

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

W.P.S.T.87 of 2023

Animesh Pal
VS.
The State of West Bengal & ors.

For the Writ Petitioner : Mr. Swapan Kumar Nandi,
Mr. Sizan Nandi,
Mr. Debjyoti Ghosh

For the State : Mr. Tapan Kumar Mukherjee,
Sr. Advocate
Ms. Debdooti Dutta

Hearing concluded on : 05.06.2023

Judgement on : 05.06.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated December 11, 2020 passed by the West Bengal Administrative Tribunal.

2. By the impugned order, the Tribunal was pleased to note that, the mother of the deceased did not opt to apply for compassionate appointment. At the time of death of the employee, the writ petitioner was a minor. The order rejecting the prayer for compassionate appointment was assailed before learned Tribunal after about a lapse of four (04) years. The learned Tribunal found that there was no merit in the case of the writ petitioner and, therefore, refused to condone the delay in approaching the learned Tribunal.

3. Learned advocate appearing for the writ petitioner submits that father of the writ petitioner was a police personnel and that the father of the writ petitioner died on June 1, 1997 due to an assault on the father. He refers to the death certificate of the deceased father of the writ petitioner. He submits that, at the time of the death, the deceased police Constable was survived by four heirs and legal representatives, namely, the mother of the deceased Constable, his wife and two children. The writ petitioner is one of the child of the deceased police Constable and was 9 years

old at the material point of time. The mother of the police constable did not apply for compassionate appointment.

4. Learned advocate appearing for the writ petitioner draws the attention of the Court to the letter dated August 5, 2006. He submits that by such letter, the wife of the deceased Constable was requested to apply for compassionate appointment. He submits that immediately thereafter, on August 6, 2006, the wife of the deceased Constable wrote to the authorities that she was not willing to take compassionate appointment and requested the authorities to consider the writ petitioner for grant of compassionate appointment. He refers to several correspondence thereafter emanating from the authorities. He submits that, there was a proposal for an appointment of writ petitioner on compassionate basis. The authorities, however, did not take steps with regard thereto. Consequently, the writ petitioner approached the Tribunal being O.A. No.94 of 2014. He refers to the order dated April 1, 2014 by which, the O.A. No.94 of 2014 was disposed of. He contends that, the prayer for compassionate appointment of the petitioner was rejected by the writing dated August 27,

2015. Such writing dated August 27, 2015 was made subject-matter of challenge in O.A. No.410 of 2019 which was disposed of by the impugned order of Tribunal.

5. Learned advocate appearing for the writ petitioner relies upon **2022 SCC Online 684 (Malaya Nanda Sethy vs. State of Orissa & ors.)** and submits that, the authorities are required to dispose of an application for compassionate appointment within six months. In the present case, according to him, the authorities was unable to dispose of the application for compassionate appointment within such time.

6. Relying upon **(2017) 5 WBLR (Cal) 244 (The State of West Bengal & ors. vs. Debarghya Chakraborty & ors.)** learned advocate appearing for the writ petitioner submits that, the delay towards consideration of the claim of the writ petitioner was attributable to the authorities and therefore, the writ petitioner cannot be visited with the penalty of limitation.

7. In the facts of the present case, the father of the writ petitioner expired in harness on June 1, 1997. The service rules governing the employment of the father of the writ

petitioner allowed compassionate appointment to be made.

The relevant rule in this regard is as follows:-

“5. A dependant of an employee who dies in harness, or retires on being declared permanently incapacitated may apply to the appointing authority through the Head of the Office of the employee in the prescribed proforma as per Part-I & Part-II of Annexure ‘A’ of this Department Notification No.303-Emp, dated 21-08-2002 along with copy of death certificate/Part-I and Part-I Annexure ‘B’ of this Department aforesaid notification alongwith a medical certificate, as the case may be, prying for employment on compassionate ground or financial relief. On receipt of such application, the appointing authority shall form an enquiry committee comprising not less than three senior officials of the Department to which the employees belonged. The committee so formed shall make enquiries about the genuineness of the prayer as well as the financial

condition of the family of the deceased or the prematurely retired employee and submit a report within one month as per Part-III of Annexure-A/Annexure-B of this Department aforementioned notification to the Nodal Committee set up in the Labour Department of the State Government.”

8. The deceased employee left behind four heirs and legal representatives as his family members as will appear from the writing dated June 17, 1997 at page 29 of the writ petition. The four heirs and legal representatives of the deceased employee are his wife, the writ petitioner, the daughter of the writ petitioner and the mother of the deceased employee.

9. The wife of the deceased employee and mother of the writ petitioner did not apply for compassionate appointment on the death of the deceased employee within six months of the date of death or at all.

10. The records produced before Court demonstrates that there is a writing dated August 5, 2006 emanating from the authorities offering compassionate appointment to the wife of

the deceased employee. The wife of the deceased employee refused to accept the compassionate appointment so offered on the plea that her son the writ petitioner herein should be afforded the compassionate appointment.

11. Nothing is placed on record to suggest that writ petitioner applied for compassionate appointment even thereafter. There are however, letters emanating from the authorities to suggest that, the writ petitioner was being considered for grant of compassionate appointment. The consideration of the authorities in this regard continued up to July 22, 2009. This consideration did not result in grant of an appointment of compassionate appointment to the writ petitioner.

12. Subsequent to the mother of the writ petitioner requesting consideration for compassionate appointment of the writ petitioner and no appointment being granted, the writ petitioner approached the Tribunal for compassionate appointment being O.A. No.94 of 2014. Such O.A. No.94 of 2014 was disposed of by an order dated April 1, 2014 on the following terms:

“.....we dispose of the application directing the respondents particularly, respondent no.1, the Principal Secretary to the Govt. of West Bengal, Department of Home (Police) to take appropriate final decision in the matter within four months from the date of communication of this order and the decision so taken shall be communicated to the petitioner within three weeks thereafter.”

13. The authorities considered the application for compassionate appointment and rejected the same by a writing dated August 27, 2015. The writing dated August 27, 2015 was received by the writ petitioner contemporaneously. No steps were taken by the writ petitioner for a period of 5 years thereafter.

14. The writ petitioner thereafter approached the Tribunal by way of O.A. No.410 of 2019 in which the impugned order dated December 11, 2020 was passed.

15. In **Debarghya Chakraborty & ors. (Supra)**, the employee died on January 22, 2010 and the writ petitioner therein attended the age of major in the month of March 2011 whereupon, the application for compassionate appointment was made and such writ petitioner was asked to appear before the died in harness committee, on December 15, 2012. There was a delay in consideration of the claim of the writ petitioner for compassionate appointment therein. In such circumstances, the Division Bench held that, where the delay was attributable to the authorities, a claim of writ petitioner for compassionate appointment cannot be negated on the ground of delay occasioned by the authorities.

16. As noted above, the factual scenario in the present case are different. The death occurred on June 1, 1997 with no application for compassionate appointment being made by any of the heirs of the deceased employee till August 6, 2006 when there was an offer for compassionate appointment to the mother of the writ petitioner which was refused by the mother of the writ petitioner on the ground the writ petitioner should be afforded the compassionate appointment. Moreover, the

claim of the writ petitioner for compassionate appointment which was canvassed in the earlier round of litigation was disposed of on April 1, 2014 with an order of rejection of the claim being passed by the authorities on August 27, 2015. This rejection order also remained unassailed by the writ petitioner for over a period of four years.

17. The ratio of **Malaya Nanda Sethy (Supra)** is also not applicable to the facts and circumstances of the present case. There, an application for compassionate appointment was required to be disposed of within a period of six months from the date of submission of the completed application. As noted above, there was no application for compassionate appointment at all made by any of the heirs of the deceased employee to the authorities.

18. In such circumstances, we find no merit in the present application.

19. **W.P.S.T. 87 of 2023** is **disposed of** accordingly.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

21. I agree.

(Md. Shabbar Rashidi, J.)

CHC