

06.05.2024
Item No. 06.
Court No.6.
AB

**M.A.T. 510 of 2024
With
CAN 1 of 2024**

**Suman Baulia
Vs
The State of West Bengal & Others**

Mr. Abhrotosh Majumdar, Sr. Adv,
Mr. Avra Majumdar,
Mr. Sayan Sinha,
Mr. Kausheyo Roy,
Ms. Alisha Dasfor the Appellant.

Mr. Lalit Mohan Mahata,
Mr. Ziaul Haquefor the State.

Affidavit of service filed in Court today, be kept
with the records.

A judgment and order dated February 19, 2024,
whereby the appellant's writ petition, being WPA 1488
of 2024, was dismissed by a learned Judge of this
Court, is the subject matter of challenge in this appeal
at the instance of the writ petitioner.

The paternal grandfather of the appellant /writ
petitioner, namely, Nirapada Baulia, was an employee
of Dulduli Gram Panchayet, North 24 Parganas. He
died in harness on March 19, 2007. The appellant's
father, Jayanta Baulia, applied for appointment on
compassionate ground, on May 26, 2007. He again
submitted an application as per the direction of the
respondent Authorities. When Jayanta's application
was being processed, he expired on March 5, 2016.
The appellant was a minor at that time.

The appellant attained majority in the year 2019 and applied on August 26, 2022, for appointment on compassionate ground. Such application not having been processed, the appellant approached the learned Single Judge for a direction on the concerned Authorities to consider the appellant's application.

The learned Judge referred to the law governing compassionate appointment and dismissed the writ petition with the following observations:

“The law relating to appointment on compassionate ground has been settled by various decisions delivered by this Court and also by the Hon'ble Supreme Court.

The very purpose of providing appointment on compassionate ground is to tide over the immediate financial crisis faced by the family on the death of the bread earner.

In the instant case, the employee expired in the year 2007. Thereafter application was made by the son of the deceased employee. While the same was being processed, the son of the employee also expired in 2016. The petitioner was not eligible for appointment on the day his father died. At such a belated point of time, compassion cannot be shown to the petitioner. There is no provision for reservation of vacancy for permitting employment on compassionate ground till the heir of the deceased attains majority. The very idea for providing compassionate appointment is to ensure that the family of the deceased gets immediate relief. Appointment on compassionate ground cannot be claimed as a matter of right.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Mr. Majumdar, learned Senior Counsel representing the appellant/writ petitioner candidly says that ordinarily, the Court may not interfere in the

case of this kind. However, there is one aspect of the matter which the learned Judge failed to consider. The Deputy Secretary to the Government of West Bengal, Department of Panchayet & Rural Development issued a Memo dated July 27, 2022, approving the appointment of Jayanta Baulia i.e. the appellant's father in the post of a Group-D vacancy under appropriate exempted category. Mr. Majumdar says that since Jayanta passed away in 2016, the benefit of the aforesaid Memo could not be reaped by him. The appellant's case should be considered by the concerned Authorities in the light of the fact that approval was granted to his father, although too late.

We find that a representation was made by the appellant, addressed to various Officers in the Administration including the Commissioner, Panchayet & Rural Development Department, Government of West Bengal. We are of the view that nobody will be prejudiced if the Commissioner considers and disposes of the representation of the appellant in the light of the fact that approval for compassionate appointment of the appellant's father was granted by the Competent Authority although highly belatedly, after the death of the appellant's father.

Accordingly, we direct the Commissioner, Department of Panchayet & Rural Development, Government of West Bengal, being the respondent

no.8 herein, to dispose of the representation of the appellant, which was received by the Panchayet & Rural Development Department, Government of West Bengal, on December 20, 2022 (a copy whereof is at page 102 of the stay petition), by a reasoned order, in accordance with law, within a period of 12 weeks from the date of communication of this order to the respondent no.8, after granting an opportunity of hearing to the appellant or his authorized representative. The decision so taken shall be communicated to the appellant within a week from the date of the decision.

Ordinarily, we would not have interfered with the order under appeal as apparently it does not suffer from any infirmity. The law governing the subject has been succinctly and correctly summarized by the learned Judge. However, only in view of the fact that approval was granted in favour of the appellant's father, albeit after the death of the appellant's father, we are directing the Competent Authority to consider the case of the appellant. The respondent No.8 shall take an independent decision in the matter without being influenced by any observation in this order.

There are other prayers in the writ petition, which we have not considered. We clarify this so that if such prayers are renewed in future before the competent forum, the question of constructive res judicata would not arise.

The appeal and the connected application are disposed of.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)