

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

22.12.2021
Item No.15
Court No. 01
sg

WP.ST 1 of 2021

Nilratan Barman
Versus
The State of West Bengal & Ors.

Mr. Victor Chatterjee
...for the petitioner

Mr. Bikramaditya Ghosh
Mr. Momenur Rahman
...for the State

This writ petition is directed against the two orders dated 8th July, 2019 and 14th February, 2020 by which the application of the writ petitioner for appointment on compassionate ground and the application for review of the order dated 8th July, 2019 were dismissed.

The undisputed facts emerging from the pleadings of the documents relied upon by the parties are stated below.

The father of the petitioner died on 4th October, 2002. The petitioner made an application on 30th August, 2007. Due to non-consideration of the said application, the petitioner approached the Tribunal in 2011 in which an order was passed by the learned Tribunal to consider the said application within a timeframe. There has been a delay in disposing of the said application and ultimately, on 6th June, 2017 the said application for compassionate appointment was rejected on the ground that the first application was made by the petitioner on 30th August, 2007

after a lapse of five years and as such, the said application cannot be processed in terms of Clause 14(a) of the Labour Department's Notification No. 251-Emp, dated 3rd December, 2013 and Clause 10(a) of the Notification dated March 1, 2016. The said decision was challenged before the Tribunal.

The learned Tribunal relying on the Labour Department's aforesaid Circulars, declined to interfere with the order passed by the authority concerned.

The petitioner filed an application for review of the order dated 8th July, 2019 on the ground that in spite of best efforts she could not produce the letter dated 13th December, 2002. The learned Tribunal refused to review its order on the ground that the writ petitioner had failed to satisfy the conditions of Order 47 Rule 1 of the Code of Criminal Procedure and accordingly, declined to review its order.

Admittedly, when the petitioner made the application on 30th August, 2007 for compassionate appointment, there was no existence of the Labour Department's Circulars on which reliance was placed by the Department concerned and also by the learned Tribunal.

The impugned order under challenge before the Learned Tribunal in the Writ Petition does not say that the said Labour Department's Circulars would have retrospective effect. It is axiomatic that the circulars and/or schemes prevailing on the date of the death of the bread earner would be the relevant date for considering the application for compassionate appointment (*State of Madhya Pradesh & ors. –versus-Ashish Awasthi* reported in *AIR 2021 SCC Online 1084 paragraph 7* and *Secretary to the*

Government Department of Education (Primary and others – versus- Bheemesh alias Bheemappa reported in 2021 SCC Online 1264.)

Considering the fact that none of the Labour Department's Notifications would not have any manner of application in the instant cases, we are of the opinion that reliance on the said two Notifications to deny his prayer for compassionate appointment was improper and unsustainable.

Moreover, there has been an inordinate delay on the part of the department in considering the application of the petitioner for compassionate appointment.

In the event, the petitioner could satisfy that the application was made on 30th December, 2002 which is within few months from the date of death of his father and further request was made on 30th August, 2007, these facts are to be taken into consideration in deciding the prayer of the petitioner for compassionate appointment. Delay in the hands of respondent authorities in considering the applications cannot defeat the right of the petitioner to be considered for compassionate appointment if he is otherwise eligible.

In view thereof, we allow this writ petition. The order of the learned Tribunal dated 8th July, 2019 is accordingly set aside.

If the petitioner is able to succeed on his prayer that the application was immediately filed on 13th December, 2002, then there cannot be any dispute that the petitioner stands on the same footing as that of Mr. Tapan Barman who was allowed compassionate appointment after he approached the learned Tribunal in 2011 provided the petitioner conforms to all the

requirements for compassionate appointment in terms of the Circular/Scheme prevailing at the time when his father died in the month of August 2002.

Although compassionate appointment is not a vested right, the authorities concerned cannot arbitrarily and/or unreasonably denied such a right to a deserving applicant and more so if it is established that the delay is attributable to the authorities concerned in processing the application.

These factors are required to be taken into consideration when the Learned Tribunal shall decide the matter afresh on the basis of the existing pleading.

However, the Learned Tribunal shall permit the petitioner to place on records the letter dated 30th December, 2002 by way of an affidavit and an opportunity should be given to the State respondents to file a rejoinder to the said affidavit.

We, however, request the Tribunal to dispose of the O.A. No. 1006 of 2017 as expeditiously as possibly preferably within a period of four weeks after the pleadings are complete.

The learned Tribunal shall not grant any unnecessary adjournment to either of the parties.

Accordingly, WP.ST 1 of 2021 is disposed of.

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

(Biswajit Basu, J.)

(Soumen Sen, J.)