

05.12.2023
Sl. No. 50
Suman
Ct.No.25.

WPA 16678 of 2007
With
CAN 1 of 2009 (Old CAN 2464 of 2009)
With
CAN 4 of 2020 (Old CAN 868 of 2020)
(Above two CANs are not found with the file)

Goutam Das
Vs.
The State of West Bengal & Ors.

Mr. Ashraful Haque
Mr. Sarwar Jahan
..for the petitioner

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas
..for the State

Challenging the sustainability of the impugned order dated 15th March, 2007 passed by the Additional Executive Officer, Malda and Chairman of District Selection Committee, Malda, whereby the petitioner's prayer for compassionate appointment was negated and seeking a direction upon the concerned respondent to re-consider the petitioner's prayer for compassionate appointment, the present writ petition was preferred.

Capsulated form of the facts, as unfurled in the writ petition, is that the petitioner's father namely Atul Chandra Das, since deceased who happened to be an employee (sub-staff) of a Gram Panchayat under Mahanandatola Gram

Panchayat, District-Malda died in harness on 7th May, 2002 leaving behind the present petitioner, his mother, one minor brother (deaf and dumb) and one sister. The petitioner made a representation to the respondent no.2 seeking his appointment on compassionate ground on 1st September, 2003. Despite receipt of the representation the concerned respondent maintained deceptive silence. Hence, the petitioner was constrained to approach this Court by preferring a writ petition being WP No. 11795(W) of 2005 which was disposed of by a coordinate Bench of this Court by an order dated 26th September, 2005 directing the concerned respondent to consider the petitioner's prayer for appointment on compassionate ground after affording an opportunity of hearing to the petitioner within a period of eight weeks from date of communication of the order.

In compliance of the said order, the petitioner was directed to appear in hearing on diverse dates and the petitioner attended every hearings. Ultimately, under a Memo dated 12th June, 2007, an order dated 15th March, 2007 passed by the Additional Executive Officer, Malda Zilla Parishad and Chairman, District Selection Committee was communicated to the petitioner. From the order dated 15th March, 2007 it was explicit that the prayer of the writ petitioner had been turned down. Consequently, challenging the legality of the said order dated 15th March, 2015 and seeking a further direction to reconsider the petitioner's prayer for compassionate appointment, this writ petition was instituted.

Mr. Jahan, learned advocate appearing for the petitioner draws my attention to the order impugned in the writ petition and contends that the order impugned has been passed placing reliance upon the notification vide No.97-Emp/6th June, 2005. He further contends that the petitioner's father died in harness in 2002. He submits that the authority concerned fell in error in giving retrospective effect to the notification of 2005. He submits that the petitioner's prayer for compassionate appointment has been negated on the plea that the family of the deceased employee has got benefits of family pension and other retirement benefits of the deceased employee and the petitioner's family owns some agricultural lands. According to Mr. Jahan, the order dated 15.3.2007 cannot be sustained. He submits that a direction should be given to the concerned respondents to revisit the issue and to offer appointment to the petitioner on compassionate ground.

Mr. Deb Roy, learned advocate appearing for the State has strenuously opposes such prayer of the petitioner. He submits the concerned authority had undertaken an enquiry and the order under challenge in this writ petition had been passed basing upon an unimpeachable appreciation of facts and hence, such order does not call for any interference by this court. He further submits that as on date the petitioner has attained the age of 44 years and he argues that after several years from the date of death of the deceased employee, it would not be proper to direct the respondents to reconsider the petitioner's prayer for compassionate appointment. ‘

It is trite law that case of compassionate appointment of any applicant would be considered as the rules and/or norms prevailing on the date of death of the employee. Indisputably, the petitioner's father died-in-harness in 2002 and the concerned authority has negated the petitioner's prayer for compassionate appointment placing reliance upon a circular issued in 2005. So, it may be argued that in the given set of facts, the authority concerned has committed error in placing reliance upon the notification *vide*. 97 Emp dated 6.6.2005. The other ground on the basis of which the petitioner's claim for compassionate appointment was negated is that dependents of the deceased employee were receiving family pension and the family owned agricultural land. The petitioner has not denied such facts.

The next question which falls for determination is whether at such distance of time, it would be justified to direct the concerned respondents to reconsider the petitioner's prayer for compassionate appointment.

Needless to observed that the object and/or rationale behind the benevolent scheme of compassionate appointment was only to give immediate succour to the family of the deceased employee which has plunged into penury due to sudden death of the sole bread winner of the family. Such appointment should be provided immediately to enable the family to tide over the financial crisis if it is found that the family will not be able to get over the crisis if such appointment is not provided. So immediacy of the need lays the foundation

for consideration the case of compassionate appointment. Suffice it to observe that compassionate appointment is not a matter of right and it is not a matter of inheritance based on a line of succession. Such appointment is provided only to redeem the family in distress.

The petitioner's father expired in 2002. The petitioner made an application for compassionate appointment in 1st September, 2003 and such prayer was negated by an order dated 15.3.2007. Admittedly, this writ petition was instituted in 2007. The writ was taken up on 11th October, 2007 and a direction was given upon the parties to exchange their affidavits. Thereafter the matter appeared in 2019, 2022, 2023 and lastly at the fag end of this year. From 2007 to 2019 i.e. for almost an era, the petitioner has just slept over the matter. Not a single application has been taken seeking expeditious disposal of the writ petition or seeking immediate intervention of this Court. Such conduct of the petitioner suggests that the petitioner has not pursued the matter with sufficient diligence. I may profitably refer the judgment delivered in case of Malay Nanda Sethy –vs- State of Orissa, reported in AIR 2022 SC 2836 wherein it was held that the operation of a policy/scheme for compassionate appointment is founded on considerations of immediacy. A sense of immediacy is called for not only in the manner in which the applications are processed by the concerned authorities but also in the conduct of the applicant in pursuing his case, before the authorities and if needed

before the Courts. So, it can safely be held that the sense of immediacy in the matter of compassionate appointment had lost due to latches on the part of the petitioner.

Accordingly, after so many years from the date of death of employee or from the date of application of the petitioner particularly, in case at hand where delay can be attributed to the petitioner as well, a direction to reconsider of the petitioner's prayer for compassionate appointment would not be in consonance with the object of the scheme for compassionate appointment. (See, case of State of West Bengal v. Debabrata Tiwari Etc. Etc., reported in AIR 2023 SC 1467). Therefore, though in the order dated 15.3.2207 erroneously reliance was placed on the notification published in 2005, yet it would not be justified to give direction for reconsideration of the petitioner's prayer for compassionate appointment.

In view of foregoing analysis, I am of the view that the writ petition is not entitled to get relief. Accordingly, the writ petition is dismissed, however, without any costs.

The record reveals that the connected applications had been disposed of by a coordinate bench of this Court by an order dated 9.1.22019. Registry is directed to record such disposal.

(Partha Sarathi Chatterjee , J.)