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WP.ST. 91 of 2022

Ct. No. 04

Akd

Islam Ahmed & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Tulsidas Roy,

Mr. Tirthankar Roy.

... for the petitioners.

Mr. Tapan Kumar Mukherjee,

Ms. Debdooti Dutta.

... for the State.

Bearing in mind the true import of the word “compassion” we proceeded to hear out the instant writ petition filed by the widow and son claiming the appointment on the death of the Government employee while in service. Admittedly the husband of the petitioner no. 2 died on 4th October, 2005 in harness and immediately within a specified time an application was taken out by the petitioner no. 2 seeking her appointment on compassionate ground.

The application was processed by the authority and vide Memo dated 30th July, 2008 issued by the Chief Secretary to the Government of West Bengal, Home Department, she was put in a panel under the exempted category at serial no. 424. She was further communicated that she will be given an appointment the moment her turn will come, as the appointment under compassionate ground for which the said panel was created shall be exhausted as and when the vacancy in such category falls vacant.

The learned Additional Government Pleader fairly submits that as per statutory norms/rules 10% of the total vacancies are earmarked for being filled up under the compassionate ground category / exempted category.

Obviously the moment the panel is prepared

under such category, the person who stands at the higher pedestal shall get the preference over the persons at the lower tier of the said panel. The position becomes different the moment the petitioner no. 2 sought for an appointment of her son, who was admittedly minor at the time of death of his father and subsequently became major.

The application was taken out by the petitioner inviting attention of the authorities that instead of petitioner no. 2, petitioner no. 1 may be appointed on compassionate ground. Obviously the authority while considering such application found that the claim with regard to the petitioner no. 1 is untenable, as the said application is belated more particularly the petitioner no. 1 was a minor at the time of death of his father and the Rule does not permit such application to be considered after a gap of nearly nine years from the date of death of the Government employee.

The aforesaid decision of the authority was the subject matter of challenge and we must record that the grounds on which such rejection is made cannot be faulted with nor we can hold that the order of the Tribunal is susceptible to be interfered with having not followed the legal provisions or judicial discipline in this regard.

As indicated in the opening sentence of this order, more particularly when it relates to a compassionate appointment, we find that the petitioner no. 2, widow of the deceased employee, was found fit and eligible to be appointed on the death of her husband on compassionate ground. She was included in the panel of exempted category at serial no. 424; obviously for the purpose when her turn would come which give rise to an appointment, the appointment letter shall be issued to her. Obviously

the delay in giving such appointment was necessitated by the subsequent stand taken by the petitioner, more particularly the petitioner no. 2, when she wanted the petitioner no. 1, the son, to be considered for appointment on compassionate ground.

Since the petitioner no. 2 was found eligible and fit for appointment in the suitable post and included in the panel of the exempted category, the only course of action requires by the authority is to appoint the petitioner no. 2 in the event the number of vacancies invites the position held by the said petitioner no. 2 in the said panel to be appointed.

The application filed by the petitioner no. 2 jointly with the petitioner no. 1 appears to us that the said application was made with a request to consider the claim of the petitioner no. 1 and in the event the said claim is accepted, her claim shall be regarded to have been abandoned.

There is a steep competition in the public employment and the person, who suffered penury because of untimely death of the bread-earner, left with no choice but to act in pursuit of the employment. The person, who needs an immediate financial assistance by way of an appointment under the compassionate ground, left no other option or choice and, therefore, the subsequent decision of the petitioner no. 2 should not act detrimental to her right and her entitlement already fructified by inclusion of her name in the panel of the exempted category.

We, therefore, feel that it is a fit case where this Court without interfering with the impugned order direct the authorities to process the claim of the petitioner no. 2. If the appointment have already been made beyond the serial number to which the petitioner no. 2 stood, the authority shall see that

immediate appointment to an available vacancy under the said category is given to her. It appears from the record and the submission of the learned Additional Government Pleader that the date of birth of the petitioner no. 2 is 15th May, 1975 and, therefore, she has not achieved the date of superannuation as yet.

The concerned authority is directed to complete the exercise within six weeks from the date of the communication of this order in the light of the directions passed hereinabove.

The writ petition is thus disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)