

09-02-2021

Ct. 12

MAT 19 of 2020
With
CAN 1 of 2021

Uma Soren
Versus
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Yamin Ali, Adv.

Mr. Arif Ali, Adv.

...for the appellant

Mr. Joytosh Majumdar, Id. G.P.

Mr. Biswabrata Basu Mullick, Adv.

...for the State respondents

By consent of the parties, the appeal and the application are treated as on day's list and disposed of by this common order.

The appeal is arising out of an order dated 3rd December, 2019 in connection with a writ petition filed by the appellant praying for compassionate appointment. In the writ petition the appellant has, in fact, asked for implementation of a previous order dated 16th May, 2011 in which the authority concerned was directed to consider her representation dated 27th April, 2010 afresh which, inter alia, contains a prayer for compassionate appointment.

The learned Single Judge dismissed the writ application on the ground of delay and laches after taking note of the facts that extant Rule in relation to the compassionate appointment requires the applicant to make an application within two years from the date of occurrence of the incident or within a period of four years as a special case, subject to disclosing relevant documents to the authority concerned explaining the reason for such delay.

Mr. Yamin Ali, learned Counsel appearing on behalf of the appellant, submits that the decision of the authorities in denying the claim for compassionate appointment is contrary to the direction passed by a learned Single Judge on 16th May, 2011, which, according to Mr. Ali, has categorically directed the authority concerned to give compassionate appointment to the appellant in a particular school and the authority has completely overlooked this aspect of the matter and travelled beyond his jurisdiction in rejecting the said application. According to Mr. Ali, all that the authority concerned is required to do in terms of the order dated 16th May, 2011, is to give an appointment to the appellant.

Mr. Joytosh Majumder, learned Government Pleader appearing on behalf of the authorities, has submitted that the interpretation given by Mr. Ali with regard to the order passed in the previous proceeding is incorrect as had there been any complete affirmation and direction with regard to the appointment of the petitioner on compassionate ground, then there would have been no requirement for a direction upon the District Inspector of Schools (S.E.), Birbhum, to consider the representation dated 27th April, 2010 “afresh” and the District inspection of School (S.E.), Birbhum, after taking into consideration all the relevant factors including the special circumstances, has arrived at a finding that the claim is time barred and contrary to the Rules applicable to the writ petitioner.

We have heard the learned Counsel for the parties.

We have also considered the order dated 16th May, 2011 passed in the previous proceeding. It is clear from the order of the learned Single Judge passed in W.P. 21807(W) of 2010 that after taking into consideration the case made out by the writ petitioner, the learned Single Judge thought it fit and proper to direct the authority concerned to consider the representation dated 27th April, 2010 afresh meaning thereby the authority concerned would now to consider the matter without being

influenced by the earlier order of rejection.

We have carefully considered the earlier order of rejection which does not disclose any reason. In the detailed order passed by the District Inspector of Schools (S.E.) Birbhum, the authority concerned has relied upon a Division Bench order concerning compassionate appointment as also the ordinary and special circumstances that are required to be considered for the purpose of condoning the delay in considering the application for compassionate appointment. It was specifically noted in the said order that no medical certificate with the documents was produced to the authority concerned in support of her illness which is a relevant consideration in condoning the delay in making a claim for compassionate appointment. It has been fairly submitted by Mr. Ali, that no such document was produced before the authority concerned.

In absence of such material evidence, we are of the view that the order passed by the District Inspector of Schools (S.E.), Birbhum does not suffer from any illegality.

We accordingly, dismissed the appeal and the application. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)