordingly, this Court feels that the order returned by the learned Trial Court cannot be sustained and is accordingly set aside.

32. Appeal is allowed.

33. There will be a writ in the nature of Mandamus in terms of prayer as of the writ petition directing the respondents to give compassionate appointment as a Primary Teacher in favour of the appellant with utmost expedition.

34. Appeal allowed.

35. There will be no order as to costs.