

ML-53

08.08.2023
Court No.5
(AD)

WP.ST 12 of 2018

The State of West Bengal & Ors.

Vs.

Dipali Bose & Anr.

*Mr. Tapan Kumar Mukherjee, Ld. Sr. Advocate & Ld. AGP
Mr. Pinaki Dhole
Mr. Avishek Prosad*

... for the State-petitioners.

*Mr. Ekramul Bari
Sk. Imtiag Uddin*

... for the respondents.

The writ petition is directed against an order dated June 7, 2017 passed by the West Bengal Administrative Tribunal in OA-989 of 2014.

By the impugned order, the Tribunal directed the authorities to complete the process of grant of compassionate appointment to the private respondent.

Learned Senior Advocate appearing for the State-writ petitioners submits that, the employee died-in-harness on December 3, 2003 after rendering 38 years of service. He points out that, an application for compassionate appointment was made on March 19, 2004 by the private respondent no.1. The respondent no.2 made an application in 2006. Such claim for compassionate appointment by the respondent no.2 was rejected on June 25, 2007. This rejection was not challenged. Thereafter, the private respondent approached the authorities for compassionate appointment which was rejected on August 28, 2008 and reconsideration application was made which was again rejected. Thereafter, the private respondent approached the Tribunal when the Tribunal by the impugned order, allowed the prayer for compassionate appointment.

Learned Senior Advocate appearing for the State-writ petitioners relies upon the notification bearing no.97-Emp. dated June 6, 2005 of the Labour Department. In particular, he draws the attention of the Court to regulation 2 thereof.

A prayer for compassionate appointment is required to be considered on the basis of the rules governing the same.

Prayer for compassionate appointment was initially made on March 19, 2004 by the respondent no.1 who is mother of the respondent no.2. At that time, the private respondent was a minor. Thereafter, the application for compassionate appointment was made by the respondent no.2 in 2006. The prayer for compassionate appointment made by the respondent no.2 in 2006 was rejected by the order dated June 25, 2007 referring to the notification dated June 6, 2005. The order of rejection dated June 25, 2007 was never assailed. However, subsequently, fresh rejection order was passed as noted in the submission made on behalf of the State.

At the time of the application made by the respondent no.2 in the year 2006, the notification dated June 6, 2005 came into effect. The notification dated June 6, 2005 contains the provisions for compassionate appointment. Relevant is clause 2 which is as follows:-

“2. 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.”

Under the notification dated June 6, 2005, the death of the employee or the retirement or permanent incapacitation should occur before completion of 20 years of service or before attaining the age of 50 years, whichever is earlier.

It is not in dispute, in the facts of the present case that, the deceased put in 38 years of service. Moreover, the deceased employee was in excess of 50 years of age at the time of his death.

On such score, therefore, the respondent no.2 is not entitled to compassionate appointment as the scheme does not allow the same.

In such circumstances, the impugned order of the Tribunal dated June 7, 2017 is set aside.

WP.ST 12 of 2018 is allowed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

