

10th December, 2024
(D/L No.09)
Ct. No.4
(SKB)

W.P.S.T.17 of 2019
With
CAN 3 of 2023
With
CAN 4 of 2024
With
CAN 5 of 2024

Raj Kumar Pal
Versus
State of West Bengal and others

Mr. Imtiaz Akhtar,
Mr. Kiron Sk.

... for the petitioner.

Mr. Tapan Kumar Mukherjee, Id. AGP,
Mr. Pinaki Dhole,
Mr. Somnath Naskar

....for the State.

1. The affidavit of service filed in court today is taken on record.
2. The application for restoration is taken up today.
The learned counsel for the State submits that the main matter may be considered on merits.
3. Heard the learned counsel for the petitioner.
4. We are at present holding the determination for considering the subject raised in the present writ petition.
5. The learned counsel for the petitioner also submits that he is prepared and willing to make his submissions on the merits of the matter.

6. We, therefore, considered to allow the application for restoration and consider the writ petition on its merits.
7. The father of the petitioner passed away, in harness on 03.03.2011 while working as a 'Khalashi' in the Damodar Canal Head Quarter, Sub-Division, Kanainatsal, Burdwan under the Department of Irrigation and Water base.
8. The present petitioner has approached the Tribunal with the following prayers:

“a) An order or direction do issue commanding the respondents not to proceed with the application submitted by the elder brother of the applicant any further.

b) An order or direction do issue directing the respondent concerned to issue the proforma to the applicant for getting the compassionate appointment forthwith.

c) Cost of this application.

d) Any other order or orders as this Tribunal may deem fit and proper.”

9. It is not in dispute that the petitioner's brother had applied for grant of compassionate appointment on 29.08.2011, within the six months period stipulated for submitting an application for compassionate appointment.
10. The learned counsel for the petitioner submits that the petitioner also has made an application for grant of compassionate appointment. The application was submitted through his advocate on 29.12.2011. The authorities were required to consider the

petitioner's claim for compassionate appointment which they have refused to consider.

11. The Tribunal in these circumstances ought to have issued direction upon the respondent authorities to consider the petitioner's claim. The Tribunal, however, has dismissed the application filed by the petitioner bearing O.A. No.781 of 2016.
12. The learned counsel for the State, on the other hand, submits that the petitioner has never submitted any application for compassionate appointment. The application relied upon by the petitioner dated 29.12.2011 was seeking certain accounts in respect of service benefits of his deceased father. The same has been made available to him on 10.02.2012, copy of the said order has been annexed by the petitioner in the present proceedings as Annexure "P-3".
13. More than four years thereafter, the O.A. has been filed. The prayer in the said O.A. reveals the purpose of filing the O.A., namely, to stand in the way of consideration of the petitioner's elder brother whose application was admittedly made within the time and was pending before the authorities. It is a different matter that the brother's application has also been subsequently

rejected, which fact is also not in dispute. The perusal of the letter dated 29.12.2011 sent by the petitioner's advocate leaves no room for doubt that the same does not raise any claim in respect of the compassionate appointment. Whatever details were requisitioned by the advocate on behalf of the petitioner has been made available to the petitioner by way of a letter dated 10.02.2012 issued by the Sub-Divisional Officer of the Damodar Canal Head Quarters, Sub-Division where the petitioner's father lastly served.

14. The submission of the petitioner's counsel that the letter dated 29.12.2011 to be treated as an application for compassionate appointment, therefore, is clearly unacceptable as we do not find in the letter even a mention of the word 'compassionate appointment' therein.

15. It is clearly an application seeking certain details which details have been made available to the petitioner, which fact is not in dispute. After the response dated 10.02.2012 making available the details to the petitioner, he has not raised any objection that the said application should have been treated as an application for compassionate appointment.

16. It is only about four years thereafter that he has filed the O.A. in question. The Tribunal's forum was invoked long after the time limit prescribed for making an application for compassionate appointment had lapsed, i.e. in the month of September, 2011. The O.A. has been filed in the year 2016.

17. We have recorded above that prior to filing of the O.A. there was no claim made by the petitioner for the benefit of compassionate appointment. We are also taking note of an undisputed fact that the petitioner's elder brother's application for compassionate appointment was pending consideration. In fact, by filing the O.A., the petitioner was challenging the candidature of the elder brother, without ever making any claim for the same benefit. Rejection by the Tribunal, in these circumstances, therefore, does not require any interference.

18. The writ petition is dismissed.

19. All the connected applications are, accordingly, disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)