

Item No. 06

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

HEARD ON: 23.06.2022

DELIVERED ON: 23.06.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 26775 of 2017

Biplab Kumar Mahato

VERSUS

The State of West Bengal & Ors.

Appearance:-

Mr. Satyaranjan Kundu

Mr. Mrinal Kanti Ghosh

.....for the Petitioner

Mr. Supriyo Chattopadhyay

Mr. Sabyasachi Mondal

.. for the respondents/State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The father of the petitioner was serving as a Clerk of the Bodaldih High School, in the district of Purulia. He died in

harness on December 09, 2000. Petitioner applied for compassionate appointment on June 02, 2001, which stood rejected by the Director of School Education by an order dated 8th June, 2011. Thereafter the petitioner submitted a representation dated 13th June, 2011 stating that he was less than 18 years of age when his father died and crossed 18 years of age on 2nd March, 2003.

2. Alleging inaction on the part of the respondent authorities in considering the representation dated 13th June, 2011, petitioner filed W.P. No. 11229(W) of 2011 before this Court and a coordinate Bench by an order dated January 31, 2017 directed the concerned authority to consider and dispose of the representation of the petitioner dated June 13, 2011. The Secretary, School Education Department by an order dated August 23, 2017 rejected the prayer for compassionate appointment. Being aggrieved against the said order, petitioner preferred the instant writ petition.

3. Mr. Kundu, learned advocate appearing for the petitioner submits that since this Hon'ble Court directed the authorities to consider the prayer for compassionate appointment, it shall be deemed that the petitioner is otherwise qualified to be considered for compassionate appointment.

4. He further submits that the claim of the petitioner could not also be rejected on the ground that he was a minor as on the date of filing of the application as the Hon'ble Supreme Court in the case of **Syed Khadim Hussain vs. State of Bihar** reported at **(2006) 9 SCC 195** held that such authorities should consider the case of the petitioner after he attained majority.

5. Mr. Chattopadhyay, learned counsel appearing for the State submits that the competent authority, after taking into consideration the decision of the Larger Bench of this Court in the matter of **Piali Saha vs. State of West Bengal & Ors.** reported at **2013(1) CHN (CAL.) 18** wherein it was held that when the legislature has fixed a time limit, the Court cannot extend such time limit, rejected the claim of the petitioner by a reasoned order.

6. Heard the learned advocates for the parties and considered the materials on record.

7. It is not in dispute that the petitioner was a minor when he applied for appointment on compassionate ground. The earlier application for compassionate appointment was rejected on the ground that the same was in violation of Schedule V of G.O. No. 697-ES/SIs-18/08 dated July 09, 2009 which provides that no person below 18 years of age on the date of application for

compassionate appointment is eligible for getting compassionate appointment. Thus, the said application, which was admittedly filed while he was a minor, was rejected.

8. The coordinate Bench by an order dated January 31, 2017 passed in W.P. No. 11229(W) of 2011 directed the Principal Secretary to consider and dispose of the representation dated June 13, 2011 in accordance with law. From a bare perusal of the order dated January 31, 2017 it does not appear that the petitioner questioned the validity of the order dated June 08, 2011 passed by the Director of School Education at the time of hearing of the said writ petition. The coordinate Bench while directing the said authority to consider the prayer for compassionate appointment made by the petitioner by representation dated June 13, 2011 did not interfere with the order of rejection dated June 08, 2011 passed by the Director of School Education. Therefore, the said order dated June 08, 2011 attained finality.

9. The petitioner's representation dated 13th June, 2011 was directed to be considered by a coordinate Bench. The said representation was submitted more than 10 and ½ years after the death of his father whereas the policy decision which was in force at the relevant point of time stipulated that an

application for compassionate appointment is to be filed within 2 years from the date of death.

10. In **Syed Khadim Hussain (supra)**, the application for compassionate appointment was filed within the prescribed time limit. Therefore, the said decision is distinguishable on facts and as such is not applicable to the facts of this case.

11. Furthermore, the Larger Bench in the case of **Piali Saha (supra)** after taking into consideration the decision of the Hon'ble Supreme Court in the case of **Syed Khadim Hussain (supra)** held that where the legislature has fixed a time limit in relation to substantive law, the Court cannot taking the task of legislature extend the time limit as the same would amount to amendment of the rule, which power the Court does not have.

12. Mr. Kundu placed reliance on an unreported decision of a Division Bench delivered on **17th September, 2008** in the case of **Ranabir Mahato vs. State of West Bengal & Ors.** wherein the Hon'ble Division Bench following the decision of the Hon'ble Supreme Court in **Syed Khadim Hussain (supra)** directed the authority to consider the claim for compassionate appointment in spite of the fact that the application was a belated one. However, in view of the Larger Bench decision of **Piali Saha**

(supra), **Ranabir Mahato (supra)** can no longer be held to be a good law.

13. The Secretary being the respondent no. 1 herein, after taking into consideration the relevant policy decisions that were in force at the time of death of the petitioner's father as well as at the time of consideration of such application rejected the claim of the petitioner on the ground that such application was filed after the prescribed time limit fixed in the rules after attaining majority.

14. That apart, since the earlier order rejecting the claim of the petitioner on the ground of minority was not interfered with by this Hon'ble Court on the earlier occasion and the fact that the subsequent application was made after 10 and ½ years after the death of his father, the claim of the petitioner for compassionate appointment being a highly belated one does not deserve to be considered.

15. The Larger Bench in **Piali Saha (supra)** specifically observed that the time limit fixed in the rules is a rigid one and the Court do not have the power to extend the same. The concerned authority applied the relevant circulars and law applicable to the facts of the instant case and in my view, the order dated August 23, 2017 is a well reasoned order and the

same does not suffer from any infirmity warranting interference by this Court.

16. For the reasons aforesaid, the writ petition stands dismissed without however, any order for costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

PALLAB, AR(Ct.)