

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 10496 of 2015

Sourav Jha

Versus

The State of West Bengal & Ors.

Md. Yusuf Ali

.....For the Petitioner

Mr. Pinaki Dhole

Ms. Kakali Samajpati

.....For the State-Respondents

Heard on : 14.02.2022

Judgment on : 18.02.2022

Krishna Rao, J.: The petitioner has prayed for cancellation of the Memo No. 707-SC/P 7P-95-2011(Pt-4) dt. 22.03.2013 passed by the respondent no. 2, the Commissioner of School Education, West Bengal wherein the respondent no. 2 has rejected the request made by the petitioner for appointment on compassionate ground on account of death of his father late Sudhansu Kumar Jha. The petitioner further prayed for a direction upon the respondent no. 2 to accord approval of compassionate appointment of the

petitioner and to send the same to the respondent no. 4, Chairman, Malda District, Primary School Council for appointment of the petitioner.

The father of the petitioner was appointed as Primary School Teacher and joined as Assistant Teacher of Mitna Primary School under Harishchandrapur (South) Circle, Malda on 29.10.2003. The father of the petitioner Sudhansu Kumar Jha died on 13.10.2006. After the death of the father of the petitioner, the mother of the petitioner has made a representation to the respondent authorities informing the school authorities regarding the death of her husband and taking appropriate steps for their survival. At the time of the death of the father, the petitioner was minor. As per the Birth Certificate, the date of birth of the petitioner is 22.12.1993. When the petitioner attained majority, the petitioner has started making representation to the authorities for appointment on compassionate ground on account of the death of his father as his father died-in-harness. The representation of the petitioner was duly forwarded by the school authorities to the Chairman, Malda District Primary School Council for consideration vide their application dt. 20.01.2012.

On receipt of the representation submitted by the petitioner, the Commissioner of School has rejected the claim of the petitioner vide Memo No. 707-SC/P 7P-95-2011(pt-4) dt. 22.03.2013 stating inter alia:

“His proposal for appointment of Sri Sourav Jha, son of Late Sudhanshu Kumar Jha has not been approved, since the ward attained majority after 5 years 2 months and passed Madhyamik after 2 years 7 months from the date of death of the teacher. So the minimum eligibility criteria was not fulfilled by the present ward within the prescribed time limit of two years as laid down in the existing G.O. No. 85-SE (Pry) dtd. 15.02.2008 and the G.O. No. 57-E (Pry) dtd. 15.01.2002 prevailing at the time of death (13.02.2006) of the teacher.”

The petitioner has challenged the impugned Memo dt. 22/03/2013 and submitted that the respondent authorities failed to consider the request of the petitioner as immediately after the death of the father of the petitioner, the mother of the petitioner has made representation but the authorities have not considered the same and at the relevant point of time the petitioner was minor. Immediately when the petitioner attained majority, the petitioner had made several representations for compassionate appointment but without considering the financial condition of the petitioner, the respondent authorities have rejected the claim of the petitioner.

The Counsel for the petitioner relied upon the judgment passed by the Division Bench of this Court in the case of Soumik Dandapath –vs- State of West Bengal & Ors. reported in (2012) (1) CHN (CAL) 60 (DB) and unreported judgment passed in MAT No. 1720 of 2012 in CAN No. 10456 of 2012 dt. 18.12.2012. The Counsel for the petitioner submitted that the rejection order has been passed by the Commissioner in the Memo No. 23.02.2013 but the competent authority is the Chairman and only after the approval of the Chairman the Commissioner can exercise his discretion but in the instant case, the matter was not placed before the Chairman and the Commissioner himself as rejected the claim of the petitioner.

The Counsel for the petitioner further submitted that the respondents ought not to have rejected the claim of the petitioner as the mother of the petitioner has made an application well within time and if the respondents are of the view that the claim of the petitioner is delay than the respondents ought to have considered the request of the mother of the petitioner for

appointment on compassionate ground. The petitioner further submitted the Division Bench of this Hon'ble Court vide order dt. 18.12.2012 (supra) in the similarly circumstances matter directed the authorities to approve the proposal of the Chairman for appointment of the appellant on compassionate ground.

The Counsel for the petitioner further submitted that after the death of the father, the petitioner and the mother was facing great hardship and are in starvation. The Counsel for the petitioner prayed for setting aside the impugned Memo dt. 22.03.2013 and prayed for a direction upon the respondents for issuance of appointment of the petitioner on compassionate ground on account of the death of his father.

Per Contra, Ld. Counsel for the respondents submitted that though the mother of the petitioner has made an application just after the death of the father of the petitioner i.e. on 13.10.2006 but in the said application the mother of the petitioner has not prayed for appointment on compassionate ground.

The Counsel for the respondent further submitted that in the representation dt. 13.10.2006, only the mother of the petitioner has intimated about the death of the father of the petitioner and prayed for taking necessary action.

The Counsel for the respondents further submitted that the petitioner attained majority only in the year 2011 i.e. after the period of 5 years from the death of his father. As per the G.O. No. 85-SE (Pry) dt. 15.02.2008 and G.O. No. 57-SE (Pry) dt. 15.01.2002 prevailing at the time of death of the father of the petitioner the statutory period is 2 years to claim the

compassionate appointment but the petitioner has prayed for his appointment after the period for 5 years and as such the respondents have not committed any illegality by rejecting the claim of the petitioner.

The Counsel for the respondents has relied upon the judgment passed by Larger Bench of this Hon'ble Court in the case of Piali Saha -vs- State of West Bengal reported in 2013 (1) CHN 18 wherein the Larger Bench of this Hon'ble Court has decided the following questions:

“1. Whether an application seeking an appointment on compassionate ground under the death-in-harness category who was a minor at the time of death of the concern teacher or was a minor at the time of making an application within the statutory time framed for 2 years has any legal right to be considered for such appointment as minor.

2. Whether on attaining majority a subsequent application can be deemed to be held as a continuing process notwithstanding the fact that such application was made after the statutory period of 2 years?”

While deciding the aforesaid issue, the Hon'ble Larger Bench held that:

“It was opined by the Division Bench that delay in making application can be condoned by virtue of the concept of continuous wrong. The Ld. Single Judge in case of Prithwish Samanta while construing the said Rule 14 has been pleased to hold that the period of two years for making application is extendable applying the Provision of Section 6 (1) of the Limitation Act.

We are of the view such an interpretation given by the Ld. Single Judge and accepted by the Division Bench in the case of Prithwish Samanta is wholly unacceptable under the scheme of the Constitution. Section 6 (1) of the Limitation Act is applied for taking action before the judicial fora for ascertaining a right which has accrued already, not for acquiring or creating right which is non-existent. Provision of Section 6 of Limitation Act is essentially designed to provide a safe guard measure against legal disability in bringing legal action to assert legal right before judicial fora.

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 envisaged 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 wrong-doer, not creating substantive right now non-existent.

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 legislature has fixed a time limit in relation to substantive law the court cannot taking the task of legislature extends time limit, simply it amongst 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 mandatory in character, we answer the aforesaid question 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 set to be continuing process.”

In the instant case admittedly on the date of death of the father of the petitioner, the petitioner was 13 years of age. After the death of the father of the petitioner, the mother of the petitioner had made an application only for the information and taking appropriate action and not for her appointment on compassionate ground. Even after the representation dt. 13.10.2006, the mother of the petitioner has not proceeded or requested the authorities for her appointment on compassionate ground. Only after attaining the majority by the petitioner, the mother of the petitioner had started making representation to the authorities and thereafter the petitioner had also started making representation for appointment of the petitioner on compassionate appointment i.e. after the period of more than 5 (five) years.

The Government Order specifically provide with prescribed time limit of 2 (two) years to apply for appointment on compassionate ground but in the instant case the petitioner had prayed for compassionate appointment after the lapse of 5 years. In view of the judgment passed by the Larger Bench of this Hon’ble Court, the time cannot be extended and the time fixed

in the Government Order is mandatory and thus there is no illegality in the order passed by the respondents vide Memo dt. 22.03.2013.

As regard the prayer made by the Counsel for the petitioner for appointment of the mother of the petitioner, there is no document available on record to prove that the mother has ever applied for her appointment on compassionate ground. In the instant writ petition also, mother is not a party. Only the son has filed the instant writ application praying for compassionate appointment on account of the death of his father by challenging the Memo dt. 22.03.2013. This Court is of the view that as the mother has never applied for appointment on compassionate ground and in the instant writ application the petitioner has prayed for his appointment on compassionate ground and thus the prayer for appointment of mother of the petitioner cannot be granted.

In view of the above the W.P.A 10496 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)