

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble Justice Rajesh Bindal
and
The Hon'ble Justice Aniruddha Roy

W.P.S.T. 63 of 2019

Gour Sarkar
vs.
The State of West Bengal & Ors.

For the Petitioner: Mr. Taraprasad Halder, Advocate,
Mr. Ambu Bindu Chakraborty, Advocate.

For the State Respondents: Mr. Jyotosh Majumder, Advocate,
Learned Government Pleader,
Mr. Biswabrata Basu Mullick, Advocate,
Mr. Raja Saha, Advocate.
-Through VC

Heard on: January 11, 2021.
Judgment on: February 10, 2021

ANIRUDDHA ROY, J.:

1. The present writ petition was filed challenging the impugned order dated March 15, 2019 (for short 'the impugned order') passed by the West Bengal Administrative Tribunal, Kolkata (for short, 'the Tribunal') in OA No. 328 of 2017 (for short 'the original application') (Gour Sarkar -versus- The State of West Bengal and others) filed by the writ petitioner, whereunder the relief claimed by the writ petitioner seeking compassionate appointment in the Home Department of the State was declined.

2. The writ petitioner is an Arts Graduate (B.A.). The father of the writ petitioner, since deceased, namely Mukul Sarkar (for short, 'the deceased') was employed as a constable in the Office of the Superintendent of Police, District Murshidabad. The father of the petitioner died on November 12, 2005 leaving behind his widow, two daughters and one son being the writ petitioner herein. At the time of death of his father the petitioner was 11 years old. However, the the two daughters of the deceased were major. The widow of the deceased made a representation dated July 31, 2006 requesting the State Authority that as and when the writ petitioner would become major, appointment on compassionate basis be granted to him, since the deceased had died in harness.
3. Upon attaining majority the writ petitioner made a representation and applied for compassionate appointment on the necessary format with all requisite documents before the State Authorities
4. Upon receipt of the said representation from the writ petitioner the relevant authority of the State directed the Officer-in-Charge, Gazole, Police Station, that the writ petitioner would appear before the police line on January 13, 2014 for employment under exempted category. The petitioner was informed to appear in the written test to be held on February 2, 2016 and the consequent physical fitness procedure. The writ petitioner duly participated in the written test and the physical fitness procedure and performed well in the same, as claimed by the writ petitioner. The petitioner was also called for viva voce tests on February 24, 2016 after qualifying the written test.

5. Thereafter, as the writ petitioner did not receive any communication, he was compelled to move the Tribunal filing OA 255 of 2015. The same was disposed of vide order dated November 26, 2015 passed by the Tribunal whereby Additional Chief Secretary, Department of Home (Police) was directed to take a decision with regard to the compassionate appointment of the writ petitioner and communicate the same to him. Pursuant to the said direction the concerned State Authority vide its decision dated July 18, 2016 rejected the prayer of the writ petitioner for compassionate appointment.
6. Being aggrieved by the said decision of the Additional Chief Secretary, Department of Home (Police), the writ petitioner filed the said original Application praying for the following reliefs:

“ (a) A direction upon the respondent No.2 to quash and/or set aside the impugned order being No. 3144-PL/PB/2P-212/16 dated 18/7/2016 as set out annexure ‘P-6’ to the instant application.

(b) The direction upon the respondent specifically the respondent No.3 to rescind and/or withdraw the impugned order and/or not to give effect the annexure ‘P-6’ by allowing the applicant to join in the post of Constable in “est Bengal Police under compassionate ground in die-in-harness category.

(c) The direction upon the respondent No.2 to consider the prayer of the applicant as stated in Annexure ‘P-7’ dated 01-12-2016 of the instant application.

(d) To pass such order or orders direction or directions and/or any other order as to Your Lordship may does for and proper.”

The said original application was dismissed by the order impugned.

7. Mr. Taraprasad Halder, Learned Advocate, appearing with Mr. Ambu Bindu Chakraborty, Advocate for the writ petitioner submitted that the writ petitioner was a minor in 2005 when his father died. A representation was made for his compassionate appointment by the widow of the deceased seeking a compassionate appointment for him. The widow was not literate and the sisters of the writ petitioners who were then major, were not in a position to do job. The writ petitioner after becoming major became entitled to get compassionate appointment in the year 2014 and immediately he then applied for the same to meet the need and sustenance of the family.
8. Mr. Halder submitted that, the writ petitioner was fully eligible for appointment on compassionate basis. The state employer by asking the writ petitioner to sit in the written examination and to appear before the viva voce for selection, in which, the writ petitioner had performed, well the state employer acknowledged the candidature of the writ petitioner for compassionate appointment and as such there was no good reason with the state employer to reject the claim of the writ petitioner. There was no delay and laches on the part of the writ petitioner or his family in applying for compassionate appointment and the moment writ petitioner attained majority he applied before the state employer for the same. The appointment is extremely necessary for survival of the family of the deceased and to meet their financial distress.

9. In support of his contention Mr. Halder relied upon the judgment of a coordinate bench *in the matter of: State of West Bengal and others –versus- Debarghya Chakraborty and others, reported at (2017) 5 WBLR (Cal) 244.*
10. Mr. Jyotosh Majumder, the Learned Government Pleader appearing with Mr. Biswabroto Basu Mullick, Advocate for the state respondents at the threshold submitted that, there is no specific scheme provided for giving compassionate appointment in the facts and circumstances under which the writ petitioner seeks such appointment. He further submitted that the deceased died in the year 2005 when the widow and two daughters of the deceased were there who were major but did not seek compassionate appointment and the family of the deceased could wait till the writ petitioner attained majority in January, 2014 when the writ petitioner himself applied for compassionate appointment. It was submitted that, the object behind compassionate appointment is to provide for immediate survival of the family of the deceased, who died in harness. In the instant case no such necessity was there in the family of the deceased immediately after his death and, therefore, the question of granting compassionate appointment to the writ petitioner after about 11 years of death of the employee concerned will not arise.
11. Mr. Majumder, then submitted that the decision of the state respondent to reject the prayer of the writ petitioner for compassionate appointment was based upon a notification of the Labour Department, dated December 3, 2013, to which he drew attention of this Court. The “eligibility” Clause being Clause 6 of the notification inter alia provides for that the family which is indigent and

deserves immediate assistance for relief from financial destitution deserves such an appointment.

12. In support of his contention Mr. Majumder, had relied upon the following decisions:

- (a) *In the matter of: Sanjay Kumar –versus- State of Bihar and others, reported at (2000) 7 SCC 192.*
- (b) *In the matter of: State of U.P. and others –versus- Paras Nath, reported at (1998) 2 SCC 412.*
- (c) *In the matter of: Jagdish Prasad –versus- State of Bihar and another, reported at (1996) 1 SCC 301.*
- (d) *In the matter of : Santosh Kumar Dubey –versus- State of U.P. and others, reported at (2009) 6 SCC 481.*
- (e) *In the matter of: Food Corporation of India and another –versus- Ramkesh Yadav and another, reported at (2007) 9 SCC 531.*

13. Heard learned counsels for the parties and perused the paperbook. In the facts of this case, the issue falls for consideration before this Court is that, whether the writ petitioner is entitled for any compassionate appointment and or decision taken by the State employer rejecting the claim of the writ petitioner for compassionate appointment was just and lawful.

14. After hearing the parties and considering the materials before this Court, it appears that facts are not disputed. The essential facts are that the deceased was the father of the writ petitioner who was employed as a constable in the Office of the Superintendent of Police, District Murshidabad, who died on November 12, 2005. The writ petitioner was at that time 11 years old boy. The deceased left two daughters of the deceased, who were major besides his

widow. The widow and the daughters chose not to opt for any compassionate appointment. The widow made a representation dated July 31, 2006 requesting the state employer that as and when the writ petitioner would become major compassionate appointment may be granted to him. The writ petitioner after becoming major filed representations dated January 12, 2014 and March 11, 2016 for compassionate appointment and went through the examination processes conducted by the state employer and ultimately vide communication dated July 18, 2016 the claim of the writ petitioner for compassionate was rejected by the state employer. From the said communication dated July 18, 2016 it appears, to this Court, that there was application of mind on the part of the state employer. The said decision was upheld by the Tribunal vide impugned order, which was challenged in this writ petition.

15. On a perusal of the reasons mentioned in the said decision dated July 18, 2016 whereunder claim of the petitioner was rejected by the state employer, it is evident that, the prayer was considered in the light of the notification dated December 3, 2013 issued by the Labour Department and the subsequent amendment thereto which has been already referred to hereinabove. The said notification inter alia prescribes that the family which is indigent and deserves immediate assistance to the relief from financial destitution is to receive compassionate appointment. In as much as, contemporaneously with the death of the deceased neither the wife of the deceased nor either of the two daughters sought for any compassionate appointment and on the

contrary they made a representation to the effect that the writ petitioner being the minor son of the deceased may be provided with the compassionate appointment after he attains majority. The writ petitioner after attaining majority in the year 2014 for the first time applied for compassionate appointment which is after more than 8 years of the death of the deceased. The said decision dated July 18, 2016 inter alia records that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the government servant to grant relief from economic distress. As the family of the deceased could survive for about 8 to 9 years after the death of the deceased till the writ petitioner attained majority, he was not, entitled for compassionate appointment as there was no immediate need of sustenance for survival or any immediate financial distress.

16. Compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis and distress resulting due to the death of the bread earner who had left out the family in penury and without any means of livelihood. Immediate action is always required for requesting for compassionate appointment after the demise of the deceased bread earner of the family. Such a matter cannot be allowed to be prolonged or kept alive for a long time as in the instant case for about 8 to 9 years after the death of the deceased. There cannot be reservation of vacancy till such time as the writ petitioner became a major after lapse of 8 to 9 years, unless there are some

specific provisions. The very object of the compassionate appointment is to look after the family so that the family gets immediate relief.

17. *In the matter of: Sanjay Kumar (Supra)*, the Hon'ble Supreme Court had held:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood . In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1998, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief".

18. *In the matter of: State of U.P. & Ors. (Supra)*, the Hon'ble Supreme Court had held:

"5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

7. No such considerations would normally operate seventeen years after the death of the government

servant. The High Court was, therefore, not right in granting any relief to the respondents”.

19. *In the matter of Jagdish Prasad (Supra), the Hon’ble Supreme Court had held:*

“3. It is contended for the appellant that when his father died in harness the appellant was minor, the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules”.

20. *In the matter of Santosh Kumar Dubey (Supra), the Hon’ble Supreme Court had held:*

“11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome

sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bananza and also as a right to get an appointment in government service.

13. *In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could have survive and successfully faced and overcome the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed”.*

21. *In the matter of Food Corporation of India & Anr.(Supra), the Hon’ble Supreme Court had held:*

“9. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed debtors the policy. In LIC v. Asha Ramchandra Ambedkar this court stressed the need to examine the terms of the rules/schemes governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment. In this case, the scheme clearly bars compassionate appointment to the dependant of an employee who seeks voluntary retirement on medical grounds, after attaining the age of 55 years. There is a logical and valid object in providing that the benefit of compassionate appointment for a dependant of an employee voluntarily retiring on medical grounds, will be available only where the employee seeks such retirement before completing 55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service on medical grounds and

thereby virtually creating employment by "succession". It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory".

22. Applying the law prevailing on the field as discussed above, the purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the immediate hardship caused to the family of the deceased on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided and subject to there being specific and expressed rules or schemes providing such appointment. The Courts and the Tribunal cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments. For the purpose, reference can be made to the judgment of Hon'ble the Supreme Court *in the matter of: MGB Gramin Bank v. Chakrawarti Singh, reported at AIR 2013 SC 3365.*

23. *In the matter of: Umesh Kumar Nagpal v State of Haryana & Ors, reported at (1994) 4 SCC 138,* Hon'ble Supreme Court considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

"The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the

deceased.....The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.... The only ground which can be justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis."

(Emphasis added)

24. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of taking such appointment stands evaporated.
25. Considering the facts of this case, immediately after the death of the deceased in 2005 the widow or any of the daughters, who were then major, could apply for such compassionate appointment to overcome the immediate financial distress occurred due to the sudden death of the deceased while in employment and for survival of the family, such is not the case. Merely a representation was made by the widow requesting for a compassionate appointment for the writ petitioner, who was then a minor, after attaining his majority. The writ petitioner attained majority after 8 to 9 years of the death of the deceased and applied for compassionate appointment, this clearly shows that there was no requirement of an immediate appointment in the family of the deceased to meet any financial distress or for survival of the family of the deceased after his sudden demise in 2005. In other words, the family could

survive without such employment till 2014 or 2016. Such situation clearly goes against the object behind the compassionate appointment.

26. While adjudicating an issue of refusal to give compassionate appointment by the state employer, it is the duty of the Tribunal or Court to carefully examine and consider that the request for appointment on compassionate ground should be reasonable and proximate to the time of death of the bread earner of the family, who died in harness. The Tribunal and the Court must be very cautious and keep it in mind that the process of giving appointment on compassionate ground cannot be a source of recruitment and should not give rise to any right of employment in the government sector. The Court must also be very sure at the same time, as to whether any specific rule or scheme is in existence for granting such a compassionate appointment in the relevant employment sector. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.
27. The ruling, *In the matter of: Debarghya Chakraborty (Supra)*, relied upon on behalf of the writ petitioner, there the deceased employee died in harness on January 22, 2010 and the writ petitioner seeking the compassionate appointment applied on March 25, 2010 after the School Final examination. The writ petitioner further applied on January 10, 2011, however, the issue was not addressed by the state respondent till February, 2014 and meanwhile a scheme of 2013 came in effect against such compassionate appointment. On

this factual matrix a Coordinate Bench of this Court held, that the delay towards consideration of the writ petitioners claim was attributable to the state authorities and as such the intervention of said scheme of 2013 had no effect in the case of the writ petitioner and the claim of the writ petitioner was rightly allowed by the Writ Court. In the instant case, the writ petitioner applied after about 8 to 9 years of the demise of the deceased father. On the basis of such delayed application the claim of the writ petitioner cannot succeed. Thus, the ratio of the judgment of the Coordinate Bench *in the matter of: Debarghya Chakraborty (Supra)*, has no application in the facts of this case.

28. In view of the above discussions and for the reasons mentioned above, this Court is of considered view that, the decision of rejection dated July 18, 2016 made by the state employer is valid and lawful and consequently the impugned order dated March 15, 2019 passed by the Learned Tribunal suffers from no infirmity and accordingly the same is not interfered with.
29. In view of the above, the writ petition being WPST No. 63 of 2019 stands dismissed.
30. There will, however, be no order as to costs.

(Aniruddha Roy, J.)

I agree

(Rajesh Bindal, J.)