

22
30.08.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMA 286 of 2019
With
CAN 1 of 2019 (Old No. CAN 4821 of 2019)**

**Souvik Sinha
Versus
DVC & Ors.**

**Mr. Surya Kumar Chattopadhyay,
Mr. Satyaranjan Kundu,
Mr. Ankit Chatterjee.
... for the appellant**

**Mr. Ranjay De,
Mr. B. Banerjee.
... for the DVC**

The appellant's father died on 9th February, 2003 while in service in the respondent corporation. The appellant's mother made an application for appointment on compassionate ground. The said application was registered in the respondent corporation. Serial no. of the same was 121 at the time of filing of this case. The respondents informed that the appellant's mother that her application will be considered when her turn comes. While so, the scheme of appointment on compassionate ground was replaced by scheme of payment of lumpsum amount.

According to the respondent corporation, they informed appellant's mother repeatedly to opt for receiving lumpsum amount of Rs.5 lakhs as per existing scheme. The appellant's mother kept silent and did not

respond. The appellant who was minor at the time of death of his father, applied for compassionate appointment on 15th June, 2017 and subsequently filed writ petition being W.P. No. 542 (W) of 2018.

The respondent corporation opposed the case of the appellant on various grounds including that the present scheme is of lumpsum payment in view of compassionate appointment, being improbable due to the passage of fourteen years having already been elapsed after death of the appellant's father.

Learned Judge considering the materials on record placed before him and the judgments of the Hon'ble Apex Court in the case of **Jagadish Prasad vs. State of Bihar** reported in **1996 (1) SCC 301** and **State of J & K and Others vs. Sajad Ahmed Mir** reported in **(2006) 5 SCC 766** has dismissed the writ petition.

Against the said order of dismissal the appellant has come out with the present appeal.

Both the learned counsel appearing for the appellant and respondents made submissions extensively. The learned counsel for the appellant relied on the following unreported judgment in support of his claim :-

1. The Principal, Mahatma Gandhi College & Anr. vs. Mrinal Kanti Kumbhakar & Ors.

The learned counsel for the respondent relied on the following judgments in support of his claim :-

1.State Bank of India & Ors. vs. Jaspal Kaur
reported in **(2007) 9 SCC 571.**

2. ***Arindam Choudhury vs. State of West Bengal & Ors.*** reported in **20189 SCC Online CAL 159.**
3. ***State of West Bengal vs. Debabrata Tiwari & Ors.*** reported in **2023 SCC Online SC 219.**
4. ***Steel Authority of India Limited vs. Gouri Devi*** reported in **2021 SCC Online SC 1080.**
5. ***N.C. Santhosh vs. State of Karnataka & Ors.*** reported in **(2020) 7 SCC 617.**
6. ***Director of Treasuries in Karnataka & anr. vs. V. Somyashree*** reported in **(2021) 12 SCC 20.**
7. ***Punjab State Power Corporation Limited 7 Ors. vs. Nirval Singh*** reported in **(2019) 6 SCC 774.**
8. ***State of Chhattisgarh & Ors. vs. Dhirjo Kumar Sengar*** reported in **(2009) 13 SCC 600.**
9. ***Punjab National Bank & Ors. vs. Ashwini Kumar Taneja*** reported in **(2004) 7 scc 265.**

Heard Mr. Surya Kumar Chattopadhyay, learned counsel appearing for the appellant and Mr. Ranjay De, learned counsel appearing for the respondents and perused the entire materials on record.

From the above materials it is seen the appellant's father died on 9th February, 2003 while in service. The appellant's mother made application for appointment on compassionate ground.

According to the appellant, the said request was not considered till 2017 when appellant became major. On 5th June, 2017 the appellant made application for appointment on compassionate ground for himself instead of his mother. The request for substitution of a person for compassionate appointment in place of person who made earlier application cannot be considered due to passage of time. The appointment on compassionate ground is a special type of recruitment in deviation of regular recruitment. The compassionate appointment is given in order to tide over financial crisis faced by the family members of the deceased employee who died while in service. The issue of compassionate appointment was considered by Hon'ble Apex Court and various High Courts and it has been repeatedly held that compassionate appointment cannot be claimed as a matter of right, and also that the compassionate appointment is not a right of inheritance executable after passage of considerable time gap. The legal heirs of the deceased employee are not entitled to appointment on compassionate ground, as a matter of vested right.

The Hon'ble Apex Court held that legal heirs who are claiming compassionate appointment has to approach the Court within a reasonable time period after rejection of the request of the application for compassionate appointment or its non-consideration, after filing.

In the present case, mother of the appellant has applied for compassionate appointment and her name was registered by the respondent corporation in a queue.

Pending the same, the scheme of appointment on compassionate ground was replaced by another scheme of lumpsum payment of Rs.5 lakhs.

According to the respondent corporation, the lumpsum payment has been increased to Rs.15 lakhs and several letters have been sent to the mother of the appellant. The mother of the appellant did not respond the same.

When the matter is taken up for hearing today, after elaborate arguments learned counsel for the appellant, in addition to his arguments, made submission that appellant will not have any objection if appointment is given to his mother and also submitted that appellant will not insist for employment, if the respondent corporation considered the application for giving lumpsum payment. Appellant's mother is willing to receive the lumpsum amount and submitted that by a letter dated 18th August, 2021 the respondent offered Rs.15 lakhs granting thirty days time to receive the said amount to apply for lumpsum amount. The said time limit may be extended for the mother of the appellant.

In view of the above submission, the mother of the appellant is permitted to give application under the new scheme of payment of lumpsum amount in lieu of compassionate appointment as per the present scheme within a period of three weeks from the date of receipt of copy of this order and if such application is received, the respondent corporation is directed to consider the

application and pay the lumpsum amount within three weeks thereafter.

With the above directions, the appeal is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)