

07.08.2024

rpan/64

WPST 104 of 2024

Amit Jha

– Versus –

The State of West Bengal & Others

Mr. Sankha Ghosh,
Mr. Biswarup Nandy
... for the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Tuli Sinha
... for the State/Respondents.

The present writ petition has been preferred challenging an order dated 4th April, 2024 passed by the learned Tribunal in the original application, being OA 777 of 2022. By the said order the learned Tribunal refused to interfere with the order dated 22nd August, 2022 in respect of compassionate appointment of the petitioner.

Mr. Nandy, learned advocate appearing for the petitioner submits that the petitioner's father, who was the sole bread earner of the family, died in harness on 20th July, 2010. Immediately thereafter the petitioner's mother submitted a representation to the respondent no.6 on 7th February, 2011. Considering the said application, the concerned authorities set up a 3-man committee and the petitioner's name was incorporated at serial no.314 in the single list of candidates. Such fact was communicated by the Additional Chief Engineer (Roads) by a memo dated 5th June, 2013. Thereafter, the respondent no.3 passed an order on

16th October, 2015 observing *inter alia* that the petitioner was a minor at the time of his father's death and as per the Labour Department Circulars the employment of persons, who are under-aged at the time of death of the deceased, cannot be considered and accordingly, the petitioner's prayer for compassionate appointment was rejected. Subsequent thereto, by a representation dated 8th March, 2021 the petitioner prayed for reconsideration of his prayer upon relaxation invoking Rule 3A of the West Bengal Service Rules, Part – I. As the same was not considered, the petitioner was constrained to approach the learned Tribunal and on the basis of an order dated 3rd March, 2012 his claim was relegated for consideration to the competent authority. Pursuant thereto, an order was passed by the Secretary to the Government of West Bengal, Public Works Department on 22nd August, 2022. Aggrieved thereby, the petitioner again approached the learned Tribunal by filing OA 777 of 2022 and the order passed in the same has been impugned in the present writ petition.

Mr. Nandy argues that by the time the petitioner attained majority in the year 2012 the Labour Department, Employment Cell issued a circular dated 1st March, 2016 wherein it has *inter alia* been stated that all undisposed cases where the death/incapacitation has occurred prior to issue of

this order but after the issue of order no.30-Emp. Dated 2nd April, 2008 could be looked into afresh, if the incumbent complies with the revised instructions. By the said memo the time line towards submission of representation was also modified and it was directed *inter alia* that in case the deceased family is in need of financial assistance and such appointment is absolutely necessary to support the family, application for employment may be submitted within two years from the date of retirement. In view thereof, the learned Tribunal ought to have appreciated that as the petitioner attained majority within the time frame prescribed, his claim could not have been negated.

According to Mr. Nandy, the revised provisions need to be given a purposive interpretation in the backdrop of the object of scheme towards grant of compassionate appointment. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents denies and disputes the contention of Mr. Nandy and submits that it is not a case that on the date of death of the deceased no member of the family was entitled to apply for compassionate appointment. The petitioner's mother did not submit such application for compassionate appointment and she applied for

compassionate appointment of the petitioner, who was admittedly a minor on the date of death of the deceased. The respondents have considered the petitioner's case on the basis of the policy prevalent on the date of death of the deceased and mere submission of a prayer for reconsideration cannot reinvigorate a claim which has already been finalised and decided. The petitioner did not even challenge the order dated 16st March, 2016. Thus, the petitioner's case was not an undisposed of case as referred to in the memo dated 1st March, 2106. In the said conspectus, the learned Tribunal did not interfere with the order passed on 22nd August, 2022 and refused to exercise discretion in favour of the petitioner.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The fact that the petitioner was a minor at the time of death of his father is not disputed. The prevalent scheme did not provide that as and when such minor becomes a major, he can be appointed without any time consciousness or limit.

The object of compassionate appointment is to provide succour to the dependent members of the deceased and to mitigate the financial hardships faced by them for the untimely death of their bread earner. It is also well-settled that appointment of

compassionate appointment cannot be claimed as a matter of right. The petitioner admittedly was not competent to be considered for compassionate appointment on the date of death of his father since he was a minor. In the said conspectus, the learned Tribunal refused to exercise discretion in favour of the petitioner and we do not find any infirmity in the said order warranting interference in the present writ petition.

Accordingly, the writ petition is dismissed.

There shall, however, be no order as to costs.

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

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