

Item-6. 20-09-2023

sg Ct. 8

FMA 2880 of 2014
CAN 1 of 2015 (old CAN 5895 of 2015)
CAN 2 of 2015 (old CAN 5896 of 2015)

Sanjib Mahapatra
Versus
The State of West Bengal & Ors.

Mr. Saibal Acharya, Adv.
Mr. Jakir Hossain, Adv.
...for the appellant

Mr. Somnath Ganguli, Adv.
Ms. Priyamvada Singh, Adv.
Mr. Sukalpa Seal, Adv.
...for the State

1. CAN 1 of 2015 (old CAN 5895 of 2015) is an application for condonation of delay.
2. There is delay of 1334 days in preferring the appeal. Sufficient cause being shown for not being able to prefer the appeal within the time of limitation. The delay of 1334 days in preferring the appeal is condoned. CAN 1 of 2015 (old CAN 5895 of 2015) is thus disposed of.
3. The writ petitioner has prayed for appointment under died in harness category. The father of the petitioner was appointed as a primary school teacher in 1963. On 19th February, 1983 he died. On 19th August, 1983 his mother made a representation seeking a compassionate employment under died in harness category. On 19th February, 2085 her mother gave a reminder. Thereafter, the matter did not progress. The legal heirs did not approach the Court. On April 9, 2002 after the petitioners passed the secondary examination, he sent a representation requesting the authority to give him an employment on compassionate ground. He filed the writ

petition in the year 2008.

4. The immediacy of the need of the family has lost. An application for compassionate appointment is to be made without delay and in any case, within the period mentioned in the relevant Rule or Scheme or order.
5. We have gone through the order of the learned Single Judge. All relevant considerations have been taken in denying the relief. Though the appeal was preferred in the year 2013, but no attempt was made to list this matter and it was at the instance of the Court, this matter has been listed. If the family of the deceased would sustain themselves for the last 30 years, there is enough justification to decline compassionate appointment in the died in harness category. In any event, the Rules have changed in the meantime and we do not find any explanation for not approaching the Court between 1985 and 2008, if there is a genuine need for financial assistance and the family was in penury.
6. A compassionate appointment is an exception to norm that for all government vacancies, equal opportunity should be provided for all aspirants as mandatory under Articles 14 and 16 of the Constitution of India. It is a concession and not a right. The principles for compassionate appointment are encapsulate in paragraph 2 at pages 139 and 140 of ***Umesh Kumar Nagpal vs State of Haryana*** reported in (1994) 4 SCC 138, which reads as follows:

“The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule,

appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.

What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class-III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment

given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

7. The purpose of compassionate appointment is to enable the family of the deceased to get over a sudden financial crisis. Compassionate appointment is basically a way out for the family which is in difficulties on account of death of their only bread earner.
8. Inexplicable delay is a factor to take into consideration in not approaching the Court as a policy has changed in the meantime and the immediate need of an employment may be lost by virtue of such inordinate and inexplicable delay.
9. With the above observation, the appeal and the application are accordingly, dismissed.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)