

27.06.2024.
Court No.13
Item No. 134
ap

W.P.A. No. 6689 of 2016
Dipak Ghosh
Versus
The State of West Bengal & Ors.

Mr. Golam Mastafa,
Mr. Tarasankar Samanta.

...For the petitioner.

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee.

...For the State.

1. The petitioner challenges an order dated 17th November, 2015 passed by the Principal Secretary, School Education Department, Government of West Bengal.
2. By the impugned order, the petitioner's application for consideration of 47 days in shortfall of 18 years in age on the date of expiry of two years, on the claim for compassionate employment, was not entertained.
3. The facts of the case are that the petitioner's father died on 15th February, 2009 while in service/died-in-harness. He applied for compassionate employment on 4th September, 2009. He had qualified in the Secondary Education of the State. He was, however, seriously underage.
4. In terms of the Rule 14 of the West Bengal Primary School Teachers Recruitment Rules, 2001, an application for compassionate employment is required to be made within two years of the death of the teacher

concerned. The application of the petitioner could not be entertained as the petitioner was admittedly underage and also not qualified as on the date of the application.

5. The petitioner thereafter within two years from the date of his father's death, acquired Higher Secondary Qualification which is a basic qualification for appointment of Assistant Primary Teachers in the State. The petitioner, however, did not possess a valid Training Qualification like the Teachers Eligibility Test Certificate or a D. El. Ed. Certificate.

6. The writ petitioner attained the age of 18 years, 47 days after the expiry of two years after his father's death. His application for compassionate employment was now declined on the ground that the eligibility of the petitioner arose two years beyond the death of his father and hence, his application could not be considered.

7. The writ petitioner filed W.P. No. 10090 (W) of 2011 that was disposed of by an order dated 9th November, 2011 by a Single Bench of this Court. The Bench was of the view that given the object and purpose of the compassionate employment i.e. to enable a family to tide over financial crises, the State should consider amendment of the Rules of 2001 (supra) to provide relaxation in age in deserving cases as regards the age at the time of appointment.

8. The respondents heard the petitioner and adjourned the matter until receipt of appropriate response dated 28th March, 2012 from the Finance Department of the State.

9. For inaction on the part of the respondents in disposing of his representation, the writ petitioner filed W.P. No. 18486 (W) of 2015 that was disposed of by an order dated 20th August, 2015 by another Co-ordinate Bench of this Court.

10. Reference was made by the said Bench in its order dated 20th August, 2015 to an order of a larger Bench of this Court in the case of **Piali Saha – Vs. – State of West Bengal & Ors.** reported in **2013(1) Calcutta High Court Notes 18**. In the said decision, the larger Bench had held that the period of two years stipulated in Rules for compassionate employment cannot be extended by the State.

11. However, having regard to the observations of the earlier Bench dated 9th November, 2011 (supra), the Secretary, School Education Department, Government of West Bengal was directed to consider and dispose of the petitioner's representation within the stipulated period. The impugned order was passed thereafter.

12. The object and purpose of compassionate employment need not be stated separately as has already been discussed in the order dated 9th November, 2021 (supra). As on date more than 15

years have elapsed since the petitioner's father's death.

13. As to whether the petitioner can still maintain a claim for compassionate employment and whether any inaction on the part of the State can be alleged in these facts must be considered in the light of a recent decision of the Hon'ble Supreme Court of India in the case of ***State of West Bengal – Vs. – Debabrata Tiwari*** reported in **2023 Live Law SC 175** particularly paragraph 7 thereof.

14. The Hon'ble Supreme Court was pleased to set out at paragraph 7 the basic principles governing compassionate employment and the consequences of delay on the part of both the State as well as the applicant in disposing of and/or pursuing, as the case may be, an application for compassionate employment.

15. What would be relevant to the facts of this case in paragraph 7(3) which is set out below:

“7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated.

Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”

16. It was held by the Supreme Court that the delay on the part of the applicant to approach the authorities for compassionate employment and/or the delay on the part of the respondents to consider or deal with such application would be equally fatal and defeat the object of compassionate employment.

17. The Hon’ble Supreme Court has stressed on the immediacy and/or its absence to be the basic consideration while dealing with the cases of compassionate employment.

18. Applying the principles laid down by the in the ***Debabrata Tiwari case (supra)*** this Court notes that after a passage of merely 15 years as on date, it cannot be said at any stretch of imagination that there is any immediate need for giving compassionate employment to the petitioner given its purpose i.e. to prevent the family from falling into penury and/or starvation as a consequence of the loss of the sole bread earner.

19. The delay on the part of the State in passing the impugned order cannot come to the aid of the petitioner. The State had already rejected the petitioner’s request for consideration of his case since he was under aged on expiry of two years. By that time he was 18 years, his application was beyond time.

There are no provisions for keeping the petitioner in any live register under the Rules of 2001. Rule 14 of Rules of 2001 (supra) has duly been applied by the State Authorities and that too within the time.

20. The consideration effected in the impugned order dated 17th November, 2015 was whether or not the State was going to relax the two-year Rule in appropriate cases. The Finance Department and the Education Department of the State have expressed their inability to do so. These are the policy matters within the exclusive domain of the State.

21. The impugned order, therefore, of academic relevance to the petitioner's claim cannot even otherwise be faulted. The immediacy and urgency for employment and source of income of the family of the deceased stood extinguished on the expiry of two years after the death of the petitioner's father.

22. For the reasons stated above, no order can be passed in the instant writ petition.

23. W.P.A. No. 6689 of 2016 must fail and is hereby dismissed.

24. There will be no order as to costs.

25. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

