

WP.ST 191 of 2023

Monoj Bag
Vs.
The State of West Bengal & Ors.

Mr. Sukumar Ghosh
Ms. Moumita Ghosh
..... For the petitioner.

Mrs. Ashmita Chakraborty
..... For the State.

The present writ petition has been preferred challenging an order dated 20th July, 2023 passed by the learned Tribunal in the original application being OA 793 of 2022 by which the petitioner's prayer for compassionate appointment was refused.

Shorn of unnecessary details the facts are that the petitioner's father died in harness on 4th November, 2001, while working as a Constable. At that juncture, the petitioner, namely, Manoj Bag (in short, Manoj) was aged about ten years. To tide over the financial distress due to the sudden loss of the sole bread earner, the petitioner's mother submitted an application praying for compassionate appointment of Manoj on 29th May, 2002. The same was, however, not considered by the authorities. Upon attaining majority, Manoj submitted an application in the prescribed proforma on 20th March, 2011 for compassionate appointment. He was thereafter, called for physical measurement and physical efficiency test in the year 2011 and in the year 2012 he was called

for an interview and his claim was ultimately rejected by an order dated 3rd April, 2018 passed by the respondent no. 2 herein. Aggrieved by the said order, Manoj filed an original application being OA 298 of 2021 which was disposed of by an order dated 25th April, 2022 quashing the order dated 3rd April, 2018 and directing the respondent no. 2 to consider Manoj's application for compassionate appointment. Manoj, however, challenged the said order by filing a writ petition being WPST 59 of 2022 which was disposed of by an order dated 5th August, 2022 directing the respondent no. 2 to comply with the directions passed by the learned Tribunal in OA 298 of 2021. Pursuant thereto, the respondent no. 2 passed an order afresh on 9th November, 2022 refusing Manoj's prayer for compassionate appointment. Aggrieved thereby, Manoj preferred an original application being OA 793 of 2022, which was decided by the order impugned in the present writ petition.

Drawing our attention to the contents of the order dated 25th April, 2022 passed in OA 298 of 2021, Mr. Ghosh, learned advocate appearing for the petitioner submits that in consideration of the application submitted in the prescribed proforma, the police authorities conducted an enquiry and came to a finding that Manoj's family was in financial distress and accordingly he was called for physical measurement, physical efficiency test and an interview. Upon

ascertaining that Manoj's family was in financial distress, his prayer for compassionate appointment could not have been turned down on the ground of minority though on the basis of the enquiry, financial status was considered after Manoj attained majority and submitted an application in the prescribed proforma in the year 2011. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned on the same. Reliance has been placed upon the judgment delivered of *Syed Khadim Hussain- vs -State of Bihar & Ors.*, reported in (2006) 9 SCC 195 and the judgments delivered by two coordinate benches of this Court in the cases of *Ram Bahadur Thapa & Anr. – vs – Union of India & Ors.*, (unreported) and *Tania Islam – vs – State of West Bengal.*, reported in 2013 (1) CLJ (Cal) page 177.

Mrs. Chakraborty, learned advocate appearing for the State respondents denies and disputes the contention of the petitioner and submits that admittedly Manoj was minor on the date of death of his father. Manoj's mother submitted her representation seeking compassionate appointment of Manoj on 29th May, 2002. Upon attaining majority, Manoj applied in the year 2011. The said application was considered in consonance with the West Bengal Scheme for Compassionate Appointment, 2013 (hereinafter referred to as the said scheme). In para 10 (a) of the said scheme it was provided that the application for employment should be filed within six

months from the date of death. By a notification dated 3rd December, 2013, a new para 10 (a) (a) was incorporated to the effect that even belated requests up to five years after death can be considered under the said scheme. Manoj admittedly does not fulfil the said criteria since he attained majority about eight years after his father's death and submitted an application about two years thereafter in the month of November, 2011. In the said sequence of facts and considering the provisions of the said scheme, the respondents have rightly refused Manoj's prayer for compassionate appointment and the learned Tribunal rightly refused to interfere with the same.

Drawing the attention of this Court to the order dated 5th August, 2022 passed by a coordinate bench of this Court, she submits that the Hon'ble Court observed that compassionate appointments are made on a scheme being framed by the nodal employer and the scheme does not provide any mechanism towards summoning candidates for written test and interview as required under normal recruitment and that the employer cannot adopt any course *de hors* the same. In view of such observation, the argument of Mr. Ghosh, that weightage ought to have been granted to fact that the petitioner successfully completed the physical measurement, physical efficiency test and interview, is not acceptable.

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

It is well settled that compassionate appointment is granted to provide immediate succor to the family and to save the family members from financial crisis. Compassionate appointment is not a vested right and it is required to be considered strictly on the basis of the scheme framed by the employer.

Indisputably, Manoj was a minor on the date of death of his father. He attained majority in the year 2009 and submitted an application in the prescribed proforma in the year 2011. His claim thus comes within the purview of the said scheme. Para 10 (a) (a) incorporated subsequently in the said scheme categorically provides that a belated request in exceptional cases can be considered even when the death of the Government servants took place up to five years ago. Manoj did not attain minority within the said period of five years from the date of death of his father.

It is well settled that a decision is an authority for what it decides and not what can be logically deduced therefrom. Even a slight distinction in fact or an additional fact make a lot of difference in the decision making process. The judgment delivered in the case of *Syed Khadim Hussain (supra)* was considered by a coordinate bench of this Court and it was, *inter alia*,

observed that the said judgment in does not constitute a binding precedent within the meaning of Article 141 of the Constitution of India. [See the judgment delivered in the case of *Arindam Choudhury Vs State of West Bengal*, reported in *2019 (1) CHN 614*]. The judgments in *Syed Khadim Hussain (supra)*, *Ram Bahadur Thapa (supra)* and *Tania Islam (supra)* are distinguishable on facts.

In said conspectus, we do not find any infirmity in the order impugned. The learned Tribunal, upon dealing with the factual issues arrived at specific findings and we do not find any patent error of law in the same.

Accordingly, the writ petition being WPST 191/2023 is dismissed.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

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