

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 114 of 2023

Appellant :- Ajay Kumar Maurya

Respondent :- Chairman U.P. Rajya Vidyut Utpadan Nigam Ltd. Lko. And Others

Counsel for Appellant :- Shashank Shekhar Shukla, Annapurna Agnihotri

Counsel for Respondent :- Puneet Chandra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per: Arun Bhansali, CJ)

1. This appeal is directed against the order dated 30.08.2022 passed in Writ – A No. 5471 of 2022, whereby the writ petition filed by the appellant seeking compassionate appointment has been dismissed.
2. The writ petition was filed, *inter alia*, with the averments that the petitioner is adopted son of Smt. Manju, who died on 11.02.2005 while working as Class-IV employee in R&M Subordinate Department of U.P. State Electricity Corporation Limited at Shakti Bhavan Extension, Lucknow. Upon her death, the petitioner, being legal heir, applied seeking compassionate appointment on 14.03.2005, however, at the relevant time, as the petitioner was minor, he was required to apply once he has attained the age of majority. The petitioner became major in the year 2010, however, it is claimed that there was a dispute between the petitioner and his sister, which was pending consideration before the Civil Court which came to be decided on 20.01.2013 in favour of the petitioner, when he again approached the respondents by filing application seeking compassionate appointment, which came to be rejected on 03.12.2015 indicating that the same was time barred. Against the rejection, the petitioner made representation in the year 2017, which came to be rejected on 18.10.2021.
3. Feeling aggrieved, the petitioner approached this Court by filing Writ–A No. 657 of 2022, which came to be decided on 10.02.2022, whereby the orders dated 03.12.2015 and 18.10.2021, rejecting the representations of the petitioner, were set

aside on account of the same being non-speaking with further direction that in case, a fresh representation is made, the authority concerned shall consider and decide the same within a period of eight weeks by a reasoned and speaking order without being influenced by any observation made in the order but in accordance with law.

4. The respondents, by order dated 19.04.2022, rejected the representation after referring to judgment in **Eastern Coal Field Ltd. Vs. Anil Badyakar and Others : (2009) 13 SCC 112** on the ground that as 17 years have passed since the death of the employee and the petitioner has survived on his own during the said period and the compassionate appointment is accorded to get over the immediate financial crises on account of the death of the bread earner, in view of the judgment of the Hon'ble Supreme Court, he was not entitled for the same. Feeling aggrieved, the petitioner approached this Court by filing the writ petition, which has been dismissed vide order impugned.

5. Learned Single Judge, after hearing the parties, came to the conclusion that in view of the Larger Bench judgment in **Shiv Kumar Dubey Vs. State of U.P. : AIR 2015 All 47**, the fact of petitioner's minority cannot enure to his benefit for the purpose of compassionate appointment unless the petitioner was able to demonstrate that on the date, on which the claim of compassionate appointment was made, the state of penury had continued. Learned Single Judge further observed that death of the petitioner's mother occurred in 2005 and the matter was being decided in 2022, the writ petition was filed after 7 years of having submitted the application for compassionate appointment in 2015. The age of majority was attained by the petitioner in the year 2010 and, therefore, there was no reason to interfere with the impugned orders and consequently dismissed the writ petition.

6. Learned counsel for the appellant made submissions that the orders impugned passed by respondents as well as by learned Single Judge deserve to be set aside inasmuch the dismissal of the application and the petition are wholly unjustified. Submissions were made that immediately on the death of petitioner's

mother in the year 2005, he applied, however, as he was minor at that time, the application was rejected whereafter as soon as the litigation between the appellant and his sister came to an end by judgment dated 20.01.2013, he again applied which application was rejected on 03.12.2015. Against the order dated 03.12.2015, he represented on 05.04.2017, which was again rejected on 18.10.2021. The said orders dated 03.12.2015 and 18.10.2021 were set aside by learned Single Judge and the respondents were required to pass a fresh order, which order though has been passed, the same does not consider the facts in appropriate context, inasmuch, the same again has been dismissed on account of delay whereas there was no delay at all as immediately on the death of his mother, he had applied for grant of appointment but due to minority, the same was not granted whereafter on conclusion of the litigation between the petitioner and his sister, he applied in the year 2013, wherein the orders were passed in the year 2015 and the representation made by him in the year 2017 was decided in the year 2021, therefore, the delay, if any, has been on account of the respondents only and for that reason the petitioner cannot be made to suffer and therefore the orders impugned deserve to be set aside. Reliance has been placed on **Malaya Nanda Sethy Vs. State of Orissa : Civil Appeal No. 4103 of 2022** decided on 20.05.2022 by Hon'ble Supreme Court.

7. Counsel for respondents supported the order impugned. Submissions were made that the legal position is very clear wherein the Larger Bench in the case of **Shiv Kumar Dubey (supra)** has laid down that there is no general right which can be asserted to the effect that a member of the family, who was a minor at the time of death, would be entitled to seek compassionate appointment upon attaining majority and where rule provides for a period of time within which an application has to be made, the operation of rule is not suspended during the minority of a member of the family and therefore, as the application was made after 8 years of the death of the employee, and petitioner has approached the Court after 17 years of her death, the rejection of the application for grant of compassionate appointment is justified and, therefore, the appeal be dismissed.

8. We have considered the submissions made by counsel for parties and have perused the material available on record.

9. The facts, as noticed hereinbefore more than once, are not in dispute wherein the death took place in the year 2005, the appellant on gaining the eligibility on attaining the age of majority in the year 2010, applied in the year 2013, may be on account of some pending litigation with his sister and rejection took place in the year 2015, which was reiterated in 2021 and he approached this Court for the first time in the year 2022, i.e., after 17 years of death of his mother and presently about 19 years have passed since the death of his mother.

10. The governing Regulations, 1998 of the respondent-Corporation provides limitation of 5 years from the date of death with a proviso that the period of limitation can be relaxed in a case of undue hardship. The aspect of minority in relation to the period of limitation has been determined by Larger Bench of this Court in **Shiv Kumar Dubey (supra)** in following terms:

“(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.”

11. The appellant applied on 09.07.2013 for compassionate appointment on the strength of the succession certificate having been issued in his favour by the Court of competent jurisdiction, however the grant of succession certification has nothing to do with the claim of compassionate appointment inasmuch the succession certificate only pertains to the movable properties of the deceased and nothing more. The respondents rejected the application on 03.12.2015 as barred by limitation, whereafter the appellant made a representation against order dated 03.12.2015 in the year 2017, which came to be rejected on 18.10.2021, by then 16 years had already passed and for the first time petition was filed before this Court claiming compassionate appointment in the year 2022 wherein the petition was allowed, orders dated 03.12.2015 and 18.10.2021 were set aside and the appellant was directed to file a fresh representation and the respondents were directed to decide the same without being influenced by any observation passed in the order.

The representation was again rejected and as noticed, the writ petition was dismissed.

12. The aspect of the delay in filing the writ petition in relation to passing of orders by the authorities and its ultimate impact on the claim for compassionate appointment has been examined by Hon'ble Supreme Court in **State of West Bengal Vs. Debabrata Tiwari and others : AIR 2023 SC 1467**, wherein Hon'ble Supreme Court referred to the judgment in **State of Uttaranchal Vs. Shiv Charan Singh Bhandari : (2013) 12 SCC 179**, wherein it was observed that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix and a mere submission of representation to the competent authority does not arrest time and came to the following conclusion:

“10. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action.

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12. In the present case, the applications for compassionate appointment were made by the Respondents-Writ Petitioners in the year 2005-2006. Admittedly, the first concrete step taken by the Chairman of the Burdwan Municipality was in the year 2013, when the said authority forwarded a list of candidates to be approved by the Director of Local Bodies, Burdwan Municipality. The Respondents-Writ Petitioners knocked on the doors of the High Court of Calcutta only in the year 2015, i.e., after a lapse of nearly ten years from the date of making the application for compassionate appointment. The Respondents-Writ Petitioners were not

prudent enough to approach the Courts sooner, claiming that no concrete step had been taken by the Appellant-State in furtherance of the application by seeking a Writ in the nature of Mandamus.

13. The sense of immediacy in the matter of compassionate appointment has been lost in the present case. This is attributable to the authorities of the Appellant-State as well as the Respondents-Writ Petitioners. Now, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the Respondents-Writ Petitioners have been able to eke out a living even though they did not successfully get appointed to the services of the Municipality on compassionate grounds. Hence, we think that this is therefore not fit cases to direct that the claim of the Respondents-Writ Petitioners for appointments on compassionate grounds, be considered or entertained.”

The Court also took note of the judgment in the case of **Malaya Nanda Sethy (supra)** cited by counsel for the appellant before reaching the said conclusion.

13. From the above latest judgment, on the aspect of compassionate appointment, wherein it has been laid down that not approaching the Court for a long time amounts to waiver of the right and that entertaining a claim made in the year 2005-06 in the year 2023 would be of no avail as the appointment seeker has been able to eke out a living even though they did not successfully get appointed to the services.

14. In view of the above facts situation, wherein the application was made after 8 years of the death of the bread earner and the writ petition for the first time was filed after 7 years of dismissal of the representation in the year 2015 and presently 19 years have passed since the death of the employee, in view of the long series of judgments on the aspect of compassionate appointment, which have been taken into consideration in the case of **Debabrata Tiwari (supra)**, no case for interference in the order impugned is made out.

15. There is no substance in the appeal. The same is therefore dismissed.

Order Date :- 12.09.2024.

P.Sri.

(Jaspreet Singh, J) (Arun Bhansali, CJ)