

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.11004 of 2019

Jogeswar Bag

.....

Petitioner

Mr. K.K. Swain, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Jena, SC

(S & M.E. Deptt.)

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

19.07.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard learned Counsel appearing for the Petitioner and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 24.09.2018 under Annexure-10 passed by the Tribunal in O.A. No.743(C) of 2015 and the Order dated 03.01.2015 under Annexure-8 passed by the Block Education Officer, Barpalli, and to issue direction to the Opposite Parties to appoint the Petitioner under Rehabilitation Assistance Scheme either in the post of Class-III or Class-IV within a stipulated period.

4. Learned Counsel for the Petitioner contended that since Petitioner's claim for compassionate appointment was rejected by the Authority, he approached the Tribunal by filing O.A. No.743(C) of 2015. The Tribunal, vide order dated 24.09.2018, dismissed the said O.A. on the ground of delay and laches. It is stated that the mother of the Petitioner was virtually mad due to death of her husband and therefore, she could not accept the

compassionate appointment and his elder sister, who was major, did not apply for appointment under the Scheme. By that time the petitioner was not major and even he had not applied for appointment under the Rehabilitation Assistance Scheme within one year from the date of attaining the majority. He applied for appointment under the Rehabilitation Assistance Scheme, when he attained the age of 24 years, i.e., after six years of attaining the majority.

5. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department contended that since the Petitioner claims for compassionate appointment, long after the death of his father, who died in 1988, the benefit is not permissible to him. More so, neither the mother of the Petitioner nor his elder sister applied for compassionate appointment at the relevant point of time. Even the Petitioner immediately after attaining the majority, did not apply for and he applied for the compassionate appointment only at the age of 24 years i.e. after six years of attaining his majority. Thereby, there is a gross delay in filing the application for compassionate appointment and he therefore prays for dismissal of the Writ Petition. To substantiate his contentions, he has relied upon the judgment of the apex Court in ***State of Himachal Pradesh and another v. Shashi Kumar***, (2019) 3 SCC 653, paragraphs 35, 36 and 37 whereof reads as follows:

*“ 35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the writ petition before the High Court was instituted on 11-05-2015. The application for compassionate appointment was submitted on 08.05.2007. On 15-01-2008 the Additional Secretary had required that the amount realised by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In **Umesh Kumar Nagpal v. State of Haryana**, this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased*

employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

*36. We are not impressed with the submission that delay should not be taken into account since Para (8) of the policy/scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including **State of J & K v. Sajad Ahmed Mir and Local Admn. Deptt. v. M. Selvanayagam**.*

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

6. Having heard learned Counsel for the Parties and after going through records, it appears that the father of the Petitioner, while working as Assistant Teacher in Tulandi M.E. School, died in harness on 18.03.1988 leaving behind his widow Sukanti Bag, aged about 33 years and daughter Bilasini Bag, aged about 6 years and son Jogeswar Bag, the petitioner herein aged about one year. The widow became mad due to death of her husband and she could not apply for compassionate appointment under the Rehabilitation Assistance Scheme. The present Petitioner, after attaining majority and having passed B.A. and P.G.D.C.A, applied for his appointment under Rehabilitation Assistance Scheme vide application dated 17.12.2012 to the District Inspector Schools, Bargarh. As he was not given appointment by the District Inspector of Schools, he submitted a representation on 11.02.2014. Since his representation was not considered, he filed O.A.

No.3904(c)/2014 and the Tribunal, vide Order dated 28.11.2014, directed Opposite Party No.4 to treat the paper book as representation so as to consider the same within a period of one month from the date of receipt of copy of the Order. Pursuant thereto, Opposite Party No.4-Block Education Officer, Barpali, vide impugned Order dated 03.01.2015, rejected the prayer of the Petitioner for appointment under Rehabilitation Assistance Scheme. The stand was taken at the time of death of his father that his mother was virtually mad and when the Petitioner became major, he applied for appointment under the Rehabilitation Assistance Scheme, but the same was rejected. As the distress condition of the family persisted, the Petitioner once again approached the Tribunal by filing O.A. No.743(c)/2015 and the Tribunal, while disposing of the said O.A. on 24.09.2018, passed the following Order:

“6. The stand of the applicant is that his mother was virtually mad due to death of her husband cannot be accepted as there is no evidence to substantiate the said stand. Even elder sisters of the applicant on then attaining majority did not apply for appointment under the Rehabilitation Assistance Scheme, even the applicant has not applied for appointment under the Rehabilitation Assistance Scheme, within one year from the date of attaining majority. He only applied for appointment under the Rehabilitation assistance Scheme when he attained the age of 24 years i.e. after six years of attaining majority. The respondent No.4/Block Education Officer, Barpali by a reasoned legal order has rejected the prayer for the applicant vide Annexure-8 dtd.03.01.2015 and therefore, it needs no interference. Hence, the O.A. has no merit and accordingly stands dismissed.”

7. The said order of the Tribunal dated 24.09.2018 is the subject matter of challenge before this Court. As it appears, the death of the employee was occurred on 18.03.1988 and the claim for compassionate appointment was made long after his death. The Petitioner applied for compassionate appointment even after six

years of attaining his majority, i.e. at the age of 24 years. Therefore, the Tribunal has rejected the prayer of the Petitioner. The reason for dismissal of the Original Application is evidently delay and laches.

8. In view of the judgment of the apex Court in ***Shashi Kumar*** (supra), as advanced by the learned Standing Counsel for School and Mass Education Department, we do not find any merit in the Writ petition and the same is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

Alok/Padma

(S.K. MISHRA)
JUDGE

