

07. 11.05.2023
Court No.6
Tanmoy Ghosh

MAT 1021 of 2022
Raja Sen
-Versus-
The State of West Bengal & Ors.

With
IA No: CAN/1/2023
With
IA No: CAN/2/2023

Mr. Avishek Prasad, Adv.,
Mr. Sougata Mitra, Adv.,
Mr. Rameswar Sinha, Adv.,
Ms. Ankita Dey, Adv.

...for the appellant.

Affidavit of service filed in Court today, be kept with the records.

Although we are not fully satisfied as to whether or not service has in fact been effected on the State, in view of the nature of the order that we propose to pass, we do not wish to defer hearing of this matter.

In Re: IA No: CAN/1/2023

This is an application for condonation of delay of fifty four (54) days in filing the appeal, as noted by the Stamp Reporter. Causes shown being sufficient, the delay is condoned. The application being IA No: CAN/1/2023 is accordingly disposed of.

In Re: MAT 1021 of 2022
With
IA No: CAN/2/2023

By consent of learned Advocate appearing for the appellant, the appeal and the connected application are taken up together for hearing.

A Judgment and order dated April 12, 2022, whereby the appellant's writ petition being WPA 3461 of 2022, was dismissed, is under challenge in this appeal.

The appellant says that his father was working as a Sub-Assistant Engineer in Jhalda Municipality. He died in-harness in the year 2005. The appellant, in the same year, made an application for being appointed on compassionate ground in died-in-harness category. In 2010, considering his financial crisis, the Municipality employed him as a casual worker. His application was kept pending. In 2012, the Municipality recommended his case for being appointed in died-in-harness category as a Conservancy Jamadar, which is a sanctioned post, to the Director of Local Bodies. The recommendation was supported by a finding by a Committee that the appellant was indeed in financial crisis. There was total inaction on the part of the Director of Local Bodies. The appellant was meted out repeated assurances that his case would duly be considered. Ultimately, the appellant had to approach the learned Single Judge with the present writ petition for appropriate direction on the respondent Authorities to grant him compassionate appointment.

The learned Judge dismissed the writ petition primarily on the ground that for 18 years after the death of the appellant's father, the appellant slept over his rights. The learned Judge relied on three authorities which lay down the principles governing compassionate appointment.

Being aggrieved, the writ petitioner has come up by way of this appeal.

We are conscious that compassionate appointment is not a mode of recruitment. It is only a special formula devised by the Courts to enable a bereaved family to tide over immediate and sudden financial crunch when the deceased person who died-in-harness, was the sole bread earner of the family. It cannot be an alternative or substitute for the regular method of recruitment. A person requesting for compassionate appointment must approach the concerned Authority immediately or soon after the demise of the concerned employee. It is correct that unreasonable and unexplained delay in applying for compassionate appointment is itself sufficient to defeat the application.

However, in the present case, it may not have been entirely correct for the learned Judge to record that for 18 years after his father's demise, the appellant did nothing. It is on record that the appellant applied in the year 2005 itself. In the year 2012, the Municipality recommended the appellant's case to the Director of Local Bodies. The said Authority has not yet taken any decision in the matter.

It is true that between 2012 and 2022, the appellant did nothing. However, it is also a fact that he is working as a casual worker in the said Municipality till date. Considering that since 2010 or even there before, the appellant is serving the Municipality, *albeit* as a casual

worker, and in view of the fact that the Director of Local Bodies has not taken a decision on the recommendation of the Municipality to grant compassionate appointment to the appellant, we direct the Director of Local Bodies being the respondent no.2 herein, to take a decision in the matter, in accordance with law. We make it clear that we are not binding the hands of the respondent no.2 in any manner. The respondent no.2 shall take a reasoned decision, after granting an opportunity of hearing to the appellant or his authorized representative in accordance with applicable Rules/Regulations, if any, and the settled principles governing compassionate appointment. The entire exercise shall be completed within eight (8) weeks from the date of a copy of this order along with a copy of the writ petition being forwarded to the respondent no.2.

The order of the learned Single Judge is set aside.

The appeal being MAT 1021 of 2022 and the connected application being IA No: CAN/2/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)