

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 498 of 2013

With

IA No.: CAN 1 of 2019 (Old No.: CAN 6633 of 2019), CAN 2 of 2021

Poulami Sarkar

Vs.

State of West Bengal & Ors.

For the petitioner

: Mr. Dilip Kumar Samanta

Mr. Ashik Kumr Paul

For the State

: Mr. Tapan Mukherjee, Ld. AGP

Ms. Sangeeta Roy

Heard on : June 28, 2023

Judgment on : June 28, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated October 9, 2013 passed by the West Bengal Administrative Tribunal in O.A. 682 of 2010.

2. By the impugned order, the Tribunal negated a claim of compassionate appointment made at the behest of the writ petitioner.
3. Learned Advocate appearing for the writ petitioner draws the attention of the Court to the facts of the case. He submits that, initially, the father of the writ petitioner was an employee of the government and died-in-harness on April 2, 1992. Thereafter, the mother of the writ petitioner received compassionate appointment and was working. The mother of the writ petitioner died-in-harness on November 24, 1998 in-harness. The writ petitioner was a minor at that point of time. The date of birth of the writ petitioner is April 11, 1990. Upon attaining the age of an adult, the writ petitioner applied for compassionate appointment on April 15, 2008. The application not being considered, the writ petitioner approached the Tribunal. The Tribunal, by an order dated September 22, 2011 required the Principal Secretary, Land and Land Reforms Department to consider such application. The Principal Secretary by an order dated December 23, 2011 negated the claim for compassionate appointment. The Tribunal was

approached where the claim of compassionate appointment was also negated by the impugned order.

4. Learned Advocate appearing for the writ petitioner submits that, two grounds were advanced for the purpose of negating the claim for compassionate appointment. One ground was the age of the writ petitioner. He relies upon *(2015) 7 Supreme Court Cases 412 (Canara Bank and Another vs. M. Mahesh Kumar)* and submits that, the writ petitioner was entitled to apply for compassionate appointment on attaining the age as an adult, which the writ petitioner did. The claim for compassionate appointment cannot be denied merely on the ground that the writ petitioner was a minor at the relevant point of time. The other ground for denial was the family income of the writ petitioner. Two pensionary benefits received pursuant to the death of the parents of the writ petitioner were taken into consideration to arrive at a finding that the total family income of the writ petitioner was more than 90 per cent of the salary that the writ petitioner is likely to receive on employment. On such ground, the writ petitioner was found to be unsuitable for grant of compassionate appointment. He

relies upon (2005) 10 Supreme Court Cases 289 (*Govind Prakash Verma vs. Life Insurance Corporation of India and Others*) in support of the contention that, death benefits cannot be taken into consideration for the purpose of calculating the financial condition of the family of the deceased employee.

5. Learned Advocate appearing for the State submits that, the writ petitioner is governed by the prevailing rules of employment of the deceased employee. He submits that, by virtue of Notification being Emp-26 dated March 1, 2016 read with Notification No.251-Emp dated December 3, 2013, the writ petitioner was required to apply within a period of five years from the date of death. In the facts of the present case, the application was made beyond such period prescribed. Therefore, on both counts, the writ petitioner was not entitled to receive compassionate appointment.
6. In the facts of the present case, the writ petitioner was born on April 11, 1990. The father of the writ petitioner was an employee with the State. Father of the writ petitioner died-in-harness on April 2, 1992. Compassionate appointment was given to the mother of the writ petitioner. Mother of the writ

petitioner also died-in-harness on November 24, 1998 leaving behind two heirs surviving her. The writ petitioner is the elder of the two children of the deceased employee. The writ petitioner initially applied for compassionate appointment and the same was rejected since the writ petitioner was a minor. Subsequent to the writ petitioner attaining the age of an adult she applied for compassionate appointment on April 15, 2008. No decision was taken on such application. The writ petitioner approached the Tribunal by way of OA No.440 of 2011. Such application was disposed of by an order dated September 22, 2011 requiring the Principal Secretary to decide the claim for compassionate appointment of the writ petitioner.

7. By an order dated December 23, 2011, the Principal Secretary considered the application for compassionate appointment of the writ petitioner and denied the claim on two grounds. One ground was the family income of the writ petitioner and the other was that the writ petitioner was a minor at the relevant point of time. Being aggrieved by the rejection order dated December 23, 2011, the writ petitioner approached the Tribunal by way of O.A. 682 of 2010. By the impugned order

dated October 9, 2013, the Tribunal concurred with the view expressed by the Principal Secretary in his order dated December 23, 2011. The Tribunal did not direct grant of compassionate appointment to the writ petitioner.

8. Compassionate appointment is not a matter of right. Compassionate appointment is guided by the service rules. In the facts of the present case, twin factors are required to be satisfied by an applicant for compassionate appointment and to receive the same. One of the two factors is the quantum of family income and the other is the time-limit prescribed by the two notifications dated December 3, 2013 and March 1, 2016.
9. So far as the monthly income is concerned, the Supreme Court in *Govind Prakash Verma (supra)* is of the view that, consideration of the amount which was being paid as family pension to the family of the deceased and other amounts paid on account of terminal benefits under the rules were not to be taken into consideration for the purpose of deciding the monthly income of the family in question.
10. In the facts of the present case, age of the writ petitioner at the time of death is crucial. Writ petitioner is governed by Emp

No.251 dated December 3, 2013 and No.26-Emp dated March 1, 2016. In terms of those two notifications, the writ petitioner was entitled to apply within five years from the date of death of the family member after showing good cause for not making an application even six months from the date of the death.

11. In the facts of the present case, the application for compassionate appointment was made beyond five years from the date of death. The Supreme Court in *M. Mahesh Kumar (Supra)* dealt with a right of compassionate appointment. The Supreme Court noted the 1993 scheme governing employees of banks which provided that, in the case of death of the employee of the bank and if the family member was a minor, then, such family member would be entitled to apply for compassionate appointment on such member becoming an adult. Such clause in terms of the employment so far as the deceased employee concerned is not present at all in the facts of the present case.
12. In such circumstances, we are of the view that the writ petitioner is not entitled to compassionate appointment as prayed for. We are, therefore, unable to grant any relief to the writ petitioner.

13. **WP.ST 498 of 2013** is dismissed.
14. In view of the dismissal of the main writ petition, nothing survives in the interlocutory applications and as such, IA No.: CAN 1 of 2019 (Old No.: CAN 6633 of 2019), CAN 2 of 2021 are disposed of.

(Debangsu Basak,J.)

15. I Agree.

(Md. Shabbar Rashidi, J.)