

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 1803 of 2022

With

IA. No. CAN 2 of 2022

The Principal, Mahatma Gandhi College & Anr.

Vs.

Mrinal Kanti Kumbhakar & Ors.

For the Appellants : Mr. Sunit Kumar Roy

For the State : Mr. Swapan Kumar Dutta

Mr. Pradyot Kumar Das

For the respondent No.1 : Mr. Dilip Sinha

Heard On : 22.12.2022

Judgement Delivered On : 05.04.2023

THE COURT:- This instant appeal has been preferred against the Judgment and Order passed by the Hon'ble Single Bench on the 12th day of September, 2022 in writ petition being WPA 18551 of 2022.

By the impugned Judgment and Order the Hon'ble Single Bench was pleased to direct the College Authority to give appointment to the writ petitioner, as a consequence of which the appellant/respondent in the writ petition has preferred this instant appeal.

The fact of the present case is that the father of the writ petitioner expired on the 21st day of January 2002. Thereafter on the 25th day of January 2002 the writ petitioner made an application before the College Authority for his appointment on compassionate ground as his father had expired. As the College Authority did not consider the application, the petitioner was compelled to file a writ petition being WP 16217 (W) of 2003. The said writ petition was disposed of by an Order dated 10th of November 2003 directing the Director of Public Instruction to consider the application made by the petitioner in accordance with law within a given time frame.

The Director of Public Instruction by an order dated 06.01.2004 disposed of the application of the petitioner with a direction upon the petitioner to contact the Principal of the College and also directed the petitioner to provide the Principal the requisite information so that the College Authority could send the application.

Thereafter, due to difference of opinion between the Principal and the Director of Public Instructions as regards to the sending of the proposal, a long period lapsed forcing the writ petitioner to once again file a writ petition, being WPA 14858 of 2005, which was ultimately dismissed on the ground that

almost 20 years have passed by. Thereafter the writ petitioner preferred an appeal being FMA 66 of 2022 which was disposed of with a direction upon the Director of Public Instruction to once again consider the application of the petitioner and to dispose of the same by recording proper reasons.

Thereafter the Director of Public Instruction, West Bengal *vide* order dated 14.06.2022 rejected the prayer of the respondent/writ petitioner for compassionate appointment. Being aggrieved and dissatisfied with the said order the appellant/writ petitioner has filed the instant writ petition, being WPA 18551 of 2022.

The Learned Counsel appearing on behalf of the appellants/respondents has submitted that the respondent/writ petitioner had approached the Hon'ble Single Bench praying for appointment on compassionate ground after expiry of several years of the death of his father, being the deceased employee. He has further submitted that appointment on compassionate ground is not a right and it is given to a member of the family to save the said family from immediate financial crisis which has arisen due to the death of the bread earner of the said family. He has further submitted that more than 15 years have passed by since the death of the father of the respondent/writ petitioner. He also submitted that the College-in-issue in which the respondent/writ petitioner intends to be appointed on compassionate ground is affiliated to the Burdwan University wherein there is no Scheme for appointment on compassionate ground. As such, the respondent/writ petitioner cannot be appointed on

compassionate ground. Learned Counsel appearing on behalf of the appellant accordingly seeks setting aside of the impugned Judgement and Order.

The Learned Counsel appearing on behalf of the respondent/ writ petitioner pressing upon the point of appointment on compassionate ground submits that there are no laches on the part of the respondent/writ petitioner in seeking appointment on compassionate ground on the death of his father which took place on 21st of January 2002 as because the application for appointment on compassionate ground was made on the 25th day of January 2002, i.e. within the period of mourning. He further submitted that this Hon'ble Court had directed the Director of Public Instruction to consider the application of the respondent/writ petitioner for appointment on compassionate ground and had also directed to dispose of the said application by recording proper reasons.

Learned Counsel further submitted that as per the aforementioned direction the Director of Public Instruction by an order dated 06.01.2004 disposed of the application of the respondent/writ petitioner with a direction to contact the Principal of the College and provide the College requisite information so that the College Authority could send the application at an early date. However, the said process did not see the light of the day. As a result, the respondent/writ petitioner once again filed a writ petition being WPA 14858 of 2005 renewing his earlier prayer for appointment on compassionate ground.

On perusal of the impugned order and the relevant documents, it reveals that the deceased was posted as Cashier in the Mahatma Gandhi College, Lalpur, Daldali within the District of Purulia and had breathed his last on 21.01.2002 and soon thereafter, i.e. on 25.01.2002, the writ petitioner made an application for his employment on compassionate ground along with no-objection of the existing members of his family. So there is no delay on the part of the writ petitioner in praying for appointment on compassionate grounds.

Obtaining no fruitful result from the end of the authorities, the writ petitioner was compelled to file an application before this Hon'ble Court wherein the Hon'ble Single Bench was pleased to pass an order directing the respondents, particularly the Director of Public Instructions, West Bengal to consider the case of the writ petitioner in accordance with law.

Ultimately, on 19.01.2004 the Principal of Mahatma Gandhi College, Purulia forwarded the application along with relevant papers to the Director of Public Instruction, Government of West Bengal.

Thereafter the respondent/writ petitioner was compelled to file a writ petition before this Hon'ble Court, being the second round of litigation, wherein the Hon'ble Single Bench was pleased to dismiss the said writ petition, against which the writ petitioner preferred an appeal wherein the Hon'ble Division Bench was pleased to opine:

"The litigation, which was pending in the docket of the Court for pretty long time because of the inability of the Court to take up the

matter and dispose of timely, cannot be a ground to defeat the claim. Merely because of the family has survived³ for such a long time, does not ipso facto lead to the inference that the same is not in financial distress. The act of the Court shall not prejudice the litigant. The aforesaid principle is well founded on the legal maxim “actus curiae neminem gravabit”. The compassionate appointment is not an alternative mode but the scheme is framed to aid the family who suffered financial crunch because of the death of the bread-earner. Though sometime it is perceived as contravening to the provisions contained under Article 14 of the Constitution but the same has received the legal sanction in this regard with the avowed object of providing financial stability to the family. The delay in disposal of the writ-petition cannot be construed to defeat the right, which is accrued under the scheme.”

Thereby, the order of the Hon’ble Single Bench stood set aside with the direction to consider the application of the writ petitioner by recording proper reasons and to communicate the same. Pursuant to such direction an order was passed by the second respondent, rejecting the prayer for appointment. Being aggrieved, the writ petitioner preferred the third round of litigation by filing the instant writ petition.

From the aforestated discussion, it is evident that the writ petitioner has no laches on his part, which goes in favour of the respondent/writ petitioner.

From the provisions of the Notification of the year 2005 it lays down, *inter alia*, that a dependant of an employee who dies in harness may be offered appointment on compassionate ground subject to the fulfillment of the conditions that the employee has died before completing 20 years of service or before attaining the age of 50 years, whichever is earlier. From the averments it reveals that the father of the writ petitioner expired on 21st of January 2022 at

the age of 57 years and at the time of his demise the said person had rendered 19 years 1 month service to the College.

To the mind of this Court, the appellants cannot now take shelter behind technicalities after creating a long delay to which both the Principal of the College and the Director of Public Instruction bear responsibility. This Court, at the same time, reiterates the observations of the Hon'ble Division Bench (*supra*) as passed at the end of the second round of litigation between the parties.

This Court is also mindful of the legal position that though compassionate appointment is not a mode of alternative employment and cannot be implemented as a matter of right but, compassionate appointment is a benevolent and beneficial policy of the State.

Apropos the above discussion, this Court finds no infirmity in the reasoning advanced by the Hon'ble Single Bench.

MAT 1803 of 2022 with IA. No. CAN 2 of 2022 stands accordingly dismissed.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)

Later,

Mr. Roy, Learned Counsel appearing for the appellant/ the College Authority, seeks an extension of time to pay the amount as directed by the Hon'ble Single Bench. Extension of time is sought for a period of two weeks.

Heard.

Considered.

Extension of time, as prayed for, stands extended.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)