

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 4088 of 2020

Animesh Das & Anr.

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Ekramul Bari, Adv. Mr. Siddhartha Sankar Mondal, Adv. Mrs. Tanuja Basak, Adv.
For the State	:-	Mr. Pinaki Dhole, Adv. Mr. Parikshit Goswami, Adv.
Heard on	:-	07.07.2022
Judgment on	:-	13.07.2022

Amrita Sinha, J.:-

The father of the petitioner no.1 and the husband of the petitioner no. 2 was an employee of the Bardhaman Zilla Parishad. He died in harness on 1st May, 2001. The widow made an application before the Zilla Parishad on 28th June, 2001 praying for providing appointment to her son on compassionate ground. She reiterated her prayer for providing appointment to her son once again on 6th March, 2003.

By a communicating letter dated 14th June, 2012 the son of the deceased was intimated that in response to the application made for providing appointment on compassionate ground a preliminary enquiry will be made on 27th June, 2012 and he was requested to appear in the office of the Zilla Parishad along with relevant documents in support of his candidature.

The three-member enquiry committee recommended the case of the petitioner no. 1 son for being appointed on compassionate ground. The

Additional Executive Officer, Bardhaman Zilla Parishad by a communicating memo dated 22nd August, 2012 forwarded the application of the petitioner no. 1 for appointment on compassionate ground duly recommended by three-member committee for perusal and necessary action to the Commissioner, Panchayats and Rural Development. The Commissioner, Panchayats and Rural Development by a memo dated 6th September, 2012 forwarded the proposal for appointment of the petitioner no. 1 to the Joint Secretary, Panchayats and Rural Development.

As thereafter the respondents did not proceed further with the matter, the petitioner approached this Court by filing writ petition being WP No. 1341 (W) of 2018. The said writ petition was considered and disposed of by this Court on 20th February, 2019 directing the Joint Secretary, Department of Panchayats and Rural Development to consider and dispose of the prayer of the petitioner for appointment on compassionate grounds on the basis of the recommendation made by the Additional Executive Officer, Bardhaman Zilla Parishad.

The Joint Secretary duly considered the matter and rejected the prayer of the petitioner no. 1 with the observation that the petitioner no. 1 was a minor at the time of death of his father and when the widow applied for appointment on 28th June, 2001. The petitioner no. 1 attained majority more than two and half years after the death of his father.

It was observed that as per the extant rule prevalent at that time for compassionate appointment, application ought to have been filed within one year. The Joint Secretary passed order that the case of the widow may be taken up for consideration if she is otherwise eligible for appointment and subject to the approval of the competent authority. It was clearly mentioned that the petitioner cannot be considered for appointment in lieu of the candidature of the widow.

Consequent to the order passed by the Joint Secretary, request has been made to the District Panchayat and Rural Development Officer to forward the relevant documents along with three-member enquiry report in respect of the widow for considering her appointment, if she is willing, on compassionate ground.

The petitioners are aggrieved by the same.

According to the petitioners as the Commissioner, Panchayats and Rural Development already recommended the proposal for appointment of the petitioner no. 1 way back in the year 2012, as such, after so many years, his candidature ought not to be rejected.

It has been submitted that at the relevant point of time there was no time limit specified for filing application for being appointed on compassionate ground. The widow of the employee, immediately after the death of her husband, filed the application for providing employment to her son. The said application was duly proceeded and the three-member enquiry committee recommended the candidature of the son.

The petitioner has relied upon the circular of the Labour Department being no. 567(100)-EMP dated 18th November, 1997 wherein it has been mentioned that a son/daughter/near relation of a government servant dying in harness, may be offered employment on compassionate ground if, and only if, the fall in income due to the death of the government servant makes the financial condition of the family so acute as to make the appointment essential. On receipt of the application the controlling officer should form an enquiry committee to enquire about the genuineness of the claim and also the financial condition of the family of the deceased government employee. The appointing authority on examination of the genuineness of the claim and the financial condition of the family of the deceased government employee will recommend the case to the appointing authority.

It has been submitted that the Commissioner being satisfied with the genuineness of the claim and the distressed financial condition of the deceased government employee recommended the candidature of the son for being appointed on compassionate ground. The same ought not to be negated at this stage.

Learned advocate for the petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Syed Khadim Hussain –vs- State of Bihar & Ors.*** reported in ***(2016) 9 SCC 195*** wherein the Court held that as the widow submitted the application on time, the authorities should have considered her application.

The petitioner also relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***State of Madhya Pradesh & Ors. –vs- Ashish Awasthi*** reported in ***(2022) 2 SCC 157*** wherein the Court held that the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.

Reliance has also been placed on the judgment delivered by this Court in the matter of ***State of West Bengal & Ors. –vs- Debargha Chakraborty & Anr.*** reported in ***(2017) SCC Online Cal 43*** wherein the Court held that the writ petitioner cannot be made to suffer for the delay attributable to the appellants. The claim of the petitioner could not have been rejected by applying the provisions of the new scheme which was admittedly not given any retrospective effect.

Reliance has also been placed on the judgment delivered by this Court in the matter of ***Subimal Sarkar –vs- State of West Bengal*** reported in ***2012 SCC Online Cal 4257*** wherein the Court held that the applicant's claim for compassionate appointment cannot be denied by the appointing authority by keeping the application pending for an unreasonably long period of time only in order to frustrate the purpose of the application. The respondents cannot argue

that due to the passage of time, the necessity for compassionate appointment is blown over.

The petitioners also rely upon the judgment delivered by this Court in the matter of ***Gopal Mondal -vs- State of West Bengal*** reported in **2012 (2) CHN 705** wherein the Court, relying upon the judgment delivered in the case of Syed Khadim Hussain (supra) held that, since the respondents acted upon the application for compassionate appointment and the process was being facilitated when the son attained majority accordingly, the authority ought to look beyond the dry contours of the situation and not merely go by the rulebook to consider the prayer for compassionate appointment.

The petitioners pray for setting aside the impugned order of rejection.

Learned advocate representing the State respondents opposes the prayer of the petitioner. It has been submitted that on the date of death of the employee, the son was a minor. The application made by the mother of the minor for providing appointment on compassionate ground cannot be treated as a valid application in the eye of law.

It has been contended that there is no provision in law for reserving vacancy for providing employment to the minor after he attains majority. According to the circular of the Panchayat department being no. 266/ PN/ O/ I/ 3S-271/ 98 dated 28th January, 1999 issued in compliance of the judgment and order passed on 5th August, 1998 in WP No. 7993 (W) of 1998 (Smt. Usha Das vs. State of West Bengal & Ors), in case of death in harness, a member of the family of the deceased employee seeking employment on compassionate ground shall submit his application to the appointing authority within a period of one year, or so, from the date of death.

Application made by the son individually after attaining majority has not been annexed. The writ petitioner no. 1 has annexed copy of two applications made by his mother on his behalf on 28th June, 2001 and 6th March, 2003. The

impugned order records that the son made application for appointment on 8th April, 2004, in violation of the extant rules prevalent at that point of time.

It has been submitted that the widow has not given any reasons as to why she was not interested for the job.

It has been argued that since there is a specific circular of the department of Panchayats the same ought to be given preference over the circular of the Labour department for providing appointment on compassionate ground in the Panchayat department.

Stress has been laid on the settled proposition of law that compassionate appointment cannot be claimed as a matter of right and appointment ought to be given strictly in accordance with the scheme and not otherwise. The same is not a regular mode of employment and is a concession given to the family of the deceased employee to tide over the immediate financial crisis faced on the death of the breadwinner.

Learned advocate for the State respondents rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Local Administration Department & Anr. Vs. M. Selvanayagam @ Kumaravelu*** reported in **(2011) 13 SCC 42** paragraphs 11 to 14 wherein the Court held that ideally, appointment on compassionate basis should be made without any loss of time. An appointment on compassionate ground must have some bearing on the object of the scheme. Application made by the minor and thereafter making further application on attaining majority cannot be said to subserve the basic object and purpose of the scheme. It would appear that on attaining majority the applicant staked his claim on the basis that his father was an employee of the Municipality and he died while in service.

Reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Sanjay Kumar vs. State of Bihar & Ors.*** reported in **(2000) 7SCC 192** paragraph 3 wherein the Court observed that the

date when the first application was made, the applicant was a minor and not eligible for appointment. There cannot be any reservation for the vacancy till such time the applicant attains majority 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.

Reliance has also been placed on the judgment delivered by the Larger Bench of this Court in the matter of ***Piali Saha vs. State of West Bengal*** reported in **(2013) 1 CHN 18** paragraphs 16 to 18 wherein the Court held that when the legislature has fixed a time limit in relation to substantive law, the Court cannot take the task of the legislature and extend the time limit. Subsequent application made after attaining majority is not a lawful application and the same cannot be said to be a continuing process.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties. The date of death of the employee is 1st May, 2001. The widow of the employee made application for providing appointment to her son on 28th June, 2001. The son was a minor at that point of time, his date of birth being 28th February, 1985. Immediately on the son attaining majority on 28th February, 2003, a further application was made by the widow, on behalf of her son, on 6th March, 2003. For reasons unknown, the widow never applied for getting the job herself.

In June 2012, the son was requested by the Secretary of the Zilla Parishad to appear for a hearing with relevant documents in support of his claim for being appointed on compassionate ground. The three-member committee enquired and assessed the financial stability of the family of the deceased employee and forwarded the application of the son for appointment on compassionate ground in the died in harness category.

The Commissioner of Panchayats and Rural Development in turn forwarded the proposal for appointment of the son to the Joint Secretary of the Panchayats and Rural Development department. All along the respondent authorities proceeded with considering the candidature of the son. At no point of time was the candidature of the widow taken into consideration.

As the department did not proceed further with the application of the son a writ petition was filed before this Court by the son being WP No. 1341 (W) of 2018. The Court vide order dated 20th February, 2019 disposed of the writ petition by directing the Joint Secretary to consider and dispose of the prayer of the petitioner for appointment on compassionate ground on the basis of the recommendation made in his favour.

It was at that point of time that the issue of the son being a minor on the date of death of the employee was raised for the first time. All records of the employee were before the concerned authority when the initial application was made by the widow for providing appointment in favour of her son. It was the duty of the authority to verify the documents of the applicant and to immediately make known to her that the case of the son could not be considered as he was a minor.

Instead of the same, the authority set up the three-member enquiry committee to assess the financial status of the family of the deceased and being satisfied that the family was in need of financial help, recommended the case of the son in the year 2012. The same implies that though the employee expired in 2001 but the family was in financial crisis even in the year 2012.

Had the authorities been diligent enough to carefully scrutinize the documents and prayer of the widow immediately after the first application was made in the year 2001 and she had been made aware that the son being a minor was ineligible for appointment, then it may have been that, the widow would have made application for her own appointment. The authority waited for

more than a decade to forward the application made on behalf of the son recommending appointment to be given in his favour on compassionate ground.

It is settled law that appointment on compassionate ground may be offered if and only if, the family is in such distressed financial condition that the job becomes essential for survival. The three-member committee opining in favour of the son in 2012, even though the employee expired in 2001, implies that the family was indeed in financial crisis. So, the essential criteria of being considered for appointment on compassionate ground, stands satisfied.

The next issue is whether the authority can proceed with the application made by the mother in favour of the minor son. As per the circular of the Panchayat department dated 28th January, 1999, an application from any member of the family seeking employment on compassionate ground made within one year of the death of the employee may be proceeded with. The said circular also mentions that in cases where applications has been made after more than a year from the date of death of the employee, in such cases the application may be normally rejected, unless there is some valid and compelling reasons for such delay.

In the present case, there was no delay on the part of the widow in making application for providing appointment on compassionate ground in favour of her son. The first application was made within a period of two months from the date of death and the second application was made within a week of attaining majority of the son. The promptitude with which the applications were made by the widow in favour of the son indicates that the family was really in need of financial help.

The State being a model employer ought to have guided the family of the deceased as regards the manner and the procedure that is to be followed for seeking employment on compassionate ground. The authority, instead of

advising the widow the proper procedure, considered the candidature of the son and being satisfied with the distressed financial condition of the family, recommended the case of the son for appointment. After nearly two decades of death of the employee, the respondents cannot be heard to submit that, the candidature of the widow would be considered in place and instead of the son. The said decision to consider the case of the widow ought to have been informed to her immediately on receiving her first application within two months of death of her husband. The authority waited for nearly twenty years to intimate the widow that the Government would consider her candidature for appointment, provided, she is willing to accept the same. It is obvious that the widow will never express her wiliness for the job at such a late stage as from the very beginning she opted for providing the job to her son.

The fact of offering employment after more than two decades is certainly not in conformity with the object of the scheme to provide immediate financial relief to the distressed family. After so many years compassion cannot be the ground for offering employment because the period of compassion cannot be extended for twenty long years; but the financial crisis remains. Presumably because of the ground of acute financial crisis, the department is still agreeable to provide employment to the widow even though she never made an application for being employed herself.

The department ought to appreciate that the service condition of the employee contains a provision for employment on compassionate ground in the event the employee dies in harness. The said service condition should actually be acted upon and not only remain in the rulebook. The department should ensure that the family of the deceased employee reaps the advantage of such beneficial legislation and not run around from pillar to post to save them from destitution. Hyper technicality should not be resorted to with the sole intention to deprive the family the benefit which the legislature has granted.

In such a situation, can it be said that there was any delay on the part of the son in making application for getting employment. From the conduct of the petitioners the Court is convinced that there is hardly any delay on their part in making application for providing employment on compassionate ground. The petitioners have acted within the time as prescribed in law. It is the respondents who have, for reasons best known to them, delayed to take a final decision in the matter. The petitioners' prayer ought not to be stultified due to the lapse on the part of the authority to properly verify and scrutinize the initial application.

In *Piali Saha (supra)*, the Court held that the subsequent application being made after attaining majority is not a lawful action. In the present case, application was made by the widow for the son within the prescribed time limit and the authority considered and proceeded with the application of the son. This is not a case where application was made after attaining majority. As such, the ratio laid down in the aforesaid decision cannot be made applicable in the facts and circumstances of the present case.

In *M. Selvanayagam (supra)*, the Court though reiterated the settled principle of law that under the scheme of compassionate appointment the sole objective is to provide immediate succour to the family which may suddenly find itself in dire straits on the death of the breadwinner and ideally, appointment on compassionate basis should be made without any loss of time. The Court was alive to the problem that there are delays in administrative process and in view of the number of already pending claims under the scheme and availability of vacancies, etc, normally the appointment may come after several months or even after two or three years. At the same breath the Court observed that it is not possible to lay down a rigid time limit but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

In the present case, the authority in conformity with the object of the scheme to provide financial relief to the family of the deceased processed the claim of the son, that too, after a decade of making the application. It can be assumed that the prayer of the son was proceeded keeping in mind the object to provide financial help to the family.

In Sanjay Kumar (supra), the Court clearly laid down that there cannot be any reservation of vacancy till such time the applicant attains majority. In the case at hand, there is no question of reservation of vacancy as appointments are offered to the deserving applicants as and when their turn comes. The name of the applicant is firstly recorded in the live register maintained by the department. It took more than a decade to ask the applicant to appear before the three-member committee to enquire about the financial status and the eligibility of the candidate. It is not a case where the vacancy has been kept reserved for the applicant to join on attaining majority.

The Hon'ble Supreme Court in the matter of Syed Khadim Hussain (supra), discussed that the rules framed by the State does not specify as to what should be done in case the dependants are minors and whether there should be any relaxation of age in case they did not attain majority within the prescribed period for submitting application. The Court was of the opinion that as the widow submitted application within the prescribed time period the authorities should have considered her application. As eleven years passed she would not be in a position to join in a Government service. It is a fit case where the son should have been considered in her place for appointment and the Court directed the authorities to consider the application of the son to give him appointment.

In the case at hand, the Government circular relied upon by the State respondents does not specify as to whether the heir of the deceased will be eligible to apply on attaining majority. As the widow applied for the son within the prescribed time period and she filed further application for her son

immediately on attaining majority and the said application was all along processed and ultimately reached the final rung, accordingly, at this stage, it will be highly improper to reject the candidature of the son and offer appointment to the widow subject to her willingness to accept the job.

In Gopal Mondal (supra), this Court held that once the application for compassionate appointment has been processed when the applicant already attained majority, then the matter has to be looked beyond the dry contours of the situation. In the instant case, the authority all along proceeded with the candidature of the son and never ever considered the candidature of the widow, as the widow never applied for the job. After nearly two decades of death of the employee there is just no scope for the widow to make fresh application for her appointment on compassionate ground.

The Joint Secretary, Panchayats and Rural Development department missed to appreciate the fact that there is no application at all by the widow for providing appointment to her and accordingly, there is no scope to offer appointment to her only on the basis of the report of the three-member enquiry committee. The said authority failed to appreciate that the Commissioner, Panchayats and Rural Development way back in 2012 forwarded the proposal for appointment of the son against serial no. 767 along with all enclosed documents in support of such appointment. The said recommendation ought not to be brushed aside by misappreciating the facts of the case and proper application of mind.

In Subimal Sarkar (supra), this Court was of the opinion that the applicant's claim for compassionate appointment cannot be denied by the authorities by keeping the application pending for an unreasonably long period of time, only in order to frustrate the purpose of the application. It cannot also be said that the necessity for compassionate appointment has been blown over due to passage of time. Here, the authorities after nearly two decades have rejected the recommendation made in favour of the son by none other but the

Commissioner of the department and agreed to offer appointment to the widow in the absence of an application made by her. The application made on behalf of the son simply gets frustrated if the same is rejected after so many years.

In *Debarghya Chakraborty (supra)*, this Court was of the opinion that the writ petitioner cannot be made to suffer for the delay not attributable to him. In the present case, the Court fails to find any delay on the part of the petitioners. It is the respondents who have delayed to take into consideration the prayer of the petitioners for being appointed on compassionate ground in proper time and in the right earnest.

There cannot be two opinions about the fact that the very purpose for providing compassionate appointment gets lost if the application is not made and thereafter proceeded with at the earliest, but at the same time, the applicant ought not to be made to suffer for the delay on the part of the authority and finally face rejection allegedly on the technical ground that the initial application was defective despite the fact that the alleged defective application was all along processed till the level of the Commissioner and thereafter the Joint Secretary. The rulebook exists to deliver substantial justice and not to defeat the same. Gross injustice would be caused if the candidature of the son is rejected at such a late stage allegedly on account of procedural lapses.

In view of the discussions made herein above, the Court is of the considered opinion that, in the facts and circumstances of the present case, the impugned order dated 16th October, 2019 cannot be supported in law and the same is liable to be set aside. The consequential communication of the Joint Secretary dated 17th January, 2020 addressed to the District Panchayats and Rural Development Officer also cannot be supported and is liable to be set aside.

Accordingly, the impugned order dated 16th October, 2019 is quashed and set aside. The subsequent offer for providing appointment to the petitioner no. 2 is also set aside. The Joint Secretary is directed to proceed with the recommendation made in favour of the petitioner no. 1 and to offer appointment to him as and when his turn comes.

WP No. 4088 of 2020 is disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)