

Item No. 1

10.12.2020
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction

WPA No. 8119 of 2020

Barun Nayek

v.

The State of West Bengal & Ors.

Mr. Soumik Ganguly

Mr. Sayan Roy

... for the petitioner.

Mr. Joytosh Majumdar, Id G.P.

Mr. Biswabrata Basumallick

... for the State.

The petitioner is the son of a deceased employee of the Belpahari Gram Panchayat, District- Jhargram. The employee died-in-harness on May 29, 2010. After his death the widow applied for employment on June 24, 2010. Since thereafter the widow never pursued her claim for appointment.

The son of the employee applied for employment by making an application on February 27, 2020. The same not being considered the son filed the instant writ petition praying for a direction upon the respondent authorities for consideration of his application for employment on compassionate ground.

The petitioner submits that he could not apply immediately after death of his father, as he was a minor at that point of time. The petitioner attained majority in

the year 2017 and he made the application for employment in February 2020.

The learned Government Pleader appearing on behalf of the respondent authorities opposes the prayer of the petitioner. It has been submitted that a vacancy ought not to be reserved till the child attains majority. Appointment on compassionate ground is an immediate measure that is required to tide over the crisis of the family members of the deceased. Since the application has been made ten years after the death of the employee no relief ought to be granted in favour of the petitioner.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Syed Khadim Hussain v. State of Bihar, reported in (2006) 9 SCC 195 to press the contention that as the application made by the widow was kept pending and not disposed of, accordingly, the petitioner has a right to be considered for employment.

The learned Government Pleader relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of State of Himachal Pradesh v. Shashi Kumar, reported in (2019) 3 SCC 653 paragraph 35 to highlight the point that as the application was made after ten years, the sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

Having heard the submissions made on behalf of both the parties it appears that the employee died-in-harness in the year 2010. Though the application was made by the widow in 2010 itself but thereafter she did not pursue with her application. She waited till her son attained majority. Even after attaining the majority in 2017 the son waited for three more years and thereafter filed the application on 27th February, 2020. The petitioner approached the Court by filing this writ petition in September 2020 praying for a direction upon the respondent authorities to consider his application on compassionate ground.

In the case of Sanjay Kumar v. State of Bihar & Ors. reported in (2000) 7 SCC 192 the Hon'ble Supreme Court held that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to the death of the breadearner who had left the family in penury and without any means of livelihood.

It is settled law that appointment on compassionate ground cannot be claimed as a matter of right. It is an exception to the general rule of appointment to any public post. Had the widow a genuine claim for employment, she would have certainly pursued her application. Not proceeding with her claim

indicates that the widow had literally forgone her claim for employment.

The Hon'ble Supreme Court in the case of Shashi Kumar (surpa) dealt with the issue in details and categorically held that the applicant is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.

In the instant case the family of the petitioner have survived for nearly ten years after the death of the employee.

In view of the above, no relief can be granted to the petitioner.

The writ petition being WPA No. 8119 of 2020 stands dismissed.

Urgent photostat certified copy of this order, if applied for, be made available to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)