

Item-38. 19-09-2023

MAT 1769 of 2022
CAN 1 of 2022
CAN 2 of 2022

^{sg} Ct. 8

The State of West Bengal & Anr.
Versus
Abdul Alim Khan & Ors.

Mr. Biswabrata Basu Mallick, AGP.
Mr. Sanjib Das, Adv.
Mr. Biman Halder, Adv.

...for the appellants

Mr. Prosenjit Mukherjee, Adv.
Mr. Nirmalya Kr. Das, Adv.

...for the respondent no.1

1. CAN 1 of 2022 is an application for condonation of delay.
There is a delay of 164 days in preferring the appeal.
2. Sufficient cause being shown for not being able to prefer the appeal within the time of limitation. The delay of 164 days in preferring the appeal is hereby condoned. CAN 1 of 2022 is, thus, disposed of.
3. This appeal is arising out of an order dated 21st February, 2022. On the limited issue that the application for compassionate appointment was not decided on the basis of the scheme prevalent on the date of demise of the employee as held in the matter of *State of M.P. vs. Ashish Awasthi* reported in (2022) 2 SCC 157, we do not find any reason to interfere with the order passed by the learned Single Judge.
4. The financial position of the family would need to be evaluated on the basis of the provisions contained in the relevant scheme. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering

employment assistance to a member of the family of a deceased Government employee [See *State of H.P v. Prakash Chand; 2019(4) SCC 285*]. The said decision considered and distinguished in *Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.* reported in *(2005) 10 SCC 289* in paragraph 8 of the judgment. However, in the event the scheme in express terms require that the family pension received by the dependants of the deceased employee is required to be taken the writ petitioners cannot object to it as the application needs to be considered on the basis of the scheme. Moreover, **Govind Prakash Verma** (supra) was held to be per incurium in *State Bank of India & Ors. vs. Surya Narain Tripathi* reported in *(2014) 15 SCC 739*.

5. The inquiries as directed by the learned Trial Judge shall, however, be carried out by the appellants.
6. The District Inspector of School (S.E.), Purba Medinipur shall reconsider the matter in the light of the observations made in this order at the earliest but positively within the period of eight weeks from date by a reasoned order and communicate the same to all the parties immediately thereafter.
7. It is needless to mention that in the event the reasoned order is in favour of the writ petitioners, immediate steps should be taken for appointment of the writ petitioners.
8. With the above observations, the appeal and the application are accordingly, disposed of.
9. Urgent photostat certified copy of this order, if applied for,

be supplied to the parties upon compliance of all requisite formalities.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)