

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1835 of 2023

with

CAN 1 of 2023

Rahima Bibi

VS.

The State of West Bengal & Ors.

For the Appellant : Mr. Prosenjit Mukherjee
Mr. Aslam Parvez
Mr. Jahangir Hossain

For the State : Mr. Amitesh Banerjee, Sr.St. Counsel
Mr. Suddhadev Adak

Heard on : December 5, 2023

Judgment on : December 5, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment and order dated September 4, 2023 passed in W.P.A. 24450 of 2018.
2. By the impugned judgment and order, the learned Single Judge dismissed the writ petition.
3. Learned advocate appearing on behalf of the appellant submits that, the deceased husband of the appellant was a dealer of a Fair

Price Shop as also kerosene oil. The husband of the appellant expired on October 16, 2011. An application for compassionate engagement was made by the younger son of the appellant which was granted. Immediately, after the grant of such appointment, the younger son also expired. The younger son expired on October 12, 2023. The appellant applied for compassionate engagement for her elder son by an application dated December 6, 2013, which was recommended to by one of the authorities. Thereafter, the appellant applied for compassionate engagement on September 23, 2015. He submits that, the application for compassionate engagement of the appellant was rejected.

4. Learned advocate appearing for the appellant draws the attention of the Court to the provisions of the West Bengal Public Distribution (Maintenance and Control) Order, 2013, particularly to the provisions relating to engagement on compassionate ground. He submits that, engagement on compassionate ground is permissible. He draws the attention of the Court to the authorities prescribed for the purpose of considering an application for grant of compassionate engagement. He submits that, under the West Bengal Public Distribution System (Maintenance and Control) Order 2013, the authority prescribed is different to that prescribed under the Kerosene Control Order. He submits that in the facts of the present case, the impugned order of rejection of the application

of the appellant, under the Order of 2013 was considered and rejected by an authority not prescribed by the Order of 2013.

5. Learned advocate appearing on behalf of the appellant submits that, the time period of 60 days prescribed in the Order of 2013 is not mandatory. In support of such contention, he relies upon a decision of the Co-ordinate Bench reported in ***AIR 2021 Cal 5 (Bakul Rani Patra vs. State of West Bengal & Ors.)***.
6. In support of the contention that compassionate appointment can be granted even if the application for grant of the same is said to be belated, learned advocate appearing for the appellant relies upon ***(2006) 9 SCC 195 (Syed Khadim Hussain vs. State of Bihar & Ors.)*** and ***(2011) 2 CHN 17 (DB) (Syed Iftikar Ali vs. State of West Bengal)***.
7. Learned Senior Standing Counsel appearing for the State submits that when the husband of the appellant died he was survived by the appellant as his widow as also two sons. In the application for grant of compassionate engagement for the younger son, the appellant and the younger son stated that the elder son was disinherited from the properties and the estate of the deceased husband. Thereafter, on such factual matrix, compassionate engagement was granted to the younger son of the appellant. The younger son expired on October 12, 2013. The appellant made an application for compassionate engagement of the elder son on December 6, 2013. He submits that the appellant was well aware

of the provisions of the Order of 2013 with the appellant taking benefit thereunder once. Therefore, today, the appellant cannot plead that she was ignorant of the provisions of the Order of 2013. He refers to the provision of the Control Order of 2013 and submits that, the elder son does not come within the definition of a family member of the younger son in view of the facts that the two sons are brothers. Brothers are not included into the definition of family under the Order of 2013. The appellant applied for compassionate engagement on December 17, 2015 which cannot be allowed *inter alia* on the ground of delay.

8. Relying upon **(1994) 4 SCC 138 (Umesh Kumar Nagpal vs. State of Haryana & Ors.)** and **(2013) 1 CHN 18 (Piali Saha vs. State of West Bengal)**, learned Senior Standing Counsel appearing for the State submits that when a time is fixed by a Sub-ordinate Legislation, the same is to be taken as mandatory as the Court cannot amend the standing order.
9. The husband of the appellant was engaged as a Fair Price Shop Dealer as also a Kerosene Oil Dealer. He expired on October 16, 2011. He left behind surviving the appellant and his two sons.
10. Engagement of the husband of the appellant was under the provisions of the West Bengal Public Distribution System (Maintenance and Control) Order 2013. Such order of 2013 provided for engagement on compassionate ground which is as follows:-

“vi) Engagement on compassionate grounds;- In case of vacancy arising out of death or in case of incapacitation on medical ground, subject to satisfaction of the authority, of any existing dealer, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased/incapacitated dealer having no regular means of subsistence, will be considered with preference on compassionate ground provided such prayer along with formal application in Form 'C' along with Annexure 1 with requisite fee is submitted within 60 days from the occurrence of such vacancy.

While applying, the applicant shall have to furnish “No Objection” from other family members in the form of an Affidavit executed before a 1st Class Magistrate except in the following cases: (a) if the applicant be the spouse of the deceased licensee, (b) if the ex-licensee, because of his/her being incapacitated/infirm has opted for the applicant.

The Sub-divisional Controller, Food and Supplies shall arrange for an enquiry to verify the eligibility of the applicant and submit the report with his opinion to the District Controller, Food and Supplies. While forwarding a case on medical ground the Sub-divisional Controller should satisfy himself/herself on examination of the medical prescription and certificate issued by a Registered Government Medical Practitioner that the ex-licensee was not in a position to run dealership business considering his/her health ground. The District Controller, Food & Supplies, shall forward the same with his comments to the State Government through the Director, DDP&S for necessary approval.

The Sub-divisional Controller, Food and Supplies after having Government approval, shall issue an offer letter in

Form D to the approved candidate, directing him/her to furnish recent passportsize photograph(s), security deposit and licensing fee as per Clause 21(i) and Schedule A.

(vii) Dealership run by any individual person shall not be allowed for inclusion of any partner(s). In the case of induction of new partner or substitution or exclusion of an existing partner, in an existing partnership licence, the same may be considered on merit subject to the provision of the Indian Partnership Act 1932 as amended from time to time.”

11. Engagement on compassionate ground is to be granted to the family member of the existing dealer. Family member is defined under the Order of 2013 as follows:-

(m) “Family members” means spouse, dependent parents, dependent sons and daughters for the purpose of considering engagement as Dealers/Distributors on compassionate ground;

12. As noted above, the husband of the appellant was survived by the appellant and their two sons. An application for compassionate engagement was made on the death of the husband of the appellant for the younger son of the appellant, *inter alia*, on the premise that the elder son of the appellant stood disinherited from the estate of the deceased husband of the appellant.
13. Younger son of the appellant was granted engagement as a Fair Price Shop Dealer as also a Kerosene Oil Dealer on compassionate

engagement. The younger son of the appellant expired on October 12, 2013.

14. On the younger son of the appellant expiring, the family members as defined under the Order of 2013 became entitled to apply for engagement on compassionate ground.
15. The appellant took advantage of an engagement on compassionate ground as provided under the Order of 2013 once on the death of her husband on October 16, 2011. On the death of her younger son, the appellant applied for engaging the elder son of the appellant by a writing dated December 6, 2013. Elder son of the appellant does not come within the definition of family member. Moreover, on the earlier occasion for compassionate engagement, the elder son was said to be disinherited from the estate of the deceased husband of the appellant.
16. The appellant comes within the definition of family member of her younger son who expired on October 12, 2013 as her younger son was unmarried.
17. The appellant applied for engagement on compassionate appointment on December 17, 2015, which was rejected by the authorities.
18. Time prescribed for making an application for compassionate engagement is 60 days in the Order of 2013. Whether such period prescribed is mandatory or not was considered by the Co-ordinate Bench in **Bakul Rani Patra** (supra). In the facts of that case, the

Co-ordinate Bench found that since the widow of the deceased dealer made the application within 90 days from the date of death and since the mental and other conditions of the widow did not allow her to make the application within 60 days, the delay was overlooked and the authorities were directed to consider and decide upon the application for compassionate engagement.

19. **Sayed Khadim Hussain** (supra), **Sayed Iftikar Ali** (supra) and **Umesh Kumar Nagpal** (supra) were rendered in the context of service law and the provisions for appointment on compassionate ground governing the service conditions of the deceased employee.
20. Again **Piali Saha** (supra) was rendered in the context of Rule 14 of the West Bengal Primary School Teachers' Recruitment Rules, 2001. There, the Special Bench held that when the Legislature fixed a time limit in relation to the substantive law, the Court cannot take the task of legislature and extend the time limit as it would amount to amendment of Rule which power the Court did not possess.
21. In the facts of the present case, the appellant was well aware of the provisions of the Order of 2013 and the nature and extent of a family member as defined thereunder. She took advantage of the Control Order of 2013 during the first round of compassionate engagement in favour of her younger son. At that time, she claimed that her elder son stood disinherited and, therefore, the application of the younger son. Thereafter, on the death of her

younger son, she applied for compassionate engagement for her elder son knowing fully well her earlier stand as also the provisions of the Order of 2013.

22. Essentially, the appellant is seeking to treat the vacancy as an item of inheritance. Compassionate engagement as contemplated under the Order of 2013 is not a subject, which is to be dealt with as a right of inheritance. Compassionate engagement is granted in order to allow the family to tide over the financial difficulty on the death of the dealer.
23. In such circumstances, we find no merit in the appeal. M.A.T. 1835 of 2023 along with connected application is dismissed without any order as to costs.

(Debangsu Basak,J.)

24. I Agree.

(Md. Shabbar Rashidi, J.)