

**16.09.
2022**

Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.**

WP.ST 64 of 2022

**Sangita Singha
Vs.**

The State of West Bengal and others.

**Mr. Ram Krishna Bhattacharya,
Mr. Somraj Dhar,
Mr. Suman Singh.**

... for the petitioner.

**Mr. Biswabrata Basu Mallick,
Mr. Raja Saha,
Mr. Sayan Ganguly.**

... for the State.

An application seeking compassionate appointment on the death of the father of the writ petitioner stood dismissed by the authority, which was challenged before the Tribunal in OA 15 of 2018.

By the impugned order, the Tribunal rejected the said application on the ground that the compassionate appointment is not a matter of right but to overcome the sudden financial crisis due to untimely death of the bread earner and if the family survives for long, it *ipso facto* leads that the family does not require any financial assistance.

There is no dispute that the father of the writ petitioner died on 23rd September 2008 and an application was taken out by the mother of the writ petitioner in the year 2010, which was rejected by the competent authority in 2012. Subsequently, after

attaining majority, the writ petitioner applied on 29th February 2016, which is still pending. The writ petitioner approached the Tribunal seeking an order for appointment on compassionate ground on the basis of a letter dated 19th August 2016 where certain directions were passed seeking the information and the requisite documents.

The Tribunal is of the view that the moment the earlier application filed by the mother was rejected and the application filed by the writ petitioner on an earlier occasion, when she was minor, was also rejected, unless the challenge made to the aforesaid order, the Tribunal application is not maintainable.

It appears from the record that the earlier application filed by the writ petitioner was dismissed solely on the ground that she was minor. There was no conscious decision on merit. However, subsequent application was taken out when she became major, and, according to the writ petitioner, certain orders were passed by the competent authority for submission of the documents and to gather information, which has not been dismissed as yet.

We invited the attention of the respective Counsel whether the scheme framed for the purpose of compassionate appointment contained any provision by putting a limitation within which the application is to be made. Our attention is drawn to a notification no.26-Emp dated 1st March 2016 wherein the existing provision has been revised. Paragraph 10(a) of the earlier notification no.251-Emp dated 3rd December 2013 has been revised by putting a timeline within which the application is to be made. However, the new

clause by way of paragraph 10(aa) of the said notification was introduced incorporating the provision relating to the delayed request, which runs thus:-

“In exceptional cases such as (i) death during action (ii) where none in family is eligible etc., departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took place upto five years ago. While considering such belated request the 3 member screening-cum-enquiry committee should, however, keep in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. Servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases could call for a great deal of circumspection at all levels. The dependent member must invariably attain the minimum age of appointment at the time of consideration.”

Upon perusal of the amended provision, the authority can consider the delayed application if there exists an exceptional circumstances, more particularly, when none in the family is found to be eligible at the time of death. The modalities have also been provided therein that if such delayed request is made, it should be placed before the three members screening-cum-enquiry committee and a clarification has also been made that since the family has somehow managed to survive shall not be construed to have sufficient means of subsistence.

It is no longer *res integra* that the appointment on compassionate ground to the member of the family of an employee, who died-in-harness, offends Article 14 of the Constitution of India, which propelled the equality in employment. However, the same has been held to be

constitutionally valid as the employee, who suffered untimely death, left the family in financial distress and it is somewhat an obligation of the employer to tide over the family therefrom.

The compassionate appointment cannot be claimed as a matter of right, but such right gets fructified the moment the employer framed a scheme or the regulation or the rules in relation to a Government employment. The scheme if provides the modalities and the manner in which the application is to be considered, the authority cannot take an inconsistent stand as they cannot travel beyond the circumference of the statutory provisions.

Though the timeline has been given yet an exception is carved out by incorporating the separate clause where the delayed request can be considered provided the conditions enshrined therein are fulfilled by the applicant.

We, thus, could not persuade ourselves to concur with the findings of the Tribunal for the reason for the amendment having brought by way of a notice dated 1st March 2016 was not taken into consideration. The order impugned is, thus, set aside.

Since the application dated 29th February 2016 filed by the writ petitioner is pending before the authority, a direction is passed upon the competent authority to expedite the said application in terms of the amended provisions and shall ensure that the same is disposed of within six weeks from the date of communication of this order in accordance with law.

Nothing observed herein above shall be construed to have any persuasive effect on the merit of the said application filed by the writ petitioner herein and the competent authority shall be free to take independent decision by recording proper reasons in accordance with law.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)