

08.01.2024
Item No.40
Court No.11
Avijit Mitra
ML

WPCT 146 of 2023

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

And

**Rajesh Bahalia
- Versus -
Union of India & ors.**

Mr. Malay Das,
Mr. M.A. Sardar,
Mr. Sirajul Haque
...for the petitioner.

Mr. Sunil Kumar Singhania,
Mr. Avinash Kankani,
Ms. Twinkle Kaur
...for the respondent nos. 4 to 6

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

This writ petition is directed against the order dated 18th May, 2023 passed by the learned Central Administrative Tribunal in the original application being O.A. No.350/00041/2022.

Before addressing the contentions canvassed by the learned advocates of the respective parties, it would be apt to narrate the essential facts leading to this writ petition. The petitioner's father who happened to be a railway employee died- in -harness on 6th November, 1998. The petitioner's mother submitted an application on 7th May, 1999 praying for release of the death-cum-retirement benefits in her favour and a further prayer was also made therein to favour the petitioner with an appointment on compassionate ground. In the meantime, one Smt. Durga Bahalia claiming herself

to be the wife of the deceased employee, approached the respondents with a prayer for release of death-cum-retirement benefit in her favour and even, she along with her two minor children instituted one suit *vide*. Other Suit no. 161 of 2000 before the Court of the learned Civil Judge (Junior Division), Lalbagh, Murshidabad. The Said suit was dismissed on 30th June, 2014. Thereafter, the petitioner's mother by making an application on 20.11.2017 renewed her prayer for the petitioner's appointment on compassionate ground and the petitioner filed a duly filled in prescribed proforma seeking such appointment in 2018. Upon receipt of such application, the respondent no.5 *vide*. his letter dated 18th February, 2019 informed the petitioner that the minimum requisite educational qualification for appointment in level –I (7th CPC) on compassionate ground was pass '10th standard'. The petitioner enhanced his qualification and passed the Class-X examination conducted by the West Bengal Council of Rabindra Open Schooling in June, 2020 and he applied for compassionate appointment on 3rd July, 2021. By an order dated 19th November, 2021 the respondent no.6 *vide*. his order dated 9th November, 2021 negated the prayer for compassionate appointment of the petitioner on the ground that the petitioner applied for compassionate appointment nearly 23 years after the death of the ex-employee. Assailing the order dated 9th November, 2021 the petitioner moved the original application being OA No.350/0041/2022 which was disposed of by the order under challenge in this writ petition whereby the order of rejection of the petitioner's application for compassionate ground by the concerned respondent was upheld.

Mr. Das, learned advocate appearing for the petitioner contends that the prayer for petitioner's appointment on compassionate ground was made way back in the year 1999 and accordingly, the case of the petitioner's appointment on compassionate ground should have been dealt with as per rules prevailing in 1998. He submits that in 1998, the petitioner was class- VIII passed candidate and at that time, the minimum educational qualification for getting appointment in level-1 in the railway was 'Class VIII pass standard'. Subsequently, on the basis of the recommendation of the 7th Pay Commission, the minimum qualification was enhanced to "passed 10th standard" and on the basis of assurance made by the railway authorities, the petitioner enhanced the qualification and at this stage, it would not be justified to allow the railway authorities to deny the petitioner's claim for getting appointment on compassionate appointment.

Mr. Sinhanian, learned advocate appearing for the respondent nos. 4 to 6 vehemently opposes the petitioner's prayer. He contends that first and foremost condition of getting appointment on compassionate ground is financial dependency and/or financial distress. He claims that the petitioner's family has survived without any appointment on compassionate ground for 23 years and hence, at such distance of time, it would not be justified to pass any direction for his appointment on compassionate ground. He asserts that there is no scope to interfere with the order under challenge in the writ petition and the same deserves to be affirmed.

Heard the learned advocate appearing for the respective parties and perused the materials on record.

Admittedly, the petitioner's application seeking appointment on compassionate ground was made in the year 1999 but since one lady claiming herself to be the wife of the deceased employee, approached the railway authority for getting the death-cum-retirement benefits, one civil dispute was cropped up between the petitioner's family and the said lady. The civil dispute was resolved in 2014. Thereafter, the petitioner approached the railway authority in 2017 and ultimately, the petitioner made an application for compassionate appointment by filing the duly filled in proforma in 2018. In 2019, the petitioner's prayer for appointment on compassionate ground was negated on the ground that the minimum requisite qualification for appointment in Level-1, as per recommendation of 7th Central Pay Commission, on compassionate ground was 'passed 10th Standard'. Accepting such order of the respondent authority, the petitioner enhanced his qualification and after passing the class-X examination, he again made application seeking such appointment.

In this context, reference to the decision rendered in case of Umesh Kumar Nagpal –vs- State of Haryana, reported in (1994) 4 SCC 138 would be instructive wherein the Hon'ble Apex Court observed as follows :

'.. the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the

family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide for the same. The Hon'ble Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome'.

Every appointment in Government Sector and also in public undertakings should be made through open advertisement and an exception has been carved out only to give immediate relief to the family which has fallen in acute financial distress due to sudden death of the bread earner of the family.

The learned Tribunal also placed reliance upon a judgment delivered in the case of State of West Bengal –vs- Debabrata Tiwari & Ors. Etc. Etc. reported in 2023(2) SCR 611 wherein it was held that for the reason of prolong delay either on the part of the appellant in claiming the benefit or the authority in dealing with such claim, the sense of immediacy is diluted and lost.

In this case also due to prolonged delay, in our view, the sense of immediacy is diluted and lost. Hence, we are of the considered view that at such distance of the time giving direction upon the concerned respondents to give appointment to the petitioner on compassionate ground would not be in consonance

with the object of the scheme introduced for giving employment on compassionate ground.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and passed reasoned order. We do not find any error, least to say any patent error of law in the same. The impugned order does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

The writ petition being WPCT 146 of 2023 is, accordingly, dismissed.

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.)