

05.10.2024
(Sl.No.1)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

(Via Video Conference)

WPA 8407 of 2023

Sri. Sachin Lall

Vs

Union of India and others

Mr. Nayan Rakshit

... for the petitioner

Mr. Indrajit Dasgupta

...for the Union of India

Mr. Arup Nath Bhattacharyya

Mr. Hemanta Kumar Das

Ms. Pousali Das

... for respondent nos. 5 & 6

The petitioner assails a communication dated 18 February 2014 rejecting the application filed by the mother of the petitioner for compassionate appointment.

Briefly, the petitioner's mother had upon her husband's death, applied for compassionate appointment for her son on 11 January 2005. The application for compassionate appointment was accepted by the respondent authorities. By a communication dated 17 October 2007, the respondent authorities sought for additional details of the pension amount and other allowances being received by the petitioner's mother. In response to the above query, the petitioner's mother furnished such information. Subsequently, the impugned

communication came to be passed rejecting the prayer for compassionate appointment inter-alia on the ground that the respondent company had introduced a scheme dated 10 August 2009 for payment of lump sum compensation in lieu of compassionate appointment.

It is alleged that during the pendency of the application for compassionate appointment submitted by the petitioner's mother between the period 2004 to 2008, five candidates had been appointed on the ground of compassionate appointment. This fact is also substantiated in a reply dated 6 March 2023 to an application under Right to Information Act 2005 issued by the authorities. The petitioner relies on the decision in *Union of India & Others. Vs. Smt. Asha Mishra & Another* dated 7 May 2010 passed by the Hon'ble High Court at Allahabad in Civil MISC Writ Petition 13102 of 2010 to contend the rejection of the claim for compassionate appointment is untenable on the ground of change of policy. The petitioner also alleges that the application for the compassionate appointment was being diligently followed up with the respondent authorities and could not have been rejected on the ground of a subsequent administrative order. In this connection, reliance is also placed on the decision in *Canara Bank & Anr vs. M. Mahesh Kumar, 2015 (II) CLR 563*.

On behalf of the respondent authorities it is contended that the writ petition is barred by limitation and not maintainable. On merits, it is submitted that upon scrutiny of the application for compassionate appointment it was found that the family of the petitioner ranked 18(A) amongst other

candidates for compassionate appointment. As such, in view of the prevalent policy, the petitioner's mother had been offered lump sum compensation. In any event, the prayer for compassionate appointment cannot be considered in view of the inordinate and unexplained delay. Moreover, despite the authorities having repeatedly sought for details for submission of necessary details to make lump sum payment, the petitioner's mother failed to furnish such information. In support of their contention, the respondent relies on the decision in *Noharlal Verma v District Cooperative Central Bank Limited, Jagdalpur, 2008(14) SCC 445*.

The father of the petitioner died on 13 February 2004. An application for compassionate appointment was made on 11 January 2005. The relevant documents were ultimately submitted by the petitioner's mother on 5 November 2007. On 15 September 2008, a Memorandum of Settlement was executed settling the terms and conditions for permanent absorption of the employees of Mint, Presses and Paper Mills who were on deemed deputation with the authority. Subsequently, a policy was adopted by the respondent authorities to provide lump sum compensation in lieu of compassionate appointment. By the impugned communication dated 18 February 2014, the application by the petitioner's mother for compassionate appointment was rejected by the respondent authorities and lump sum compensation in lieu thereof was offered to the petitioner's mother. Thereafter, by a communication dated 10 October 2017, the petitioner's mother attempted to renew the prayer for compassionate appointment.

On 30 March 2021, the petitioner's mother requested for lump sum compensation in lieu of compassionate appointment. In reply, the respondent authorities forwarded the necessary form and documents to be filled up by the petitioner's mother. Despite repeated reminders, the petitioner's mother never submitted the necessary information to the authorities. On 27 November 2022, the prayer for compassionate appointment was sought to be revived by the petitioner and thereafter this petition filed in 2023.

It is a fundamental that any appointment on compassionate grounds is to meet the sudden crisis occurring in a family on account of death of the sole bread earner while in service. The general rule in public service being that any appointment has to be on the basis of an open invitation and comparative merit having regard to Articles 14 and 16 of the Constitution of India. To this extent, appointments on compassionate grounds are an exception to the general rule. The rationale underlying compassionate appointment being that the same is granted in the interests of justice to meet certain contingencies. Compassionate appointment can neither be claimed nor be granted unless the Rules governing service permits such appointments. Compassionate appointment cannot also be given as matter of right but only to the most deserving family to tide over immediate crisis. A Court cannot stretch the provisions of compassionate appointment by liberal principles on humanitarian grounds. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of the sole bread earner.

(*Canara Bank & Anr vs. M. Mahesh Kumar*, (2015) 7 SCC 412, *Umesh Kumar Nagpal vs. State of Haryana and Others*, (1994) 4 SCC 138).

An application for compassionate appointment must also be made and pursued with utmost diligence. The impugned communication rejecting the prayer for compassionate appointment is dated 18 February 2014. This writ petition has been filed in 2023. The father of the petitioner died on 13 February 2004. By a communication dated 30 March 2021, the petitioner's mother, nearly 7 years after issuance of the impugned communication had requested for lump sum compensation in lieu of the prayer for compassionate appointment and thereafter chose not to pursue this option.

In this background, the filing of the writ petition after approximately a decade disentitles the petitioner for appointment on compassionate grounds. The facts in support of the prayer for compassionate appointment cannot be considered in view of the undue, inordinate and unexplained delay in the filing of this petition. If the petitioner and his mother could survive for more than two decades since the death of the petitioner's father and for nearly a decade since the issuance of the impugned communication, any request for compassionate appointment after such a long time is contradictory and irreconcilable to the object behind compassionate appointment. (*State of U.P. and Others vs. Paras Nath*, (1998) 2 SCC 412, *Dhalla Ram vs. Union of India and others*, (1997) 11 SCC 201.)

Even on merits, upon consideration by the respondent authorities, the Screening Committee of the responding authority had at a meeting held on 28 February 2008 and found that the petitioner's family had secured 18(A) rank out of 44 candidates and hence was not within the zone of consideration for compassionate appointment. This is not justiciable.

In view of the above, there is no merit in the writ petition. WPA 4807 of 2023 is dismissed by granting liberty to the petitioner to file an application in accordance with law for lump sum payment in terms of the letters dated 8 November 2021 and 9 February 2022 issued by the respondent authorities. If such an application and the necessary information pursuant thereto is received, the respondent authorities are directed to make payment of the above amount expeditiously and preferably within a period of 12 (twelve) weeks from the date of receipt of the above information.

(Ravi Krishan Kapur, J.)