

S/L 14
12.04.2022
Court. No. 19
GB

WPA 3461 of 2022

Raja Sen
Vs.
The State of West Bengal & Ors.

*Mr. Sougata Mitra,
Mr. Rameshwar Sinha,
Ms. Ankita Dey.*

...for the Petitioner.

*Ms. Chaitali Bhattacharya,
Mr. Kartik Chandra Kapas.*

...for the State.

Affidavit-of-service filed in Court today be kept with the record.

This writ petition has been filed challenging inaction of the Director of Local Bodies, Government of West Bengal in taking steps with regard to the compassionate appointment of the petitioner, whose father died-in-harness while working in the Jhalda municipality.

Records reveal that the Chairman of the Jhalda municipality on the basis of a resolution adopted by the said municipality had submitted a proposal for appointment of the petitioner as a dependant. Reliance has been place on an enquiry report signed by the Executive Officer and Chairman of the Jhalda municipality. Strangely, the Joint Director of Local Bodies, Burdwan Division has not signed such enquiry report. Thus, it is clear to the Court from the records that even if the municipality may had proposed the name of the

petitioner, such proposal was neither accepted by the three men enquiry committee nor by the Joint Director of Local Bodies.

The proposal by the municipality was sent sometime on August 14, 2012. Since then, the petitioner has not taken any steps in the matter. The petitioner is now 49 years old. The upper age limit for general category candidates for any job under the Government of West Bengal or in the municipality cannot be more than 40 years. The petitioner has slept over his application for compassionate appointment for more almost two decades. The father of the petitioner died in 2005. The municipality proposed the name of the petitioner sometime in 2012. The municipality is not before this Court to support the case of the petitioner despite having been impleaded as a respondent.

Compassionate appointment is granted in order to permit a family of the deceased to tide over the immediate crisis which is created due to death of the sole bread earner of the family after the family is being able to survive for at least 15 years. Such immediate crisis does not exist at present. Moreover, the petitioner has not been diligent about his right and sat tight over the matter for more than 18 years. The petitioner has also crossed the age bar, for recruitment.

Reference is made to the decision of the Hon'ble Apex Court in the decision of ***Sanjay Kumar Vs. The***

State of Bihar & Ors. reported in (2000)7SCC 192.

The relevant portion of the above decision is quoted below :

“ 1.....

2.....

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 crises resulting due to death of the bread earner who have 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 and Anr. V. Pushpendra Kumar & Ors. (Supra)*. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, 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 is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

Reference is also made to the decision of ***Piyali Saha Vs. State of West Bengal & Ors. reported in (2013) 1 CHN 78*** and the relevant portion of the above decision is quoted below:

“10. Therefore the aforesaid language of the rule is very clear as correctly contended by Mr. Sanyal, to provide for an exception to the ordinary recruitment rules as it has created classified candidates from other candidates. Apparently such a rule is an affront to Articles 14 and 16 of the Constitution of India but such a

classification is discernable for valid reasons. The reasons therefor are mentioned in the said Rules. The purpose of the appointment on death-in-harness is not to provide an employment anyone and every one at any time. Its object is to save the member of the family of the deceased teacher from the acute financial hardship which had befallen because of death and particularly when there is no other means to survive but for such employment. This exceptional provision cannot be said to be a matter of right. Therefore interpretation given by the learned Single Judge while relying on the earlier Division Bench judgment in case of Sri Prithwish Samanta and ors. which in its turn has affirmed the learned Single Judge's decision extending the period of two years on any ground is not the correct interpretation of purpose of the said Rule. It seems to us that learned Single Judge in case of Arpita Sen's case and the Division Bench while affirming the learned Single Judge's decision in case of Sri Prithwish Samanta's case have been swayed by emotional argument that object is to provide with employment. According to us if any particular member can survive for a longer time without employment and could wait on any circumstances we think that family does not deserve any employment on compassionate ground. We find support of the Supreme Court pronouncement for above conclusion. In case of Commissioner of Public Instructions & others. vs. K.R. Vishwanath reported in (2005) 7 SCC 206 in paragraph 10 Apex Court observed while noting the decision of the same Court in case of Sushma Gosain vs. Union of India that the purpose of providing appointment on the compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed

without any time consciousness or limit. The views of the same Court in earlier judgments in case of Phoolwati v. Union of India [1991 Supp (2) SCC 689], Union of India vs. Bhagwan Singh reported in [(1995) 6 SCC 476] have also been noted and accepted in this judgment.

15. We could not find legal support to condone delay aiming to extend the time on the concept of continuous wrong. We failed to comprehend how the department could commit any wrong let alone continuous wrong. When the rule creating some substantive right does not envisage any power to condone delay how Court can do it. Again we add concept of continuous wrong giving rise continuous cause of action applies in judicial proceeding for assessing existing right either codified or common law against wrongdoer, not for creating substantive right now nonexistent.

16. If the period which has not been contemplated in the Rule intending to create a right cannot be extended by the Court. In other words when the legislature has fixed a time limit in relation to substantive law the Court cannot taking the task of legislature extends time limit, simply it amount to amendment of Rule. The Court cannot have any amending power of the legislation. Under those circumstances as Supreme Court has been pleased to observe in the case quoted above the aforesaid rule is a mandatory in character, we answer the aforesaid questions in the manner as follows: The time fixed in the said Rule is a rigid, subsequent application after attaining majority is not a lawful application and the same cannot be said to be a continuing process. Now we send down the writ petition for assigning finally taking note of our decision.”

Lastly, in the matter of *Arindam Chowdhury Vs. State of West Bengal & Ors. (In re: W.P.S.T. 35 of 2018 with W.P.S.T.38 of 2018)* the Hon'ble Division

Bench has summarized the well-settled principles governing the field of compassionate appointment. The relevant portion the above decision is quoted below :-

“5. f) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

l) Compassionate employment cannot be granted after lapse of reasonable period, which must be specified in the scheme.

m) There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions.

s) Having regard to the fixation of minimum and maximum age by an employer answering the definition of State within the meaning of Article 12 of the Constitution for entering service, it is axiomatic that while an over-aged dependent cannot seek appointment, even an under-aged dependent cannot also seek such appointment.

t) It is only in rare cases, if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority.”

Under such circumstances, the Court does not find any reason to pass any order in favour of the petitioner. Compassionate appointment is neither a heritable right nor a

vested right upon an employee, who died-in-harness. It is a method of appointment contrary to the provisions of Article 16 of the Constitution of India and is used in exceptional cases in order to provide immediate support to the family of the bread earner, who had died. The pleadings also do not reveal the current status of the family nor the income pattern. The petitioner is now 49 years and cannot be appointed contrary to the rules.

Under such circumstances and for the reasons aforesaid, the writ petition is dismissed without any orders.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)