

**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

WP.ST 95 of 2023

Manoj Kumar Rai

Vs.

State of West Bengal & Ors.

For the petitioner

: Mr. Tapas Kumar Majumder

For the State

: Mr. Tapan Kumar Mukherjee, Ld. AGP

Ms. Tuli Sinha

Heard on : July 06, 2023

Judgment on : July 06, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated April 20, 2023 passed in OA 445 of 2022.
2. By the impugned order, the Tribunal rejected the original application. In the original application before the Tribunal, the writ petitioner sought for quashing of an order dated April 13, 2022 issued by the Principal Secretary, Government of West Bengal, Department of Higher Education. The writ petitioner sought for regularization of

the service of the writ petitioner as Peon under compassionate appointment in regular establishment as a Group-D staff.

3. Learned Advocate appearing for the writ petitioner submits that, the father of the writ petitioner died-in-harness on January 13, 1985. The mother of the writ petitioner applied for compassionate appointment on September 23, 1985. He draws the attention of the Court to the letter dated June 18, 1998 issued by the Deputy Secretary regarding the appointment of the writ petitioner on compassionate appointment. He submits that, the writ petitioner was granted an appointment on November 28, 2000 on contractual basis with condition of termination of service with one month's notice. The contractual appointment was consecutively renewed for total number of three years. The appointment was terminated without giving one month's notice to the writ petitioner. The appointment on contractual basis of the writ petitioner was with the concurrence of the Finance Department.
4. Learned Advocate appearing for the writ petitioner draws the attention of the Court to the reasoned order dated April 13,

2022 passed by the Principal Secretary, Government of West Bengal. He submits that, the Principal Secretary proceeded on the basis of Notification No.251-EMP dated December 3, 2013 considering the claim of compassionate appointment for the writ petitioner. He contends that, since the date of death of the father of the writ petitioner was in 1985, the claim for compassionate appointment was granted by the Notification bearing EMP/1'0'-1/82 dated July 6, 1982. Therefore, the Principal Secretary was in error in rejecting the claim for compassionate appointment of the writ petitioner.

5. In support of his contention, learned Advocate appearing for the writ petitioner relies upon *2009(2)CLJ (Cal)512 (State of West Bengal & Ors. Vs. Smt. Bina Debnath & Ors.)*, an unreported judgment and order dated October 5, 2007 passed by a Coordinate Bench in *FMA 1103 of 2007 (Sk. Israfil vs. The State of West Bengal & Others)* and *2022 SCC Online SC 684 (Malaya Nanda Sethy vs. State of Orissa & Ors.)*
6. State is represented.

7. As noted above, the father of the writ petitioner died-in-harness on January 13, 1985. An application for compassionate appointment was made by the mother of the writ petitioner on September 23, 1985. The mother of the writ petitioner did not proceed with the application for compassionate appointment made on September 23, 1985. Thereafter, there is a writing dated June 18, 1998 in respect of an application for compassionate appointment made by the writ petitioner. Therefore, it appears that, the writ petitioner approached the authorities for compassionate appointment after expiry of a period of 13 years from date of death of the deceased employee.
8. Again as noted above, the mother of the writ petitioner did not pursue her application for compassionate appointment made on September 23, 1985. Therefore, the family cannot be said to be in dire financial constraints with the mother of the writ petitioner not pursuing her application for compassionate appointment made on September 23, 1985 subsequent to death of the employee.
9. Writ petitioner was granted appointment on contractual basis from November 28, 2000. Contractual appointment

was extended for a period of two more years thereafter. One of the conditions of the contractual employment was termination of the services upon one month's notice. The prayer before the Tribunal was one of regularization of service of the writ petitioner. Writ petitioner not being appointed through a regular selection process, the question of regularization of the contractual appointment does not arise. The family of the deceased employee did not pursue the remedy of compassionate appointment at an appropriate point of time as noted above. Therefore, at this belated stage grant of compassionate appointment to the writ petitioner does not arise.

10. Writ petitioner approached the Tribunal by way of OA-952 of 2018 in respect of compassionate appointment which was disposed of by an order dated November 7, 2019 requiring the authorities to consider and dispose of the application expeditiously. The Principal Secretary passed an order dated April 13, 2022 and rejected the claim for compassionate appointment on the basis of Labour Department Notification No.251-Emp dated December 3, 2013. Assuming such notification is not applicable given the date of the death of

the deceased employee then also EMP/1 '0'-1/82 dated July 6, 1982 which is claimed to apply, does not assist the writ petitioner. The Notification dated July 6, 1982 does not state that, an application for compassionate appointment can be made at any point of time and that compassionate appointment will be given irrespective of financial condition of the family of the deceased.

11. In *Bina Debnath & Ors. (supra)* the High Court found that there was negligence on the part of the concerned authorities in considering and disposing of the application for compassionate appointment. The facts scenario in the present case are different.
12. In *Sk. Israfil (supra)* again the Division Bench found the delay in submitting the prayer for compassionate appointment was not inordinate in the facts of that case. In the present case, the application of the writ petitioner for compassionate appointment was made after 13 years from the date of death.
13. The Supreme Court in *Malaya Nanda Sethy (supra)* observed that, the authorities must consider and decide an application for appointment on compassionate grounds as

per the policy prevalent, at the earliest and not beyond a period of six months from the date of submission of such completed application. In the facts of the present case, the initial application by the mother of the writ petitioner was not proceeded with. Thereafter, the authorities decided the application for compassionate appointment in terms of an order passed by the Tribunal which was passed at the behest of the writ petitioner.

14. In such circumstances, we find no merit in the present writ petition.
15. **WP.ST 95 of 2023** is dismissed with no order as to costs.

(Debangsu Basak,J.)

16. I Agree.

(Md. Shabbar Rashidi, J.)