

19.08.2024
rpan/02-3

WPST 32 of 2024
Salma Khatun
– *Versus* –
The State of West Bengal & Others
with
WPST 51 of 2024
Rokeya Ruksana Bibi
– *Versus* –
The State of West Bengal & Others

Mr. Mukteswar Maity,
Ms. Nupur Chaudhuri
... for the Petitioner
in WPST 32 of 2024
&
for the Private Respondent no.6
in WPST 51 of 2024.

Mr. Sahid uddin Ahmed [through V.C.]
... for the Petitioner
in WPST 51 of 2024
&
for the Private Respondent no.6
in WPST 32 of 2024.

Mr. Tapan Kumar Mukherjee,
Mr. Arindam Ghosh
... for the State/Respondents.
[in both the matters]

For thematic unity, both writ petitions are heard together.

In the case at hand, two daughters of a deceased employee are entangled in a legal battle in quest of a compassionate appointment.

One Rafiuddin Ahmed, while working as an Upper Division Clerk in the Block Land & Land Reforms Office, Namkhana, District South 24-Parganas, died in harness on 4th July 2012. He left behind his widow, one son named Motiuddin Ahmed, and two daughters named Rokeya Ruksana Bibi (in short, Rokeya) and Salma Khatun (hereinafter referred to as

Salma). Before his demise, the deceased employee married off Rokeya, who is living with her husband in her matrimonial home.

Initially, Motiuddin submitted a representation seeking his compassionate appointment on 23.11.2012, but he went missing on 06.07.2013. Despite best efforts, his whereabouts could not be traced.

Given this situation, Salma, although she was a minor, applied for employment assistance on 20.04.2015, while Rokeya also submitted an application for her compassionate appointment on 14.12.2015. Despite receiving these applications, the respondents kept the issue of compassionate appointment in suspended animation, which prompted Rokeya to prefer an original application (in short, OA), being OA 37 of 2017. Similarly, Salma also instituted an original application, being OA 969 of 2017.

Records reveal that OA No. 37 of 2017 was adjourned sine die because the issue of whether a married daughter is entitled to compassionate appointment was pending before the Hon'ble Supreme Court, whereas OA No. 969 of 2017 was dismissed by an order dated 28.01.2019. Aggrieved by the order dated 28.01.2019, Salma filed a writ petition, being W.P.S.T. 74 of 2019, which was disposed of by directing the District Land & Land Reforms Officer to consider her application for compassionate appointment. Pursuant thereto, the District Land & Land Reforms Officer, by his order dated 25.01.2021, rejected Salma's claim for compassionate appointment on the grounds that she did not submit her application within the stipulated period of six months, as outlined in notification no. 30 (Emp) dated 2.4.2008.

Salma preferred OA 673 of 2021 to challenge the order dated 25.01.2021. By the time both original applications, OA 37 of 2017 and OA 673 of 2021, were heard together and disposed of on 9.3.2022 by directing the Secretary, Department of Land and Land Reforms and Refugee Relief and Rehabilitation to consider the applications of both Rokeya and Salma within a specific timeframe. In compliance with this order, the concerned Special Secretary issued an order on 8.7.2022 rejecting the claims of both daughters.

Both Salma and Rokeya challenged the order dated 8.7.2022 by filing two separate original applications being OA 457 of 2023 and OA 506 of 2022, which were dismissed by a common order dated 17.01.2024. The order dated 17.01.2024 has been questioned by both of them by preferring these two writ petitions.

Mr. Maity, learned advocate representing Salma, argues that the application for compassionate appointment was submitted by Motiuddin within the period prescribed in the memo dated 2.4.2008. However, since Motiuddin went missing, Salma was compelled to submit her own application for compassionate appointment to support the family of the deceased. Therefore, Salma's application should not be rejected based on the memo dated 2.4.2008. He further argues that Salma, who is unmarried and living with her mother, deserves employment assistance to help the family overcome their financial crisis. Mr. Maity also asserts that these issues were raised, but the learned Tribunal overlooked them and did not address them in its findings. This infirmity in the order

challenged in this writ petition, according to him, warrants interference.

Mr. Ahmed, learned advocate representing Rokeya, argues that although she is married and living with her husband in her matrimonial home, her husband is merely a daily-wager, and her entire family was dependent on the earnings of the deceased. He asserts that since Salma was a minor at the time of the deceased employee's demise and her application cannot be entertained due to non-fulfillment of the conditions outlined in the notification dated 2.4.2008, Rokeya is the appropriate person to be appointed on compassionate grounds.

Mr. Mukherjee, learned Additional Government Pleader representing the State Respondents, disputes the contentions of both Mr. Maity and Mr. Ahmed. He argues that Rokeya is not a member of the deceased's family and has not produced any material showing that her family depended on the deceased's earnings. He argues that Salma was a minor at the time of the deceased employee's death and at the time of presentation of her first application for compassionate appointment. Therefore, her claim also cannot be considered due to the specific bar in the notification dated 2.4.2008. He further argues that, in this case, the family has survived for 12 years without any employment assistance, which itself indicates that the family is not in such financial distress that a compassionate appointment should be granted.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

Indisputably, the issue of whether a married daughter is entitled to compassionate appointment following the death of her

father or mother is no longer res integra. A married daughter can claim compassionate appointment if she can substantiate, with convincing evidence that she or her family depended on the deceased's earnings. Admittedly, except for oral assertions, Rokeya has not provided any material to demonstrate such dependency. On the other hand, Salma was a minor at the time of the deceased employee's death and could not submit her application within the timeframe stipulated in the notification dated 02.04.2008.

It is axiomatic that when a scheme sets a fixed time limit for the submission of applications for compassionate appointment, the Court cannot extend this limit. The time specified in the scheme is rigid, and any application submitted after the applicant has attained majority is not considered lawful, nor can it be regarded as part of a continuing process.

Needless to observe that the object and/or rationale behind the benevolent scheme of compassionate appointment was only to give immediate succour to the family of the deceased employee which has fallen into financial distress due to sudden death of its sole bread winner. Such appointment should be provided immediately to enable the family to tide over the financial crisis if it is found that the family will not be able to get over the crisis without employment assistance. Thus, immediacy of the need forms the basis for consideration of the case of compassionate appointment.

In the present case, the deceased employee died in 2012. Nearly a decade has passed since then, and the fact remains that the family has survived without any employment assistance

during this period. Therefore, the immediacy of the need has been lost.

In this context, we are of the opinion that the concerned respondent correctly denied the claims of both daughters of the deceased employee for compassionate appointment. The learned Tribunal, after considering all relevant materials, arrived at specific findings on the factual aspects. We do not find any infirmity, substantial miscarriage of justice, or patent error, let alone any jurisdictional error in the order challenged in the writ petitioner, that would warrant interference with the same.

Accordingly, both the writ petitions, being WPST 32 of 2024 and WPST 51 of 2024 are dismissed, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)