

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

**FMA No. 595 Of 2024
With
CAN 1 of 2024**

Biswanath Senapati

-Versus-

The State of West Bengal And Ors.

For the Appellant : **Mr. Tapas Kumar Dey,
Mr. Rakesh Roy.
Mr. Ashis Kumar Dutta.**

For the State : **Mr. Susanta Pal,
Ms. Ananya Neogi.**

Delivered on : **12.07.2024**

Prasenjit Biswas, J:-

1. The order dated February 6, 2024 passed by the learned Single Bench of this Court in connection with W.P. No. 30332 of 2015 is assailed in this appeal.

2. The only prayer of this appellant/petitioner is that his retiral benefit should be calculated on and from the date of rejection of her application on 27.04.1995 for getting an appointment under the dying in harness category. Over that issue a writ application was taken out on behalf of the appellant/petitioner and the same was disposed of by passing the impugned order by the learned Single Bench of this Court. The relevant portion of the said impugned order is quoted herein below.

“For the foregoing reasons and discussions it appears to this Court that, on May 10, 2012 after the previous rejection order dated August 2, 1996 was set aside, in exercise of its equitable jurisdiction by this Constitutional Court, a notional benefit can be given to the petitioner with effect from May 11, 2012. Accordingly, respondent No. 4 is directed to give notional employment benefit to the petitioner with effect from May 11, 2012 to which the petitioner shall be entitled to commensurating with his employment and the corresponding pay scale. This notional benefit shall also include arrear, if any, payable to the petitioner accordingly.”

3. The present appellant/petitioner got a compassionate appointment with effect from August 14, 2014 on the death of her mother who died in harness on

April 10, 1995. An application was submitted by the appellant/petitioner on April 27, 1995 for getting the compassionate appointment on the event of death of her mother who was a teacher in the school. The state authority rejected the claim of the petitioner for appointing her on compassionate ground on August 2, 1996 and the same was duly communicated to the petitioner. Being aggrieved with the said rejection of compassionate appointment the present appellant filed a writ application being W.P. No. 6696 (W) of 2002 before this Court. The said writ petition was disposed of by a co-ordinate Bench of this Court by passing an order dated May 10, 2012 whereby the Director of School Education was directed to consider the claim of the petitioner by passing a reasoned order within the specified time frame. No appeal was preferred by the aggrieved party before any Bench of this Court.

4. In pursuance of the direction passed by the co-ordinate Bench in connection with W.P. No. 6696(W) 2002 the Commissioner of School Education passed an order dated July 8, 2013 by which this petitioner was granted compassionate appointment with effect from August 14, 2014. This appellant/petitioner accepted the said appointment and ultimately retired from service on July 31, 2016.

5. Mr. Tapas Kumar Dey, learned Counsel appearing on behalf of the appellant submitted that the date of appointment of the petitioner should be treated as August 2, 1996 instead of August 14, 2014 without any remuneration. It is further assailed by the learned Counsel the claim of the present appellant/petitioner for appointing him on compassionate ground was

rejected by the authority concerned but the said decision of rejection was not communicated to him and ultimately it is communicated to the petitioner on February 8, 2002. Since the order of rejection dated August 2, 1996 was set aside by a coordinate Bench of this Court by passing an order dated May 10, 2012 his period of service should be reckoned from the date of rejection of his application for appointing him on compassionate ground i.e. on August 2, 1996 and as such his retiral benefit should be given with effect from the said date.

6. In fact, the learned Counsel for the appellant submitted that although the petitioner joined service on compassionate appointment with effect from August 14, 2014 but his period of service should be treated on and from August 2, 1996 when his prayer for giving him appointment on compassionate ground was turned down by the authority concerned. Learned Counsel failed to show any law or any decision of any Court of law to that effect that despite he joined in service with effect from August 14, 2014 his period of service should be reckoned from the date of his rejection of application for getting appointment in dying in harness category. Virtually this kind of submission is beyond the provision of law and is uncommon to the legal principles.

7. We are not unmindful that compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death. Compassionate appointments are granted to provide immediate relief to the families of deceased or incapacitated government employees. But the

appointee cannot claim financial benefit from the date of his rejection of his application for getting appointment on compassionate ground. The compassionate appointment process is governed by specific regulations and guidelines formulated to ensure that the objective of providing immediate financial support and the primary goal is to provide immediate financial support to the bereaved family. The benefits would be commenced from the date of the actual appointment and not from the date of application for getting appointment in dying in harness category. The system is designed to offer relief from the point when the appointee begins to fulfill the responsibilities of the role. Legal precedents emphasize that the benefit accrues from the date of appointment, aligning with the nature and purpose of the compassionate appointment scheme. A compassionate appointment does not have the right to claim financial benefits from the date of submission of the application. The schemes of the compassionate appointments are intended to provide immediate relief and thus commence from the date of actual appointment.

8. After rejection of the prayer of the petitioner/appellant for giving him compassionate appointment in the dying in harness category the matter was traveled to this Court and the coordinate Bench of this Court by passing an order dated May 10, 2012 directed the Director of School Education to consider the claim of the petitioner by passing a reasoned order. It would appear from the said order passed by a coordinate Bench of this Court that the Court used the expression 'consideration' which means the appropriate authority is to consider the application of the petitioner for giving him appointment on

compassionate ground which entails a structured process where the authority is legally obligated or instructed to thoroughly examine and address the concerns raised by the petitioner. So, the expression 'consideration' denotes that the authority is to consider the claim of the petitioner and it signifies a formal instruction or mandate for the authority to evaluate, examine and adjudicate upon the issue raised by the petitioner. This process is typically guided by the legal principles and procedural norms to ensure fairness, transparency and justice. So, the consideration of the authority might be affirmative or be negative. There is no such direction given affirmatively upon the authority to give the petitioner an appointment on compassionate ground by passing the order by this Court. So, the authority applied its discretion and after scrutinizing all the materials submitted by this appellant/petitioner gave him an appointment with effect from August 14, 2014. The claim of the petitioner/appellant is to reckon his period of service on and from the date of rejection of his application with a prayer for giving him appointment on compassionate ground by the authority concerned i.e. from 27.04.1995 which is uncommon to law. The petitioner was granted compassionate appointment with effect from August 14, 2014 and he retired on superannuation on July 13, 2016. The learned Single Bench of this Court in exercising of his equitable jurisdiction being a Constitutional Court extended notional benefit to the petitioner with effect from May 11, 2012 as the order of rejection of giving this appellant an appointment on compassionate ground was set aside by the

coordinate bench of this Court. We are not inclined to interfere with the said direction passed by the learned Single Bench of this Court.

9. Accordingly, we find that there is no merit in the present appeal and it is liable to be rejected.

10. The instant appeal being no. FMA No. 595 Of 2024 is hereby dismissed but without any order as to costs.

11. The direction passed by the learned Single Bench of this Court in the impugned order upon the respondent no. 4 to complete the entire exercise is hereby extended for a further period of four months from the date of this order.

12. In view of the disposal of appeal CAN 1 of 2024 is also disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)