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Ct-08

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**MAT 371 of 2022**

with

**IA No. CAN 1 of 2022**

**CAN 2 of 2022**

**Soumyadeep Mondal**

**Vs.**

**State of West Bengal & Ors.**

Mr. Partha Sarathi Bhattacharyya, Sr. Adv  
Md. Kutubuddin

... For the Appellant

Mr. Pinaki Dhole  
Md. Ziaur Rahaman

... For the State

**Re: CAN 1 of 2022(Section 5)**

1. There is a delay of 76 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 1 of 2022 is thus disposed of.

**Re: MAT 371 of 2022**

1. The appeal is arising out of an order dated 13<sup>th</sup> December, 2019 passed in a writ petition filed by the son of the deceased for compassionate appointment.

2. The father of the petitioner was an employee of the West Bengal Legislative Assembly Secretariat. He died in harness on 31<sup>st</sup> May, 2007 leaving behind his widow, minor son and minor daughter.

3. In about 22<sup>nd</sup> November, 2007 the widow made an application for compassionate appointment for her son after he attains majority. The Assistant Secretary to the West Bengal Legislative Assembly Secretariat in response to the said application in a communication dated 22<sup>nd</sup> March, 2008 stated that suitable job in the Secretariat to her minor son would be considered after he attains the age of 'maturity'. Immediately after the son became major, as we read, 'maturity' in the communication dated 22<sup>nd</sup> March, 2008 as 'majority', this time curiously the said application was rejected "after due consideration" without disclosing any reason. Thereafter, a detailed representation was made to the Hon'ble Speaker of the Legislative Assembly by the writ petitioner for consideration of his prayer sympathetically. However, it was not considered.

4. This inaction has resulted in filing the writ petition.

5. In view of the nature of the assurance given earlier to the widow we are of the view that it was incumbent upon the authority concerned to disclose its mind and give a reason for such

rejection as the said decision is open to challenge otherwise it becomes an inscrutable face of a sphinx. Duty to give reason is imperative as absence of it is likely to affect important rights of the parties and if without hearing a party is deprived to know, why the decision had gone against him.

6. Even in respect of administrative orders the giving of reason is one of the fundamentals of good administration per Lord Denning MR in *Breen*, **1971 (1) All ER 1148**. Failure to give reasons amounts to failure of justice. Reasons are the live links between the mind of the decision taker to the controversy in question and the decision on conclusion arrived at. [See ***Union of India (UOI) & Ors. Vs. Jai Prakash Singh & Ors*, (2007) 10 SCC 712: AIR 2007 SC 1363**]

7. Reasons substitute subjectivity by objectivity. The necessity and duty to give reason is very lucidly explained in **Jai Prakash Singh** (*supra*) in which Justice Dr. Avijit Pasayat observed: “The emphasis on recording reason is that if the decision reveals the “inscrutable face of the sphinx”, it can, by silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. This principle has been reiterated recently in **Rajeev**

***Suri vs. Delhi Development Authority and Ors.,***  
**2022 (11) SCC 1** paragraph 727.

8. In absence of reason the basis of rejection is incomprehensible it is settled law that the administrative authority cannot supply any reason during oral submission or in an affidavit to support the decision as observed in the case of ***Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.,*** reported in ***AIR 1978 SC 851*** where it is observed: *“when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.”*

9. The learned Single Judge, however, proceeds on the basis that when the application for compassionate appointment was made the petitioner was minor and not eligible for appointment and allowing any such prayer by the concerned authority would mean that the reservation of vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The State has not filed any affidavit disclosing the reason. It was not open for the court to supply reason as the validity of the order has to be “judged by the reasons so mentioned” [See

***Mohinder Singh Gill***]. The communication made by the Assistant Secretary to the petitioner on 22<sup>nd</sup> March, 2008 would clearly show that the candidature of the petitioner would be considered on attaining majority. Unless there has been any significant financial improvement in the family of the petitioner or any other impediment the assurance given on behalf of the Government should be carried to its logical end. After all the government is expected to act as a model employer. Learned Single Judge has relied upon the decision of the Hon'ble Supreme Court in the matter of ***Sanjay Kumar Vs. State of Bihar & Anr., 2000 (7) SCC 192*** to deny such plea due to long passage of time ignoring the fact that the Government has assured the widow soon after the death of the bread-earner that the case of the writ petitioner would be considered on attaining majority. It is not akin to have a vacancy reserved till the petitioner becomes major. It is a representation which can create a legitimate expectation in the mind of the widow that the prayer for compassionate appointment of her son would be considered on attaining majority. It was possible that due to such assurance the widow did not apply for compassionate appointment. In fact, the widow was eligible for such compassionate appointment to a suitable post soon after the

death of her husband.

**10.** Mr. Pinaki Dhole, learned counsel representing the State, has submitted that since the widow has not applied for compassionate appointment, her case could not be considered. The authority knew that the son was minor when the employee died and his case could be considered only on attaining majority. The authority assured the widow that her prayer for suitable job for her son would be considered on attaining majority. The age of the minor was known to the authority as it was disclosed in the letter dated 22<sup>nd</sup> November, 2007. It was thus known to them when the son would attain majority. After he attains majority it was rejected with a cryptic communication.

**11.** Under such circumstances, we direct the authorities to consider the application for compassionate appointment of the son afresh and if found eligible to offer a suitable post to the son subject to the compliance of all formalities. The entire exercise shall be completed within eight weeks from the date of communication of this order.

**12.** In view of the above, the appeal is allowed. The impugned order and the decision dated 8<sup>th</sup> August, 2018 are set aside.

**13.** In view of disposal of the appeal, nothing remains to be decided in the application for stay

being CAN 2 of 2022 and the same is accordingly disposed of.

**14.** However, there shall be no order as to costs.

**15.** Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**