

FMA 334 of 2020
With
CAN 1 of 2019 (Old CAN 6604 of 2019)

Smt. Durgabala Mdandal
Vs.
The State of West Bengal & Ors.
(Through Video Conference)

Mr. Rabindra Nath Mahata

Mr. T.M. Saha

Ms. Aninda Bhattacharya

... .. for the appellant

Mr. Ranjan Saha

... .. for the respondent no. 6

Mr. Sudip Sarkar

... .. for the respondent no. 10

The affidavit of service filed by the appellant discloses that the respondent no. 9 is served. She is not appearing before this Court.

In this appeal the appellant who is a widow lady aged about 80 years has challenged the order of the learned Single Judge dated 01.03.2019 whereby WP No. 3672(W) of 2019 has been dismissed.

The record reflects that the writ petition was filed by the appellant with the prayer to issue a direction to the respondent no. 9 to provide financial assistance to the appellant for survival and medical treatment.

The aforesaid prayer was made in the background of the fact that the husband of the appellant had died long back and her son Bajadulal Mandal was working a Primary School Teacher but unfortunate he also died on 14.10.2014. The daughter-in-law (wife of Bajadula Mandal) had applied for compassionate appointment in

the school and had also filed the affidavit dated 25.07.2016 stating that she will bear the responsibility of all the maintenance with treatment of the appellant in future and forever.

However, after receiving the appointment the respondent no. 9 did not care of the appellant. Therefore, the appellant had initially filed WP 16153(W) of 2017 which was disposed of by order dated 18.09.2017 with liberty to the appellant to file a detailed representation before the respondent no. 5 therein and with a direction to the said respondent to decide the representation.

Thereafter, the appellant has filed the representation dated 14.11.2017 which was dismissed by the District Inspector of Schools (PE) by order dated 14.12.2017 which led to filing of WP 2737(W) of 2018 by the appellant and this Court had permitted to the appellant to file the fresh representation and directed the appropriate authority to consider the same.

As no decision on the representation was taken the appellant approached the Writ Court by filing the petition but the learned Single Judge by the order under challenge has dismissed the petition taking the view that the appellant's son aged about 37 years is in a position to look after her.

It has been pointed out by learned counsel for the appellant that only surviving son of the appellant is unemployed and is not in a position to look after the

appellant. He has also submitted that once the appointment on compassionate ground was obtained by the respondent no. 9 by giving an undertaking before the authorities that she will maintain the appellant then at this stage she cannot turn around and ignore the appellant.

Learned counsel for the respondent no. 6 has also fairly submitted that if a fresh representation is filed by the appellant then the respondent no. 6 will duly look into it.

We have also perused the affidavit dated 25th July, 2016 which was submitted by the respondent no. 9 at the stage of obtaining the compassionate appointment. The said affidavit clearly states as under:

“2. That my husband Braja Dulal Mandal died on-14/10/2014 and he has an employee as a Primary School Teacher.

3. That I do hereby declare that in the event of my Appointment as a Clerk (C-Group) under the Government of West Bengal on compassionate ground, I shall be bound the entire responsibility along with all maintenance with treatment of my mother-in-law Srimatya Durga Bala Mandal in future and for ever.”

Once the respondent no. 9 had obtained the compassionate appointment by giving an undertaking as above to maintain and extend medical assistance to the appellant, then she is bound by that.

In these circumstances, we dispose of the present appeal granting liberty to the appellant to file an

appropriate detailed representation before the respondent no. 6 who will duly consider the grievance of the appellant and pass an appropriate order after giving an opportunity to the appellant and the respondent no. 9 in accordance with law as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order along with the representation.

The appeal and the connected application are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)