

**Bahauddin
Vs.
The State of West Bengal & Ors.**

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Mr. Anirban Roy, Ld. G.P
Mr. Biswabrata Basu Mallick
Ms. Kakuli Samajpati
...For the State

The writ petitioner is not represented. However, we have heard the writ petition as the State is represented.

This writ petition is directed against an order passed by the West Bengal Administrative Tribunal on 24th September, 2019 in connection with an application filed by the writ petitioner for setting aside the order passed by Micro Small & Medium Enterprises and Textiles Department on 7th July, 2015 whereby the said authority rejected the prayer of the applicant for compassionate appointment to a Group-C or D post on merit.

The State did not file any affidavit before the Tribunal. Learned Government Pleader has argued before us that the application for compassionate appointment was not filed within time. Accordingly, the Tribunal was justified in rejecting the application of the petitioner and affirming the order passed by the concerned authority.

It is submitted that since the application for compassionate appointment was filed beyond two years from the date of death of the petitioner's father, the case of the writ petitioner could not have been considered.

In absence of any affidavit filed before the

Tribunal, we have to proceed with the petition filed by the petitioner before the Tribunal and accept the said facts as true for the purpose of determination of the issue raised before the Tribunal.

The following are the admitted facts:-

The father of the writ petitioner died on 29th April, 2009 leaving behind his wife, two sons, one daughter (all the children being minor at the time of death of their father). Subsequently, the mother of the applicant filed an application before the authority concerned for compassionate appointment in favour of the applicant, who was admittedly minor at the time of death of his father.

It appears that the application was made in or about September 2010 and the said application was processed by the authority concerned on 4th May, 2011. Admittedly, the said application was filed within the period of two years from the date of death. The concerned authority rejected the said application on the ground that at the time of submission of the application, the applicant was under age as per para 6(c) of Labour Department's Notification No. 251-Emp dated 3rd December, 2013 and Notification No. 38 Emp dated 9th June, 2015 of Labour Department.

Admittedly, the said two Notifications were not applicable as the father of the applicant died on 29th April, 2009 much prior to the date when such notifications came into force. The order rejecting the said application did not take into consideration the fact that the application for compassionate appointment was filed within two years as applicable and the rejection was based on the said notifications that came into operation much after the application was being processed

for consideration. No material was produced before the Tribunal to show that the applicant was not eligible to be considered for appointment as per the existing norms. Moreover, the fact that the application of the petitioner was processed by the Deputy Director (Textile) on 4th May, 2011, shows that the applicant was eligible for consideration for compassionate appointment at the time when such application was being considered by the authority.

In absence of any such record being produced before the Tribunal, we do not accept the argument of the State that the application of the petitioner for compassionate appointment is a belated one and the applicant does not come within the eligibility criteria for consideration for compassionate appointment.

The Tribunal has merely referred to few decisions without understanding the implication of such decisions and without trying to find out the applicability of such decisions to the facts of the present case. The judgments cannot be read as statute. The Tribunal ought to have found out whether in the facts and circumstances of the case the said judgments are at all applicable in the present case.

The State respondents are directed to follow up the matter in terms of the decision they have taken on 4th May, 2011 and provide suitable employment to the petitioner, if he is otherwise eligible.

The order of rejection by the State authorities is set aside.

We make it clear that Notifications dated 3rd December, 2013 and 9th June, 2015 cannot be made applicable to the case of the writ petitioner.

Since the learned counsel for the petitioner is reluctant to appear before us, let this order be

communicated to the writ petitioner by the department concerned within one week from date by speed post with acknowledgement due.

Learned Registrar General is directed to ensure compliance of this order in so far as the communication of this order to the writ petitioner is concerned.

The State respondents to comply with our order within twelve weeks from date.

WPST 31 of 2020 accordingly succeeds.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of all undertakings.

(Hiranmay Bhattacharyya,J.)

(Soumen Sen, J.)

