

19.11.2024
Item No.04
Court No.11
Avijit Mitra

WP.ST 140 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Shibu Basfore

- versus -

State of West Bengal & Ors.

Mr. Debabrata Ray,
Ms. Sarbani Mukhopadhyay,
Mr. Souvik Mondal

...for the petitioner

Mr. Arjun Ray Mukherjee,
Mr. Kaushik Chowdhury

...for the State respondents

1. The present writ petition has been preferred challenging an order dated 29th April, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 781 of 2023. By the said order the learned Tribunal refused to interfere with the order dated 28th August, 2023 passed by the respondent no.3 rejecting the petitioner's prayer for compassionate appointment citing the provisions of Clause 10(aa) introduced in the Scheme for compassionate appointment (hereinafter referred to as the said Scheme) promulgated *vide* memo dated 1st March, 2016 and observing *inter alia* that the petitioner, namely, Shibu Basfore (in short, Shibu) applied in the prescribed proforma 8 years after the death of his father, namely, Naresh Basfore (in short, Naresh).

2. Mr. Ray, learned advocate appearing for Shibu submits that the learned Tribunal refused Shibu's prayer in a mechanical manner without considering the sequence of facts. The OA was disposed of picking up and highlighting a single line in isolation from the order dated 28th August, 2023 passed by the respondent no.3.

3. He would urge that Shibu's claim was undisposed of till the promulgation of the said Scheme and as such the respondents were under an obligation to consider the same under the said Scheme as subsequently amended *vide* memo dated 01.03.2016. Shibu's claim clearly comes within the purview of Clause 10(aa) as none in the family was eligible to be considered till Shibu attained his majority on 12th October, 2012 since Shibu's mother expired prior to her husband.

4. He argues that the learned Tribunal ought to have appreciated that Shibu did apply in the prescribed proforma on 9th March, 2010 and in plain paper on 20th May, 2012. The same were considered and ultimately recommended and forwarded to the respondent no.3 by the respondent no.4 *vide* memo dated 19th February, 2018. Accepting Shibu's application in plain paper and considering the recommendation of respondent no.4 for sympathetic consideration, relevant documents were called for by the respondent no.3 *vide* memo dated 20th March, 2023. Having considered and deliberated upon the claim of accepting Shibu's application in a plain

paper, the respondent no.3 could not have mechanically refused his prayer.

5. He submits that from 19th February, 2018 till the month of March, 2023 Shibu received no response from the authorities though in the meantime he visited the office of the respondent no.4 on several occasions to know the outcome of his application save and except for the period from March, 2020 till August, 2021 when he could not keep regular contact due to the Covid-19 pandemic and the death of his younger brother on 6th August, 2021.

6. *Per contra*, Mr. Ray, learned advocate assisted by Mr. Chowdhury, learned advocate appearing for the State respondents submits that a claim for compassionate employment is required to be considered strictly in terms of the Scheme. It is not a vested right and cannot be claimed as a matter of right. The Scheme being an exception, has to be strictly construed and confined only to the purpose it seeks to achieve. No direction for compassionate employment in contravention of the provisions of the Scheme can be issued.

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

8. The fact that there was no major person in the family to apply for compassionate appointment in place

and stead of Naresh till Shibu attained majority stands admitted by the respondents, as would be explicit from the averments made in paragraph 10 of the affidavit-in-opposition. Shibu did apply for compassionate appointment in prescribed proforma on 9th March, 2010 and in plain paper on 20th May, 2012 i.e., eight days after he attained majority but the same were kept in abeyance for about five years and ultimately recommended and forwarded to the respondent no.3 by the respondent no.4 *vide* memo dated 19th February, 2018 after supplying and asking Shibu to fill up a prescribed format on 16th November, 2017. Such declaration in a prescribed format was also sought for by the respondent no.3, as would be explicit from the memo dated 20th March, 2023. Accepting Shibu's application and considering the recommendation of the respondent no.4 relevant documents were called for. Having considered and deliberated upon the claim accepting Shibu's application, the respondent no.3 was under an obligation as per the provisions of clause 10(aa) to ascertain Shibu's financial status after conducting an enquiry.

9. A comparison of the contents of the application in prescribed form dated 09.03.2010 read with the contents of the plain paper application dated 20.05.2012 and the proforma application dated 16.11.2017 with the contents of the prescribed form annexed to the said Scheme,

would reveal that all the information as sought for were furnished.

10. A model employer must conduct itself with high probity and candour and ensure that the dependants of the deceased employee do not succumb to the procedural rigmarole particularly when the claim pertains to a beneficial scheme towards compassionate appointment. There was no trick or device resorted to by Shibu and he ought not to have been penalised on the purported ground that the prescribed proforma was submitted belatedly. Justice cannot be forsaken on alter of technicalities.

11. For the reasons discussed above, the impugned order dated 28th August, 2023 passed by the respondent no.3 as well as the order dated 29th April, 2024 passed by the learned Tribunal in the OA 781 of 2023 are set aside.

12. The respondents are directed to consider Shibu's claim for compassionate appointment afresh on the basis of the materials on record upon conducting necessary enquiry, as provided under Clause 10 (aa) of the said Scheme and taking into consideration the recommendation made by the respondent no.4 and to communicate the final decision to Shibu.

13. The entire exercise shall be completed by the respondents within a period of eight weeks from the date of communication of this order.

14. With the above observations and directions, the writ petition is disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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