

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 18946 of 2018

Smt. Abha Yadav (Ghosh) & Anr.

Vs.

State of West Bengal & Ors.

For the petitioners : Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das

For the State : Mr. Mrinal Kanti Ghosh
Ms. Sayantanee Bhattacharjee

Heard on : January 16, 2024

Judgment on : January 16, 2024

Aniruddha Roy, J. :

Facts:

1. This is a hearing matter upon affidavits.
2. The core challenge is rejection of ***Compassionate Appointment***.

3. The first petitioner is the widow and the second petitioner is a daughter of a deceased Teacher. The Teacher died on **July 27, 2007, Annexure P-1** at **page 22** to the writ petition. The Managing Committee of the relevant school in its meeting held on **August 14, 2007** at **page 23** to the writ petition, inter alia, resolved to provide compassionate appointment to the **“WARD”** of the deceased Teacher.

4. By a communication dated **June 08, 2009, Annexure R-1** at **page 10** to the report filed by the State respondents, the two daughters of the deceased teacher including the second petitioner submitted their objection before the Headmaster of the relevant school against the claim of the first petitioner seeking compassionate appointment.

5. On **June 12, 2009, Annexure P-2** at **page 25** to the writ petition, the first petitioner applied before the respondent No. 2 seeking compassionate appointment. By a communication dated **October 27, 2009, Annexure P-3** at **page 26** to the writ petition, the respondent No. 2 sought for few clarifications and necessary documents from the Headmaster of the relevant school. No further development had thereafter happened.

6. By a communication dated **July 15, 2015, Annexure P-4** at **page 27** to the writ petition, the first petitioner withdrew her claim for compassionate appointment and applied for her daughter, the second petitioner, who was sufficiently qualified for the Compassionate Appointment. By a communication dated **August 31, 2015, Annexure P-6** at **page 29** to the writ petition, the respondent No. 2 asked the first petitioner for production of

the necessary papers and documents relating to the second petitioner through the school authority for consideration. By a resolution dated **June 24, 2016, Annexure P-7** at **page 30** to the writ petition, the Managing Committee of the relevant school, inter alia, resolved to make a request before the State authority for granting compassionate appointment to a member of the family of the said deceased Teacher. Necessary prayer was also made in this regard by the relevant school before the respondent No. 2 through its communication dated **October 22, 2016, Annexure P-7** at **page 32** to the writ petition.

7. The respondent No. 2 by its communication dated **December 26, 2017, Annexure P-9** at **page 35** to the writ petition requested the Headmaster of the school to furnish certain clarifications and information. One of such required information was ***whether the second petitioner submitted application for employment on compassionate ground within two years from the date of death of the deceased Teacher or not.*** By a clarificatory communication dated **January 6, 2018, Annexure P-10** at **page 36** to the writ petition the relevant school informed the respondent No. 2 that, the first petitioner being the widow of the deceased Teacher submitted necessary application for compassionate appointment within two years from the date of death of the deceased Teacher. Later she submitted an application for the second petitioner seeking compassionate appointment.

8. The issue was then taken up for consideration by the respondent No. 2 and the prayer for compassionate appointment was rejected by the respondent No. 2 under his impugned decision dated **April 3, 2018, Annexure P-12** at **page 5** to the exception affidavit filed by the petitioner affirmed on December 4, 2023.

9. The said rejection has been assailed through the instant writ petition.

10. The State respondents, namely, respondent Nos. 1 and 2 have filed a report in the form of affidavit affirmed on September 25, 2023. The petitioners have filed an exception thereto in the form of affidavit affirmed on December 4, 2023.

Submissions :

11. Mr. Partha Ghosh, learned counsel for the petitioners referring to the said impugned order passed by the respondent No. 2 dated **April 3, 2018** submits that, the claim of the petitioners for compassionate appointment was rejected solely on the ground of income criteria that the monthly family income at the material point of time of the family of the deceased Teacher was higher than the cut off fixed under the Rule. Learned counsel further submits that, while rejecting the claim of the petitioners the authority had applied the Rules under **ROPA, 2009** whereas the deceased Teacher passed away on **July 27, 2007**. He submits that, the law is well settled that for compassionate appointment whatever rules and law applicable on the issue should be applied which was/were prevailing as on the date of death of the

deceased employee. By applying ROPA, 2009 the respondent No. 2 had erred in law and the order impugned stands vitiated.

12. Referring to the defence taken by the State authority in its report in the form of affidavit that the application submitted for the second petitioner was beyond the specific time frame of **two years** as specified under the relevant **Government Order bearing No. 457-Edn(P)/4A-50/83 dated October 12, 1987** read with the **Government Order bearing No. 4-SE(Pry)/4A-17/54 dated January 2, 1995** cannot be construed as a strict bar, since after receiving the application dated **July 15, 2015** wherein the first petitioner prayed for the appointment for the second petitioner, the State authority from time to time had acted thereupon and exchanged communication with the first petitioner and the school authority and agreed to give appointment to the second petitioner. Learned counsel for the petitioner submits that by conduct the State authority had waved that two years bar.

13. Mr Ghosh then submits that, the admitted fact is that, mother had applied within the two years time frame from the date of the death of the deceased Teacher and then the mother opted for an appointment for the second petitioner being the daughter of the deceased Teacher after attaining her majority and acquiring all necessary qualifications. It is therefore a continuous action and cannot be said that, the application of the second petitioner was beyond the time frame specified under the Rules. In support, the learned counsel has relied upon a decision of the Hon'ble Division Bench

In the matter of: Syed Iftikar Ali Vs. State of West Bengal reported at (2011) 2 CHN 17 (DB).

14. Learned counsel for the petitioner then submits that, the income criteria, on which the claim of the petitioners was rejected, should not have been taken into account the disbursement of terminal benefits and pension to the family members of the deceased Teacher. In support, he relied upon a judgment of the Hon'ble Division Bench ***In the Mmatter of: Samim Ahmed Vs. State of West Bengal & Ors. Reported at (2015) 3 Cal LT 461.***

15. It was then argued on behalf of the petitioners that considering the facts of this case the discretion left with the State authority employer for granting compassionate appointment should have been exercised in favour of the second petitioner, as the second petitioner had met all the criteria for receiving such an appointment. In support, Mr. Ghosh relied upon a judgment of the Hon'ble Supreme Court In the matter of: ***Subhadra Vs. Ministry of Coal and another reported at (2018) 11 Supreme Court Cases 201.***

16. Learned counsel for the petitioners then submits that, a Writ Court in exercise of its jurisdiction under judicial review cannot go beyond the decision impugned before it. Though not formally cited, he referred to the ratio laid down by the Hob'ble Supreme Court ***In the matter of: Mohinder Singh Gill Vs. Chief Election Commissioner*** and submits that, the authority cannot improve the reason or supplement any reason to support

the impugned decision, when reason is not in existence on the face of the decision.

17. Mr. Mrinal Kanti Ghosh, learned State counsel being ably assisted by Ms. Sayantanee Bhattacharjee, learned advocate appearing for the respondent nos. 1 and 2 submits that, granting a compassionate appointment to the ward of a deceased teacher is governed under specific rules framed by the policy framers. The specific rules mentioned in the **Government Memo dated October 12, 1987** read with **January 2, 1995**, as referred to above, provided for a specific time-frame for two years from the date of the death of the employee, within which the ward shall have to apply. Admittedly, the first petitioner when applied for compassionate appointment for herself, she applied within the time stipulation but when in **2015** she applied for the second petitioner it was about **eight years** later from the date of death of the deceased teacher. When there is a specific rule any deviation therefrom would be construed as illegal and wrongful. Referring to, *inter alia*, paragraphs 8, 9 and 11 from the report filed by the State, learned State counsel argued that, the stand of the State authority was absolutely clear that, such a belated application filed on behalf of the second petitioner cannot be entertained in view of the bar imposed by the Rule makers in the rules.

18. The time period mentioned in the rules cannot be extended by a court of law. In support, Mr. Ghosh has relied upon a judgment of the Larger Bench of this Court ***In the matter of : Piyali Saha -vs.- The State of West***

Bengal & Ors., dated September 25, 2012 rendered in **W.P. 4364 (W) of 2011**.

19. Referring to the impugned order passed by the respondent no.2 dated April 3, 2018, Mr. Ghosh submits that, after causing the detailed fact-finding inquiry and all the relevant materials the impugned order was passed. Therefore, there is no scope to interfere with the same.

20. Inasmuch as, the learned State counsel further submits that, since the applications of the petitioners were time barred under the relevant rules and were submitted much beyond two years from the date of the death of the deceased teacher, such ground was sufficient for rejection of the claim for compassionate appointment. He submits that, even though the ground of inordinate delay is not mentioned in the impugned order, this Court in exercise of its power under judicial review as also under equitable jurisdiction should not lose sight of the same as the facts are admitted and on records before this Court. He further submits that, the impugned order also mentioned that financial condition of the family is not under distress.

21. Referring to **Annexure-R1 at page 10** to the report filed by the State respondents, the learned State counsel submits that, by a letter dated June 8, 2009 the two daughters of the deceased teacher including the second petitioner raised their objection against the application submitted by the first petitioner for her compassionate appointment. The second petitioner then turned around and claimed the compassionate appointment.

22. Mr. Ghosh further submits that, the reference of **ROPA, 2009** in the said impugned order was taken for the purpose of computation of the family income of the family of the deceased teacher and the claim of the compassionate appointment was not rejected by applying the provision of **ROPA, 2009**.

23. In the light of the above, Mr. Mrinal Kanti Ghosh, learned State counsel submits that, there is no merit in the writ petition and the writ petition should be dismissed and the impugned order dated **April 3, 2018** should not be interfered with.

24. In reply Mr. Ghosh, learned counsel for the petitioners submits that, from the impugned order it would be evident that, comparison was made to assess income criteria of the family of the deceased teacher with a Group – D employee whereas the second petitioner applied for Group – C cadre.

Decision :

25. After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, facts are all admitted with regard to the date of death of the deceased teacher and the submission of applications for compassionate appointment both for first and second petitioners. Admittedly, the death was on **July 27, 2007**. The first petitioner then as the widow submitted her application within the time-frame and then applied for the second petitioner on July 15, 2015, almost after eight years.

26. Compassionate appointment is not a matter of right. Such an appointment depends upon the policy of the State and at its discretion. No one can claim any right for compassionate appointment. Compassionate appointment is not an alternative mode of generation of employment. Compassionate appointment was introduced to meet the imminent crisis of the family due to the untimely death of the deceased State employee as died-in-harness. The rule for compassionate appointment framed by the State is required to be construed in its true spirit and essence and according to the established procedure of law. Any rule framed by the State unless challenged cannot be questioned before a court of law. The Court cannot alter, modify or amend such rules. The Court cannot add anything in the rules.

27. The Larger Bench ***In the matter of : Piyali Saha (supra)*** had observed as under.

“If the period which has not been contemplated in the Rule intending to create a right cannot be extended by the Court. In other words when the legislature has fixed a time limit in relation to substantive law the Court cannot taking the task of legislature extends time limit, simply it amounts to amendment of Rule. The Court cannot have any amending power of the legislation.

Under those circumstances as Supreme Court has been pleased to observe in the case quoted above the aforesaid rule is a mandatory in character, we answer the aforesaid questions in the manner as follows :

The time fixed in the said Rule is a rigid, subsequent application after attaining majority is not a lawful application and the same cannot be said to be a continuing process. Now we send down the writ petition for assigning finally taking note of our decision.”

28. On facts it is significant to note that, though the objection letter dated **June 8, 2009, Annexure-R1 at page 10** to the report of the State respondents, the second petitioner along with her sister submitted her objection to grant compassionate appointment in favour of the first petitioner. It clearly signifies that, as on June 8, 2009 the second petitioner was aware of the fact of the claim of her mother on the ground for compassionate appointment and at no point of time she withdrew her objection or applied herself for obtaining the compassionate appointment. It was the first petitioner who applied for the second petitioner.

29. Insofar as the ground for rejection on the plea of financial criteria as it appears from the impugned order, this Court is of the view that, such ground would come later and the application of the petitioners should be assessed primarily on the plea as to whether the application was submitted for the second petitioner within the stipulated period of two years from the date of the death of the deceased teacher. In exercise of power under judicial review under Article 226 of the Constitution of India, this court being a Court of record, has authority to look at the record for assessment of the impugned order. This Court is also armed with the power to issue writ of certiorary. This Court equally exercises equitable jurisdiction. While assessing the impugned order if this Court finds from record that, the entry of the application of the applicant was closed at the entry level, then of course, this Court has jurisdiction to look at it on the basis of the available materials

before it. The materials available before this Court clearly demonstrates that, the application made for the second petitioner was grossly belated and much beyond the time-frame stipulated under the rules as discussed above. Therefore, when the application itself is not permitted to be on the board, no further plea is required to assess such an application on any other ground whatsoever.

30. The Hon'ble Supreme Court ***In the matter of : Union Bank of India & Ors. -vs.- M. T. Latheesh*** reported at ***(2006)7 SCC 350*** had observed that, in the previous decision of the Hon'ble Court ***In the matter of : Balbir Kaur -vs.- Steel Authority of India***, reported at ***(2000)6 SCC 493*** a general observation was made in the context of compassionate appointment. The judgment was distinguished by the Hon'ble Apex Court subsequently ***In the matter of : M. T. Latheesh (supra)*** both on facts and law. This apart, the instant case in hand is directly covered by the scheme formulated by the State employer in regard to compassionate appointment.

31. In view of the above, this Court is also of the view that, the ratio laid down ***In the matter of : Samim Ahmed (supra)*** would be of no assistance to the petitioners, in the facts of this case.

32. In view of the law laid down ***In the matter of : Piyali Saha (supra)*** the time-frame stipulated under the rules for compassionate appointment cannot be modified or enlarged either by the authority or by the Court.

33. ***In the matter of: Subhadra (supra)*** the direction for appointment

and compensation was made by the Hon'ble Supreme Court since there was a bipartite agreement by and between the employer and the employee. Such bipartite agreement was carried out in the facts of this case, there is no such agreement and the appointment is governed under the prevailing rules and the policy of the State. Since there was a breach of time frame in the fact of the instant case while submitting the application for compassionate appointment, as discussed above, the appointment was liable to be rejected. Hence, the ratio laid down in the judgment has no application in the facts and circumstances of this case.

34. Inasmuch as the last paragraph of the impugned order dated April 03, 2018 records a finding of the respondent no.2 to the effect that the application of the second petitioner does not deserve consideration for appointment on compassionate ground in terms of **existing rule** and hence the same is rejected. This clearly denotes that while considering the case of the petitioner the existing rule prevailing on the subject was duly considered by the respondent no.2 and then the impugned order was passed. The existing rule provides for the time stipulation for application for compassionate appointment as already discussed above. It is, therefore, incorrect to contend on behalf of the petitioner that, the State respondents sought to supplement reason for rejection by way of its report. Hence the ratio laid down ***In the matter of: Mohinder Singh Gill (supra)*** has no application in the fact situation of this case.

35. In view of the foregoing discussions and reasons, this Court is of the considered opinion that, this writ petition is devoid of any merit and should be dismissed.

36. Accordingly, this writ petition **WPA 18946 of 2018** stands ***dismissed***, without any order as to costs.

37. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)