

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 24450 of 2018
CAN 1 of 2019 (Old No. CAN 4031 of 2019)
Rahima Bibi
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Amales Roy Ms. Mousumi Bhowal Mr. Aman Gupta Mr. Ishan BhattacharyaAdvocates
For the State	:	Mr. Amitesh Banerjee Mr. Suddhadev AdakAdvocates
Heard lastly on	:	17.03.2023
Judgment on	:	04.09.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to set aside and cancel the impugned order being Memo No. 666/FMR/13L-26/2014 dated 28.02.2018 and the impugned Memo No. 470/SCF & S/MTB/18 dated

31.08.2018 and to appoint the petitioner as M.R. dealer and S.K. oil dealer on compassionate ground in place of the late Minarul Islam.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. In the present writ petition, the petitioner challenged the validity of the impugned order dated 28.02.2018, issued by the respondent no. 2 and the order dated 01.08.2018, issued by the respondent no. 5 in which the petitioner's application for appointment as dealer on compassionate ground was rejected on the ground that she applied after a long gap of more than 2 years from the death of ex-dealer, the petitioner's son. On 12.10.2013 Minarul Islam, the existing dealer and the son of the petitioner, who was a bachelor, died intestate. On 06.12.2013 Rahima Bibi, the petitioner being the mother applied before the Sub-Divisional Control, Food & Supplies, Mathabhanga for appointment of her surviving son namely, Abdul Wahed Ahmed as the M.R. dealer on compassionate ground. On 10.12.2013 Abdul Wahed Ahmed, the son of the petitioner then applied in the prescribed form along with a forwarding memo which was received by the office of the Sub-Divisional Controller, Food and Supplies, Mathabhanga. The District Controller did not reject the prayer of Abdul Wahed Ahmed instantly on the ground that the brother did not fall within the meaning of family member. On the contrary, the District Controller, after expiry of about 11 months, forwarded the case of Abdul Wahed Ahmed with recommendation for appointment as dealer on compassionate ground to the Joint Director (Licence). On 23.07.2015 the prayer for appointment of Abdul Wahed Ahmed as a FPS dealer on compassionate ground was rejected as the case was

beyond the scope of the said Control Order, 2013. On 23.09.2015 the petitioner then applied for FPS dealership on compassionate ground as a dependent mother. On 15.02.2016 the District Controller forwarded the case of the petitioner with regard to approval of appointment of the petitioner as MR dealer on compassionate ground to the Joint Director (License). On 31.08.2018 the prayer of the petitioner for appointment FPS dealer on compassionate ground was rejected since she applied after a long gap of more than two years from the death of ex dealer. There were sufficient grounds for condoning the delay in making an application by the petitioner, the dependent mother for appointment as a dealer on compassionate ground in terms of the said Control Order, 2013. The question as to whether the time limit of sixty days for making the application for appointment as a dealer on compassionate ground was directory and not mandatory was no more res integra in view of the judgment passed by the Hon'ble Division Bench of this Court in Bakul Rani Patra versus the State of West Bengal & Ors. reported in AIR 2021 Cal 5. It was, therefore, submitted that the judgment of the Special Bench in Piali Saha versus State of West Bengal, reported in 2013 (1) CHN (Cal) 18, strongly relied upon by the respondents in the present case, was no longer the ratio.

3. Learned counsel appearing on behalf of the respondents submitted as follows. In Umesh Kumar Nagpal versus State of Haryana reported in (1994) 4 SCC 138, it was held that compassionate appointment could not be granted after lapse of a reasonable period which must be specified in the Rules. In another judgment, V Sivamurthy versus State of Andhra Pradesh

and Others reported in (2008) 13 SCC 730, the Hon'ble Supreme Court summarized the principles relating to compassionate appointment. Reliance was placed on Bhawani Prasad Sonkar versus Union of India and Others reported in (2011) 4 SCC 209. In Teri Oat Estates versus U.T. Chandigarh and others reported in (2004) 2 SCC 130, the Hon'ble Supreme Court held that sympathy or sentiment by itself could not be a ground for passing an order in relation where to the appellants miserably failed to establish a legal right. Reliance was placed on State Bank of India and Another versus Somvir Singh reported in (2007) 4 SCC 778. In Piali Saha Versus State of West Bengal, reported in 2013 (1) CHN (CAL) 18, a Larger Bench of the Calcutta High Court discussed compassionate appointments at length and held, inter alia, that the period which had not been contemplated in the Rule intending to create a right could not be extended by the Court and the Court could not have any amending power of the legislation. In Arindam Choudhury versus State of West Bengal reported in 2019 (1) CHN (Cal) 614, a Division Bench of this Court held, inter alia, that it was clear that an applicant for compassionate appointment did not acquire a right of appointment only upon proving the distressed condition of the family members of the employee who had died-in-harness. An aspirant for a post must have other necessary qualifications which, inter alia, would include being of the required age for entry in service, possessing the minimum educational qualifications and bearing good moral character as well as health. Financial crisis would not automatically guarantee an appointment.

4. I heard the learned counsels for the parties and perused the writ petitions, the affidavits filed and the written notes of submissions.

5. Government largesse is to be available equally to all. Otherwise, the same would violate Articles 14 and 16 of the Constitution of India. Compassionate appointment is indeed an exception to the normal rule of public appointment and engagement. It is made to tide over an immediate crisis and is clearly not heritable that a family member could claim as of right. That is why the Hon'ble Apex Court repeatedly held that there must be strict compliance in matters of compassionate appointment. Compassionate appointment has to be invoked strictly in accordance with the scheme laid down.

6. It is settled law that compassionate appointment has to be made soon after the death or in any event within a reasonable period or else, one would have to presume that the family of the deceased was not in any immediate need of financial assistance.

7. Clause 20(vi) of the West Bengal Public Distribution System (Maintenance and Control) Order 2013 sets a time limit of 60 days for applying on the ground of compassionate appointment.

8. If one gets into the facts of the case it will appear that there was an inordinate delay caused by the petitioner in applying for compassionate appointment. The original dealer Minarul Islam died on 12.10.2013. On 06.12.2013 the petitioner being the mother of the said dealer applied for the appointment of her surviving son as the dealer. This cannot be treated as the petitioner's own application. The said other son formally applied only on

10.12.2013. It is true that some time was taken for the authorities to apply the existing law and deny him dealership on the ground that he did not fall within the meaning of family member. It was only after the other son's application was rejected on 23.07.2015 that the petitioner herself applied for the dealership on 23.09.2015. Even the gap between these two dates is 60 days. Even if, for argumen't sake, the case of condonation of delay in making application for compassionate appointment is considered, the delay in the instant case is far too much to condone.

9. In view of the above discussions, I do not find any merit in this application.

10. Therefore, the same is dismissed. The connected application also stands disposed of accordingly.

11. However, there shall be no order as to costs.

12. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)