

Dd **47-48 13.07.2023**
(ML)

WP.ST 195 of 2016

Sri Bilas Kumar Rath
vs
Sri Sourabh Kumar Das & Ors.
With

WP.ST 19 of 2017

State of West Bengal & Ors.
Vs.
Sri Bilas Kumar Rath

Mr. Kaustav Chandra Das,
SK. Sahjahan Ali, Advocates
... ... For the Petitioner in WP.ST 195 of 2016
and respondent in WP.ST 19 of 2017

Mr. Tapan Kumar Mukherjee, AGP
Mr. Somnath Naskar, Advocates
... ... For the State

1. Two writ petitions are taken up for analogous hearing as they emanate out of the same original proceedings disposed of by the West Bengal Administrative Tribunal.
2. An applicant for compassionate appointment, approached the tribunal by way of OA 925 of 2015 which was disposed of by an order dated October 9, 2015 requiring the Chief (Mechanical/Electrical), P.H.E, Directorate) to take necessary steps for effecting the process of appointment of the applicant for compassionate appointment and to complete such exercise within four weeks from the date of communication of the order.
3. Such order dated October 9, 2015 was communicated to the appropriate authority. Despite

communication, the authority did not comply with the order dated October 9, 2015. The applicant for compassionate appointment filed an application for contempt which was registered as CCP-2 of 2016. During the pendency of the application for contempt, a supplementary application was filed at the behest of the State where, the State relied upon the memo dated January 8, 2016 rejecting the claim for compassionate appointment of the applicant.

4. By an order dated September 23, 2016, the West Bengal Administrative Tribunal, passed in CCP-02 of 2016, dismissed the contempt proceeding and allowed the applicant for compassionate appointment to avail of his remedies through a fresh original proceeding.

5. Aggrieved by such order dated September 23, 2016 passed in the contempt jurisdiction by the West Bengal Administrative Tribunal, the applicant for compassionate appointment is before Court by way of a writ petition being WP.ST 195 of 2016.

6. State assailed the order dated October 9, 2015 passed in OA 925 of 2015 by way of WP.ST 19 of 2017.

7 The father of the applicant for compassionate appointment died-in-harness on October 26, 2008. An application for compassionate appointment was made by the mother of the applicant, seeking employment of the applicant on July 22, 2009. This application for compassionate appointment was considered by the authorities. There is a report of the Inquiry Committee which says that, the five heirs and legal representatives left behind by the deceased employee, were unemployed and that there were no source of family income.

8. The tribunal, as noted above, when approached, in OA 925 of 2015 passed an order on October 9, 2015 which directed grant of appointment.

9. The writ petition being WP.ST 19 of 2017 of the State is directed against such order.

10. The State seeks to resist the grant of compassionate appointment on account of delay. This stand of the State is evinced from the writing dated January 8, 2016 which the State filed before the tribunal in the contempt proceeding. In such writing, the State ascribed the ground that that prayer for compassionate appointment was made after 8 months 26 days from the date of death of his father.

11. Taking into consideration of the scheme of compassionate appointment prevailing on the date of death of the deceased employee, it would be No. 251-EMP. dated December 3, 2013 which prescribes the time period of 6 months from the date of death for the application to be made. It also states that, if no application is submitted within such period, it would be presumed that the family did not require any financial assistance. It also prescribes that under no case application after expiry of the above period will be entertained.

12. In the facts of the present case, although the application was made beyond the time period prescribed under Clause 10 of 251-EMP. dated December 3, 2013, the authorities invoked the procedure to evaluate the application in terms of the notification dated December 3, 2013. The Inquiry Report returned a particular finding which is favourable to the applicant for compassionate appointment. Therefore, at this stage, to allow the State to rake up the plea of delay in making the application for

compassionate appointment is not permissible, in the facts and circumstances of the present case.

13. That apart, should the application for compassionate appointment be considered in light of the date on which the same was considered, then such application is guided by the notification being 251-EMP. dated December 3, 2013 modified on March 1, 2016 by 26-EMP. In the modification, an outer time period of 2 years was granted provided, appropriate ground was shown. As noted above, Inquiry Committee was constituted to look into the claim for compassionate appointment.

14. There is one more aspect to this matter. The order of the tribunal directing grant of compassionate appointment is dated October 9, 2015. The same was not challenged even after contempt proceedings were filed. Such order was challenged in 2017 after the contempt petition was disposed of on September 23, 2016.

15. The contempt petition notes that since the authorities issued the memo dated January 8, 2016 negating the claim for compassionate appointment, fresh original proceeding needs to be undertaken.

16. With the deepest of respect, the tribunal overlooked the fact that in its order dated October 9, 2015, the tribunal directed grant of compassionate appointment. Therefore, it was not within the powers of the authorities to reject the claim for compassionate appointment by the letter dated January 8, 2016. The letter dated January 8, 2016 is an act of contempt and the contempt jurisdiction of the tribunal was required to be exercised.

17. There is no merit in the challenge levelled by the State in WP.ST 19 of 2017 directed against the

order dated October 9, 2015 passed in OA 925 of 2015. The challenge, as noted above, was belated. In any event, there is no merit in such challenge on the ground as noted above.

18. WP.ST 19 of 2017 is **dismissed** without any order as to costs.

19. The order dated October 9, 2015 passed OA 925 of 2015 is required to be complied with forthwith. The applicant for compassionate appointment will be given compassionate appointment by July 17, 2023.

20. List WP.ST 195 of 2016 on **July 18, 2023** when the State will report compliance.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)