

17.06.2022

WPST 88 of 2021

Court : 04
Item : PB - 02
Matter : WPST
Status : DO
Transcriber: nandy

Santosh Rajbanshi & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Subrata Bhattacharya, Advocate

.....for the Petitioners

Mr. Pinaki Dhole, Advocate

Ms. Kakali Samajpati, Advocate

.....for the State

The matter was taken up at the stage of motion because of the point having raised in the instant writ-petition regarding the entitlement to get the appointment on compassionate ground. Admittedly the father of the petitioner no. 1 died on January 17, 2008 leaving behind him the surviving widow and one son, the petitioner no. 1. It is not in dispute that the said employee was working as a leader of Contai Fire Station under the Department of Fire & Emergency Services, Government of West Bengal.

Undisputedly, the petitioner no. 1 was minor at the time of death as his date of birth was December 5, 1992. After a gap of two and half years, the application was made by the petitioners seeking employment of the petitioner no. 1 under the compassionate appointment scheme after attaining majority. The said application was kept pending for a considerable period of time and ultimately by order dated April 22, 2016, the authority rejected the same. The aforesaid order was challenged by the petitioners before the West Bengal Administrative Tribunal by filing OA 1190 of 2016. The Tribunal rejected the said application on the ground that the petitioner no. 1 was minor at the time of death of this father and since the application was taken out after a gap of two and half

years, his prayer for compassionate appointment cannot be considered.

Our attention is drawn to Clause 6(c)(c) of the Notification No. 251 – Emp. Dated 03.12.2013 issued by the Labour Department pertaining to scheme for compassionate appointment in the various department of the Government of West Bengal. The said scheme was modified from time to time and at the time of the death the said employee the scheme which was prevalent, contemplates an application to be made within six months from the date of the death of the deceased employee. Several guidelines were provided therein for consideration of the said application but there is no provision discern therefrom which may provide an assistance to the petitioners to consider the belated application.

However, shelter is taken under the Notification No. 26-Emp dated March 1, 2016 issued by the Labour Department, Government of West Bengal where the said scheme was modified to the extent that the belated request can be made within five years from the date of the death of the employee provided the conditions mentioned therein are fulfilled.

Taking advantage of the said modified scheme it is contended that since the application was taken out within the period as stipulated in the modified scheme, the authority ought not to have rejected the said application simplicitor on the ground that the petitioner no. 1 was minor at the time of death of the employee.

It is no doubt true that by virtue of a subsequent

amendment/modification brought in the said scheme the period within which the application is required to be made, was extended and/or modified. The question that falls for consideration is whether the scheme which was prevalent at the time of death of the employee or the modified scheme which came into force later on extending the period of making an application, would be applicable for taking a decision for appointment on compassionate ground. The aforesaid point has been set at rest by the Division Bench judgment of the Apex Court rendered in the case of **Secretary to Government, Department of Education (Primary) & Ors. Vs. Bheemesh alias Bhemappa** (Civil Appeal No. 7752 of 2021 decided on December 16, 2021), wherein it is held: "Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable."

It is manifest from the afore-mentioned observations by the Supreme Court in **Bheemesh** (supra) that if the modified scheme dilutes and/or takes away the existing benefits, the modified scheme would be applied extending those benefits but where the modified scheme provides a larger benefit, the old scheme was made applicable. In the instant case, the scheme prevalent as on the date of the death provided the period within which an application is to be made seeking compassionate appointment but by virtue of a modified scheme came into force in the year 2016, the period was enlarged thereby extending such benefits.

In view of the above, we do not think that the petitioners would be entitled to derive the benefit from the

modified scheme. Since the period was provided for making an application in the scheme prevalent at the time of death of the employee to be six months and an application was admittedly taken out beyond such period, we do not think that there is any ambiguity and/or illegality in the order by which the authority rejected the application filed by the petitioner.

In view of the above, we do not find any infirmity and/or illegality in the order of the Tribunal affirming and/or upholding the order of the authority.

The writ-petition being **WPST 88 of 2021** is accordingly **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

