

Form No. - J (2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 17 of 2023

**The State of West Bengal & Ors.
VS.
Sarbojit Mukherjee**

For the Petitioners/State: Ms. Chitali Bhattacharya, Id. Sr. Govt. Adv.

For the respondent : Mr. Dinendra Nath Chatterjee,
Mr. Ashok Kumar Das Sinha, Advocates

Heard on : June 6, 2023 & June 14, 2023

Judgement on : June 14, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against order dated July 19, 2022 passed by the learned Administrative Tribunal in OA no. 191 of 2017 directing the State to consider an application for compassionate appointment afresh in light of the notifications governing the field after considering the judgment of the

Hon'ble Supreme Court passed in **2022 SCC Online SC 174 (Malaya Nanda Sethy vs. State of Orissa & Ors.)**

2. The writ petition is at the behest of the State. Learned senior Government advocate appearing for the writ petitioner submits that, the employee died on July 20, 2006. The employee was survived by his widow and two sons. Petitioner is the youngest son. The widow of the deceased employee made an application for compassionate appointment, albit not informed, on January 30, 2007. The widow did not pursue such application for compassionate appointment. The elder son who was an adult at that point of time, also did not applied for compassionate appointment. Subsequently, in 2010, the private respondent, who is the youngest son of the deceased employee applied for compassionate appointment in 2010. The application for compassionate appointment not being considered, the private respondent approached the tribunal by way of OA 455 of 2014 which was disposed of by an order dated August 18, 2014 requiring the authorities to consider and decide such application. The authorities issued a reasoned order dated December 16, 2014 rejecting the claim of

the private respondent. The rejection was made a subject matter of challenge in OA 371 of 2015 which was disposed of by an order dated December 16, 2015 to consider the application for compassionate appointment afresh. The authorities passed an order of rejection dated March 14, 2016. The same was challenged by the private respondent before the tribunal in OA 556 of 2016. Such original application was disposed of on July 28, 2016 requiring the authorities to revisit the issue once again. The authorities passed another reasoned order dated January 9, 2017 rejecting the claim of the private respondent. The same was made subject matter of the OA 191 of 2017 which was disposed of by the impugned judgment and order.

3. Learned Senior Government Advocate appearing for the writ petitioner submits, the authorities considered the application for compassionate appointment of the private respondent in light of the two notifications governing the field. Alternatively, she submits that at the time of death, private respondent was not entitled to compassionate appointment in terms of Emp no. 97 dated May 6, 2005. Even if the

authorities are to take into consideration the subsequent notification of 2013 being Emp. 251 dated December 3, 2013 and the extension of time granted by the notification being Emp. 26 dated March 1, 2016 then also, the application for compassionate appointment cannot be allowed. In support of such contention, learned Senior Government Advocate appearing for the petitioner draws the attention of the Court to various provisions of the two schemes.

4. Learned Senior Government advocate appearing for the petitioner relies upon a co-ordinate Bench Judgment reported at **2019 SCC Online, Calcutta 407 (Azim Gazi vs. The State of West Bengal & Ors.)** and submits, the private respondent is not entitled to the relief of compassionate appointment. She relies upon **1999 SCC (L & S) 1162 (Regional Manager, A.P.S.R.T.C & Anr. Vs. M. Sampooramma)** and submits since there subsists legal right in favour of the private respondent for the authorities to consider, the learned tribunal erred in directing the authorities to consider the application for compassionate appointment made by the private respondent.

5. Referring to the impugned order, learned Senior Government Advocate appearing for the writ petitioner submits that, the factual matrix in the present case is completely different. She submits that, factual matrix of the Hon'ble Supreme Court judgment referred to in the impugned order being **Malaya Nanda Sethy (supra)**. She submits that at the time of death of the deceased, the widow and the elder brother were entitled to apply for compassionate appointment. Although the widow did she did not pursue the claim. The elder son did not file an application for compassionate appointment although he was an adult at that material point of time though the younger son to attain adulthood for the application for compassionate appointment to be made. She contends that, the relief of compassionate appointment is not a vested right and certainly should not be allowed to be treated as one to be hereditary in nature. The private respondent is essentially treating the application for compassionate appointment as a hereditary right.

6. Learned advocate for the private respondent submits that, the authorities kept the application for compassionate

appointment made by the private respondent in 2010. He contends that, the application for compassionate appointment is to be decided on the basis of the rules governing compassionate appointment at the time of the consideration. On the date of the consideration, that is the last order of rejection dated January 9, 2017, Emp. 251 dated December 3, 2013 read with Emp. 26 dated March 1, 2016 were in operation in terms of such notifications. The private respondent is entitled to compassionate appointment and should be granted. He relies upon **Malaya Nanda Sethy (supra)** in support of his contention. Learned advocate for the private respondent relies upon **(2006) 9 SCC 195 (Syed Khadim Hussain vs. State of Bihar & Ors.)** and contends that, the private respondent is entitled to compassionate appointment. The Supreme Court in such case, directed consideration of compassionate appointment.

7. In **Malaya Nanda Sethy (supra)**, the Hon'ble Supreme Court noted conflict of views of the Supreme Court with regard to the scheme applicable for consideration of an application for grant of compassionate appointment. It noted that, one view was that the scheme prevailing on

the date of death should govern plea while the other view is that the scheme prevailing on the date of consideration of the application should be the guiding factor.

8. In **Malaya Nanda Sethy (supra)**, the Hon'ble Supreme Court noted that the question of the applicability of the scheme was kept open and in the peculiar facts and circumstances of the case before it, Their Lordships directed that the applicant for compassionate appointment should not be denied appointment under the 1990 Rules. Their Lordships noted that, "the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond the period of six months from the date of submission of such completed applications."

9. In the facts of the present case, the contention of the writ petitioner is that, there are two schemes for compassionate appointment. One at the time of death and the other on the date of the last consideration of the application for compassionate appointment. Under both, the private respondent is not entitled to compassionate appointment.

10. We propose to consider the contentions of the State as noted above and examined the two schemes so as to satisfy the conscience as to whether any legal right of the private respondents survives or not.

11. The deceased employee expired on July 20, 2006. An application for compassionate appointment was made by the widow on January 30,

2007. The application apparently was not in form. In any event, such application was not perused. The widow never canvassed her right to obtain compassionate appointment. At least, no material is produced before us to suggest to the contrary.

12. At the time of death, on July 30, 2006 the deceased employee was survived by his widow and two sons. One of the sons was an adult at the time of death of the deceased employee. Such adult son also did not apply for compassionate appointment. The widow made an application on May 11, 2011 canvassing the right of the youngest son being the private respondent herein for compassionate appointment.

13. The application for compassionate appointment dated May 11, 2011 is, therefore, governing the plea. This was not considered the authorities and on such ground, the private respondent approached the learned Tribunal by way of O.A. 455 of 2014, which was disposed of by an order dated August 18, 2014 directing the authorities to consider the application for compassionate appointment. The authorities decided the application for compassionate appointment on December 16, 2014 rejecting the same. The order of first rejection was assailed by the private respondent in O.A. 371 of 2015, which was allowed on December 16, 2015 directing the authorities to redo the exercise. The authorities rejected the prayer for compassionate appointment for the first time. The second of order of rejection was made subject matter of challenge in O.A.

No. 556 of 2016, which was disposed of by an order dated July 28, 2016. Again, directing the authorities to undertake a fresh exercise.

14. The authorities by the third order of rejection dated January 9, 2017 rejected the claim of the private respondent on the basis of clause 2(i) of the notification no. 97 Emp. dated June 6, 2005. This third order of rejection made subject matter challenged in O.A. No. 191 of 2017, which was disposed of by the impugned order dated July 19, 2022.

15. At the time of death of the employee, Emp. No. 97 dated June 6, 2005 was operating the deed. The relevant clause of such notification is as follows:-

“One of the dependants of an employee who dies in harness or who retires prematurely on being declared permanent incapacitated may be offered appointment on compassionate ground subject to the fulfilment of the following conditions :-

(i) the employee has died, or retired on being permanently incapacitated before completing 20 years of service or before attaining the age of 50 years, whichever is earlier.

(ii) the family of the deceased or the retired employee as the case may be, is in need of immediate assistance and appointment of a dependent of the employee is absolutely essential for survival of the family.

For the purpose of appointment on compassionate ground in terms of this notification, a dependant shall mean spouse, a son or an unmarried daughter who was solely dependent on the earnings of the deceased or the retired employees.”

16. It is admitted at the bar that the deceased employee completed more than 20 years of service and was about the age of 50 years at the time of death on July 20, 2006.

17. In view of Clause 2(I) of Emp. 97 dated June 6, 2005, therefore, none of the heirs of the deceased employee was entitled to compassionate appointment.

18. The last rejection of the application for compassionate appointment is dated January 9, 2017. On that date, the scheme of compassionate appointment was governed by Emp. 251 dated December 3, 2013. The relevant clause of Emp. 251 dated December 3, 2013 is as follows:

“10) Procedure –

(a) If the family of the deceased or the employee retired on being permanently incapacitated is in need of financial assistance and the same is absolutely necessary to support the family, application for employment is to be submitted within six month from the date of death or retirement on permanent incapacitated. If no application is submitted within the said period it will be presumed that the family does not require any financial assistance. In no case application submitted after expire of the above period will be entertained.

(b) Application is to be submitted in the prescribed proforma as in Annexure 'A' and 'B' as applicable through the Head of office. In case of death in harness such application must accompany copy of death certificate.

(c) Appointing authority will constitute three men Screening –cum-Enquiry Committee with his immediate subordinate officer and two other senior officials as members.

(d) While examining and enquiring the application for employment on compassionate ground, the Screening-cum-Enquiry Committee will take into consideration the financial condition of the family of the deceased or disabled or incapacitated employee following the provisions in this scheme to ascertain, if there is any immediate need of financial assistance for the family in the shape of employment. Such enquiry report is to be submitted as per Annexure 'A' and 'B' as applicable to the appointing authority within a period of three months from the date of making of application.

(e) The appointing authority will forward the case together with his views recorded in Annexure 'A' and 'B' as applicable to the Administrative Department concerned for consideration. If it is decided by the Administrative Department to be a fit case for offering employment suitable vacancy is to be identified as per

para 9 hereinbefore and send the case to the concerned appointing authority thereafter for offering appointment.”

19. Emp. 251 dated December 3, 2013 required an application for compassionate appointment to be submitted within six months from the date of death or retirement for permanent incapacitation. Admittedly, the private respondent did not make an application for compassionate appointment within the time period prescribed.

20. Time period prescribed by Emp. 251 dated December 2, 2013 was extended by the authorities by EMP No 26 dated March 1, 2016, which is as follows:-

“BELATED REQUESTS:-

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 for retirement on medical grounds of a Govt. servant took place upto five years age. 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 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 dependant member must invariably attain the minimum age of appointment at the time of consideration.”

21. In terms of such clause as noted above, leaving aside every other parameter required to be satisfied therein, the time period is five years from the date of death. As noted above, the deceased employee expired on July 20, 2006 with an application being made for compassionate appointment on May 11, 2011. The extension of time granted by Emp. 26 dated March 1, 2016 is not unqualified. The extension of time is to be read with the qualifications prescribed in the notification. The first qualification is that the belated application must be one of exceptional case. In understanding whether the application for compassionate appointment is an exceptional case or not, the authorities prescribed that, none of the family was eligible for applying for compassionate appointment. The authorities should also keep in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family and that the dependent member must attain the minimum age of appointment at the time of consideration.

22. In the facts of the present case, three persons were left behind by the deceased employee at the time of his death. Two of his family members were adults and were keeping of applying for compassionate appointment. The widow died. The widow, however, did not pursue her right for compassionate appointment. It is only in 2011 that she sought to sponsored the case of the private respondent for compassionate appointment. The elder son of the deceased employee also did not apply for compassionate appointment. In such circumstances, we are of the

view that, the application of the private respondent does not qualify within the parameters laid down for belated request in terms of Emp. 26 dated March 1, 2016.

23. The Co-ordinate Bench in **Azim Gazi (supra)** noted various aspects of compassionate appointment. It noted that an application for compassionate appointment made by one of the family members cannot be followed by an application by a different dependent on the rejection of the first.

24. In **M. Sampooramma (supra)**, the Hon'ble Supreme Court found in the facts of that case, no right subsisted in favour of the writ petitioner.

25. In **Syed Khadim Hussain (supra)**, the application for compassionate appointment made by the widow was rejected merely on the ground that it was not in the prescribed format. In the facts of the present case, as noted above, the widow did not pursue her application at all.

26. In such circumstances, we are of the view that, no right of the private respondent survive to be canvassed before the learned Tribunal. The application for compassionate appointment of the private respondent was rightly rejected by the authorities. The private respondent is not entitled to apply for compassionate appointment in terms of Emp. No 97 dated June 6, 2005 with the deceased employee working more than twenty years and attaining the age of 53 years at the time of death.

Subsequent scheme for compassionate appointment being Emp. No. 251 dated December 3, 2013 read with Emp. No. 261 dated March 1, 2016 also did not give any right to the private respondent for compassionate appointment.

27. In view of the discussions above, we set aside the impugned order of the learned Tribunal.

28. O.A. No. 191 of 2017 is dismissed.

29. WP.ST 17 of 2023 is allowed.

(Debangsu Basak, J.)

30. I agree.

(Md. Shabbar Rashidi, J.)