

Dd 02 13.06.2023

WP.ST 18 of 2023

**Smt. Sangeeta Saha
Vs.
The State of West Bengal & Ors.**

Mr. Subrata Ghosh Advocate
... .. For the Petitioner

The writ petition is directed against an order dated September 20, 2022 passed by the West Bengal Administrative Tribunal in OA no. 18 of 2017.

Learned advocate appearing for the writ petitioner submits that the learned tribunal passed the impugned order without considering the materials including the order of the tribunal in the earlier round of litigation dated July 26, 2016 passed in OA 1248 of 2015. He submits that, the application for compassionate appointment was made on March 25, 2006, well within the period from the date of death being October 7, 2005. He submits that the petitioner is the younger daughter of the deceased employee and is entitled to compassionate appointment.

None appears for the State respondents even in the second call.

It appears from the records made available to Court that, the deceased employee expired on October 7, 2005 while in service. The deceased employee left behind two unmarried daughters and her unemployed husband, at the time of her death. The elder daughter filed an application for compassionate appointment on March 25, 2006. At the time of death of the employee,

the elder daughter was unmarried. Later, she entered into a wedlock. The younger daughter of the deceased namely, the petitioner herein, applied for compassionate appointment on August 31, 2015. The elder daughter gave no objection on November 6, 2015.

Since, no decision was taken by the authorities, the writ petitioner approached the tribunal by way of OA 1248 of 2015 which was disposed of by an order dated July 26, 2016. In such order, the learned tribunal found that, the application of the elder sister was not decided upon by the authorities. The learned tribunal also found that, the application filed by the writ petitioner was alive and needed to be disposed of by the authorities on merits. In such circumstances, the learned tribunal directed the authorities to consider and decide the application for compassionate appointment of the writ petitioner after affording her an opportunity of hearing.

The authorities, by a writing dated December 1, 2016 communicated the reasoned order dated November 29, 2016 passed by the Director of Health Services in compliance of the order of the learned tribunal.

In the order dated November 11, 2016, Director Health Services found that there was a lapse of more than 9 years from the date of death of the employee. He noted that compassionate appointment to meet up immediate need of financial assistance arising due to sudden demise of an employee. He found that, as the family of the deceased survived for all these years, the question of immediate need stands evaporated with the passage of time. Consequently, he rejected the prayer for compassionate appointment of the petitioner.

Aggrieved thereby, the writ petitioner filed OA no. 150 of 2017 which was disposed of by the impugned order dated September 20, 2022.

By the impugned order, the learned tribunal found that the original application was for setting aside of the order dated November 29, 2016 and that the original application was without any merit and not legally tenable. The only reason ascribed was that the writ petitioner applied after becoming an adult and after her elder sister withdrew her application after a lapse of 10 years from the death of the mother.

There is substance in the contention made on behalf of the petitioner that, the learned tribunal failed to take into account its earlier order dated July 26, 2016. In its earlier order, the learned tribunal found the application of the writ petitioner to be alive and needing consideration. While considering the application for compassionate appointment, the Director of Health Services returned a finding that since, the family survived over a period of 10 years, there was no need for compassionate appointment as there was no financial distress to the family. Foundational facts with regard to whether or not, the family was in a distressed financial condition were not considered and evaluated. Compassionate appointment, is founded on a twin principles of service rules providing for the same and there being need to provide the family of the deceased employee to tide over the financial difficulties. The first parameter for compassionate appointment was otherwise fulfilled in the sense that the terms of employment permitted grant of compassionate appointment. The other condition as to whether the deceased family was in distressed financial condition or not, was required to be considered on merits. A

passage of time simpliciter is not conclusive proof of the financial stability of the family concerned. A family may survive over a period of time in financial penury. Surviving over a period of time would not disentitle a family from compassionate appointment provided that the family is in financial distress. As to whether or not, the family concerned was and still in financial distress is an issue of fact and is required to be considered on the basis of the materials with regard thereto.

In the facts of the present case, neither the Director of Health Services nor the learned tribunal embarked upon such an exercise. The issue as to whether or not the family concerned was in financial distress was not considered by any of the two authorities.

In such circumstances, we direct the Director of Health Services to consider the application of the writ petitioner afresh in the light of the observations made herein. Such consideration be made within a period of four weeks from the date of communication of this order to the Director of Health Services. Director of Health Services will afford a reasonable opportunity of hearing to the writ petitioner. He will pass a reasoned order which he will communicate to the writ petitioner within a period of six weeks. He is at liberty to consider such materials and to hear such parties that he deems appropriate.

WP.ST 18 of 2023 is **disposed of** accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)