

30.07.2024
Item No.19
Court No.11
Avijit Mitra

WP.ST 154 of 2024

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

And

Payel Chattopadhyay
- Versus -
State of West Bengal & ors.

Mr. Sourav Mitra,
Mr. D.N. Mukherjee,
Mr. Pradip Kr. Ghosh
....for the petitioner
Mr. Amitesh Banerjee, Sr. Standing Counsel,
Ms. Ipsita Banerjee
...for the State respondents

Affidavit-of-service filed by the petitioner be kept on record.

The present writ petition has been preferred challenging an order dated 23rd June, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA 70 of 2023.

Mr. Mitra, learned advocate appearing for the petitioner submits that the petitioner's father died-in-harness on 14th July, 2013. Though the petitioner was married, she was residing with the family of the deceased and was solely dependent upon the deceased's income. Due to the loss of the sole bread earner, the petitioner submitted an application for compassionate appointment on 30th

September, 2013 but the same was rejected by an order dated 31st January, 2014 placing reliance upon the Labour Department notification dated 4th January, 2011. Subsequent thereto, the Full Bench of this Hon'ble Court delivered a judgment in the case of *State of West Bengal Vs. Purnima Das* reported in 2017 (4) CHN (CAL) 362 wherein it was directed *inter alia* that if a married daughter is entirely dependent on the earnings of her father then she may be considered for compassionate appointment. The Special Leave Petition preferred against the said judgment was also dismissed and subsequent thereto, the petitioner again submitted a representation to the competent authority for consideration of her claim towards compassionate appointment on 31st January, 2018. As no decision was taken by the competent authority, the petitioner was constrained to approach the learned Tribunal but the OA was dismissed on the ground of limitation.

Mr. Mitra argues that there was no intention or deliberate delay on the part of the petitioner to approach the learned Tribunal since the Full Bench decision was delivered on 13th September, 2017 and the Special Leave Petition preferred against the same was dismissed. It is only thereafter the petitioner could approach the competent authority on 31st January, 2018. In the said conspectus, the petitioner's claim ought to have been considered on merits by the learned Tribunal.

Such contention of Mr. Mitra has, however, been opposed by Mr. Banerjee, learned Senior Standing Counsel appearing for the State respondents and he submits that the petitioner was married in the year 2002 and the death occurred in the year 2017 and there is no material on record to reveal that the petitioner being the married daughter was dependent upon the earnings of the deceased.

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

Indisputably, there was no scope towards consideration of the prayer of a married daughter towards compassionate appointment prior to the judgment delivered in the case of *Purnima Das (supra)*. Records do not reveal that there was any intentional delay on the part of the petitioner to approach the learned Tribunal and in such circumstances, the learned Tribunal, in our considered view, ought not to have dismissed the petitioner's application on the ground of limitation.

Accordingly, the order dated 23rd June, 2023 passed by the learned Tribunal in OA 70 of 2023 is set aside.

In the said conspectus, we are of the view that no useful purpose will be served by remanding the matter to the learned Tribunal since no final decision has been taken by the competent authority on the merits of the petitioner's claim.

We have been informed that the Secretary, Department of Home is the authority competent to consider the petitioner's claim on merits.

Accordingly, the writ petition is disposed of with liberty to the petitioner to file an appropriate application for compassionate appointment before the competent authority being the Secretary, Department of Home within a period of three weeks from date.

Upon receipt of such application, the Secretary, Department of Home, West Bengal or his delegate shall consider the petitioner's claim upon granting an opportunity to the petitioner and pass a reasoned order, in accordance with law and communicate the same to the petitioner.

The above exercise shall be completed within a period of eight weeks from the date of receipt of the representation from the petitioner.

We have not gone into the merits of the petitioner's claim and all points are left open to be considered by the competent officer.

As the writ petition is being disposed of without calling for affidavits, the allegations levelled against the respondents in the present writ petition shall be deemed to have been denied.

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

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.)