

DL-22

14.06.2023
Court No.5
(AD)

WP.ST 83 of 2021

**Avishek Banik
Vs.
The State of West Bengal & Ors.**

Mr. Swapan Kumar Nandi

Mr. Sizan Nandi

... for the petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP

Mr. Pinaki Dhole

Mr. Somnath Naskar

... for the State-respondents.

By the impugned order dated January 17, 2020, a request for compassionate appointment made by the writ petitioner was rejected on the ground that, the belated application for compassionate appointment established that there was no need for financial assistance to the family of the deceased employee.

Learned Advocate appearing for the writ petitioner submits that, there was a request for grant of approval for compassionate appointment made by the authorities by the Memo dated October 7, 2013 issued by the Executive Engineer, PWD. He submits that, the financial details of the family was not taken into consideration by the learned Tribunal in arriving at the finding that there was no need for financial assistance to the family of the deceased. He submits that, such finding is perverse.

State is represented.

The materials-on-record depict that, the employee

expired-in-harness on March 11, 2009. He was survived by his widow and son. The widow applied for compassionate appointment on August 27, 2009 which was not considered and disposed of by the authorities. The widow apparently was over-aged and without requisite qualification for an appointment. On December 13, 2012, the writ petitioner applied for compassionate appointment on becoming an adult. An enquiry into such application took place on April 19, 2013 and there is a report to such effect on record. The Executive Engineer, PWD also forwarded a recommendation for appointment of the writ petitioner by a writing dated October 7, 2013. However, the authorities rejected the prayer of the writ petitioner on July 11, 2018. The rejection was on the ground that a prayer for compassionate appointment by an applicant who was a minor at the time of death of the deceased employee could not be considered. Financial aspect of the family was not taken into consideration.

Aggrieved by the order of rejection dated July 11, 2018, an original application was filed being O.A. 631 of 2018. By the impugned order, the original application was dismissed on the ground that, the passage of time established that the family was without any financial distress. Neither the ground of the applicant being a minor at the time of the death *ipso facto* is a disqualifying factor nor is the passage of time from the date of the application till its rejection *ipso facto* is fatal to an application for grant

of compassionate appointment.

A family of the deceased employee may survive in penury over a period of time till its application for compassionate appointment is considered and decided upon.

A passage of time elapsing from the date of the application or from the date of death, does not equate a conclusive finding that the family was not in distressed financial condition. Financial distress is required to be considered on the basis of the financial details of the family and not merely a passage of time. Passage of time may be one of the indications of financial capability but not the sole one.

Adverting to the facts of the present case there was an enquiry conducted in respect of the application made by the writ petitioner. On enquiry, the Executive Engineer, PWD found the petitioner to be eligible on the financial criteria also. His letter of recommendation dated October 7, 2013 contains, *inter alia*, calculation sheet for monthly income of the family of the deceased government employees. It presupposes that, the financial criteria of the family of the deceased employee was taken into consideration. Nothing is placed on record to suggest otherwise.

In such circumstances, we set aside the impugned order of the learned Tribunal and direct the respondent no.3 to consider and decide the application for compassionate appointment of the writ petitioner

particularly in light of the letter dated April 19, 2013 and October 7, 2013 of the Executive Engineer, PWD, Kalyani Electrical Division, within a period of four weeks from the date of communication of this order.

The respondent no.3 will afford a reasonable opportunity of hearing to the writ petitioner. He is at liberty to hear such other parties and consult such document that he deems necessary. He will pass a reasoned order which he will communicate the writ petitioner forthwith thereafter.

WP.ST 83 of 2021 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

