

**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 110 of 2023

Suraj Routh

Vs.

The State of West Bengal & Ors.

For the Petitioner

: Mr. Syed Shamsul Arefin

Miss Kaniz Kulsum

For the State

: Mr. Tapan Kumar Mukherjee, Ld. AGP

Ms. Tuli Sinha

Heard on : August 4, 2023

Judgment on : August 4, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated June 21, 2023 passed by the West Bengal Administrative Tribunal in OA 461 of 2022.
2. By the impugned order, the Tribunal refused to grant relief of compassionate appointment to the petitioner.

3. Learned Advocate appearing for the petitioner submits that, the deceased employee died-in-harness on October 11, 2012. The mother of the petitioner applied for compassionate appointment on October 18, 2012. Thereafter, the mother of the petitioner withdrew the application for compassionate appointment and the petitioner applied for compassionate appointment on April 5, 2016. He draws the attention of the Court to the report of the enquiry committee formed for the purpose of considering the application for compassionate appointment. He submits that, the enquiry committee found that the family of the deceased employee was in financial distress. Despite such recommendation, the authorities rejected the application for compassionate appointment by a writing dated June 1, 2022.
4. Learned Advocate appearing for the writ petitioner submits that, assailing the order of rejection dated June 1, 2022, an original application being OA 461 of 2022 was filed before the West Bengal Administrative Tribunal wherein, the impugned order was passed.

5. Learned Advocate appearing for the writ petitioner relies upon the notification bearing No.26-Emp. dated March 1, 2016 and submits that, notification bearing No.251-Emp dated December 3, 2013 was clarified. He refers to the clarification issued with regard to belated request for compassionate appointment. He submits that, the present application for compassionate appointment cannot be construed to be belated.
6. Learned Senior Advocate appearing for the State submits that, the mother of the writ petitioner applied for compassionate appointment on October 18, 2012. The writ petitioner was an adult on the date of death of the deceased employee. The writ petitioner, however, did not apply for compassionate appointment within the time period prescribed by the notification No.251-Emp dated December 3, 2013. Therefore, the present application for compassionate appointment should be construed to be belated without any plausible explanation for the same being given. Consequently, according to him, the authorities correctly rejected the application for compassionate

appointment. The Tribunal correctly concurred the view expressed by the authority in rejecting the prayer for compassionate appointment.

7. As noted above, the employee died-in-harness on October 11, 2012. Applicability of notification no.251-Emp dated December 3, 2013 governing the consideration of an application for compassionate appointment in respect of such deceased employee is not being disputed by the parties before us.
8. The mother of the writ petitioner applied for compassionate appointment on October 18, 2012. Therefore, the Tribunal and the authority when they arrived at a finding that there was no need for financial assistance, cannot be said to be correct. Moreover, the enquiry committee formed by the authorities themselves recommended by the writing dated June 28, 2016 that, the family of the deceased was facing difficulties in day-to-day life out of the financial problem.
9. The twin criteria, namely, financial distress of the family of the deceased employee and service condition of the deceased employee permitting grant of compassionate appointment

stand fulfilled. In the facts and circumstances of the present case, the issue is whether the application for compassionate appointment of the writ petitioner stands defeated by reason of delay.

10. Notification no.251-Emp dated December 3, 2013 prescribes a time period for the purpose of making an application for compassionate appointment. The time period prescribed by the notification bearing no.251-Emp dated December 3, 2013 was clarified by the notification bearing No.26-Emp. dated March 1, 2016. In respect of belated request, the notification bearing no.26-Emp. dated March 1, 2016 clarifies the notification dated December 3, 2013 in the manner following :

“BELATED REQUESTS:-

In exceptional cases such as (i) death during action (ii) where none in family is eligible etc., departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took place upto five years ago. While considering such belated request the 3 member screening-cum-enquiry committee should, however, keep in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. Servant in order to relieve it from economic distress. The very fact that the family

has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases could call for a great deal of circumspection at all levels. The dependent member must invariably attain the minimum age of appointment at the time of consideration.”

11. Therefore, the time period prescribed by the notification no.251-Emp dated December 3, 2013 is not inflexible. A belated request can be entertained subject to fulfilment of various criteria prescribed therein.
12. In the facts of the present case, it cannot be said that the request for compassionate appointment was defeated by delay. There was a request for compassionate appointment on October 18, 2012. Moreover, a second application for compassionate appointment was made on April 5, 2016 by the writ petitioner on the ground that the mother of the writ petitioner who applied on October 18, 2012 was facing health issues. An enquiry committee was formed where, the enquiry committee found that the family of the deceased employee was facing financial difficulties. This finding is as late as in 2016.

13. In such circumstances, we set aside the order of rejection of the authority dated June 1, 2022 as well as the impugned order of the Tribunal dated June 21, 2023.
14. We direct the authorities to grant compassionate appointment to the writ petitioner within a period of fortnight from date.
15. **WP.ST 110 of 2023** is disposed of without any order as to costs.

(Debangsu Basak,J.)

16. I Agree.

(Md. Shabbar Rashidi, J.)