

65      **20.03.  
2023**  
Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side.**

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**WP.ST 20 of 2023**

**Partha Das**  
**Vs.**  
**The State of West Bengal and others.**

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**Mr. Joy Chakraborty,**  
**Ms. Ipsita Ghosh.**  
**... for the petitioner.**

**Mr. Tapan Kumar Mukherjee, Ld. AGP,**  
**Ms. Debdooti Dutta.**  
**... for the State.**

Admittedly, the father of the petitioner died on 29<sup>th</sup> January 2010 while in service. Immediately, the mother of the petitioner applied for appointment on compassionate ground, but later on she amended the prayer and intended that instead of her the petitioner may be considered for appointment on compassionate ground.

A further application was taken out by the petitioner on 15<sup>th</sup> January 2013 seeking appointment on compassionate ground, which was rejected by a Memo dated 13<sup>th</sup> April 2021 solely on the ground that the application is beyond the statutory period provided therein.

The State as well as the Tribunal relied upon a notification being no. 251-EMP dated 3<sup>rd</sup> December 2013 wherein Clause 10(a), which was amended on 1<sup>st</sup> March 2016, was applied for rejection of the said application beyond the period provided therein. By virtue of the said amendment an application is required to be filed within two years from the date of death or the retirement or permanent incapacitation, which manifestly appears to

be of mandatory in nature, as it contained the intention of the authority that if such application is not filed within the stipulated time, it will be presumed that the family is not under any financial distress.

Learned Additional Government Pleader is very much vocal in his submission that the moment the application is taken out beyond the period provided therein, it would be presumed that the family does not require any financial assistance. It is further submitted that the moment the family survives for two years upon an untimely death of the bread earner, such presumption is logical and, therefore, the authority may reject the application. It is, thus, submitted that the concept of compassionate appointment is always regarded as an exception to the normal rule of public employment and, therefore, has to be construed in such perspective.

We do not initially intended to make any comment on the aforesaid submissions, but the moment the aforesaid argument is advanced, we feel that certain observation is required in this regard.

It is no doubt true that the concept of compassionate appointment is literally opposed to Article 14 of the Constitution of India in relation to a public employment. Such concept has been recognized and time and again it has been held that it cannot offend Article 14 provided a scheme is framed in this regard by the nodal employer. Obviously, the object and purpose is to succor the family from the financial distress and immediate financial support is given by offering the employment on such compassionate appointment, which has to be done with alacrity and promptitude.

The moment the presumption is raised in relation to a belated application, we are amazed and shocked that such application takes seven to eight years to reach to its logical end, which appears in the instant case that the

application, which was taken out in the year 2013 came to be disposed of by a Memo dated 13<sup>th</sup> April 2021, nearly after a period of eight years. One has to ponder who should be blamed for the same. The moment the object is laudable that immediate financial support is provided by the nodal employer, the conduct and manner in which such application is dealt with consuming considerable period of time, does not appear to us reasonable, rational and/or meeting the object and purpose for framing a guideline or the scheme for compassionate appointment. Both the nodal employer and the employee and their conduct are to be considered on an equal pedestal and if embargo can be created by the nodal employer, it is really shocking that there is no timeline or embargo created in belated disposal of the applications.

Be that as it may, we do not delve to go deep into the same. It is the employer who has to take a call and ponder upon the situations and the modalities of working in the department and accountability in this regard. By virtue of the notification dated 1<sup>st</sup> March 2016 amending the Rule 10(a) of the said notification, Rule 10(aa) was inserted containing the provisions relating to belated request. The timeline fixed in Rule 10(a) is further extended to the period of five years and the special mechanism has been provided therein for dealing with such belated applications. The moment the authority found that the application is filed beyond the period provided under Rule 10(a) of the said notification, it does not automatically render such application liable to be dismissed, as it would be considered as belated request and, therefore, the consideration must have been done in Rule 10(aa) of the said notification.

The mode and the manner of disposing of such applications has been provided in the said newly inserted

Rule and, therefore, in our view, the authority has acted with closed mind and the Tribunal without venturing to go into the aforesaid aspect affirmed the said order of the authority.

Both the orders of the Tribunal as well as the authority are hereby set aside.

The applications filed by the petitioner as well as the mother of the petitioner are revived.

The competent authority is directed to consider the said applications on the parameters provided in the Rule 10(aa) contained in the amendment notification dated 1<sup>st</sup> March 2016 after affording an opportunity of hearing to the respective parties and by recording reasons on all the points that would be raised before it.

Liberty is granted to the petitioner to raise all points as available under the Law and if raised shall be dealt with by the said authority independently without being influenced by any observations made herein above.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J.)**

