

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 30332 of 2015

Sri Biswanath Senapati
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Tapas Kumar Dey Mr. Ashis Kumar Dutta
For the State	:	Mr. Avishek Prasad
Heard on	:	February 06, 2024
Judgment on :	:	February 06, 2024

Aniruddha Roy,J.

1. Affidavit of service filed today in Court is taken on record.

Facts:

2. The writ petitioner had received a compassionate appointment with effect from **August 14, 2014** in place and stead of his deceased mother who was a State employee, **Annexure P-6** at **page 34** to the writ petition.

3. The mother of the writ petitioner died-in-harness on **April 10, 1995**. The application for compassionate appointment was made on **April 27, 1995**. The State authority rejected the claim of the petitioner for compassionate appointment on **August 2, 1996, Annexure P-3** at **page 19**

to the writ petition. The rejection was communicated to the petitioner on **February 8, 2002**.

4. Assailing the said decision for rejection of compassionate appointment the petitioner filed the first round of writ litigation being **W.P. No. 6696 (W) of 2002**. The writ petition was allowed by a co-ordinate bench on **May 10, 2012, Annexure P-4** at **page 20** to the writ petition whereby the said decision for rejection of compassionate appointment dated **August 2, 1996** was set aside and the Director of School Education was directed to **consider** the claim of the petitioner by passing a reasoned order in the light of the observation made therein within a specified time frame and the writ petition was disposed of accordingly. No appeal was carried out from the said order of the co-ordinate bench.

5. Pursuant to and in terms of the direction made by the co-ordinate bench dated **May 10, 2012** the Commissioner of School Education passed its reasoned order dated **July 8, 2013, Annexure P-5** at **page 29** to the writ petition and the petitioner was granted compassionate appointment with effect from **August 14, 2014, Annexure P-6** at **page 34** to the writ petition.

6. The petitioner had accepted the said appointment and had carried out with his employment accordingly. The petitioner ultimately retired on **July 31, 2016**.

7. Through the instant writ petition the petitioner has claimed that, the date of appointment of the petitioner should be treated as **August 2, 1996**

without any remuneration instead **of August 14, 2014** as claimed in **Prayer (a)** to the writ petition.

Submissions:

8. Mr. Tapas Kumar Dey, learned counsel appearing for the petitioner submits that, immediately after rejection of the claim for compassionate appointment on **August 2, 1996**, the decision was not communicated to the petitioner and the same was communicated to the petitioner on **February 8, 2002**. The petitioner immediately thereafter filed the previous writ petition in or about **May 2002**. The writ petition was pending till 2012 and ultimately was allowed by the co-ordinate bench by its order dated **May 10, 2012**. Following the direction of the co-ordinate bench the Commissioner of School Education gave appointment to the petitioner with effect from **August 14, 2014**. The petitioner had no role to play for this long pendency of the writ petition. The moment the rejection order dated **August 2, 1996** was set aside by the co-ordinate bench under its order dated **May 10, 2012**, the claim of the petitioner relates back as on the date of rejection i.e. **August 2, 1996**. The petitioner, therefore, claims the employment benefit with effect from **August 2, 1996**.

9. Mr. Avishek Prasad, learned State counsel appearing for respondent Nos. 1, 2 4 and 5 submits that, the mother of the petitioner was a Work Education Assistant and then became a Work Education Teacher at the relevant School. In view of the policy of the State with the death of the mother of the petitioner the said post for Work Education Teacher was

abolished. With the abolition of the said post there was no question for granting any compassionate appointment for the post. He further submits that, for granting compassionate appointment a roster is essentially to be maintained in law and no beneficiary for such claim can overlap the position in the roster. The situation when arises for compassionate appointment the appointment must follow the roster serially. Thus, he submits that, beneficiary for compassionate appointment enrolled in such roster has to wait till his/her turn comes. In as much as, granting compassionate appointment is a benevolent policy decision of the State and under its discretion. Unless the discretion is used in an arbitrary or wrongful manner which is apparent on the face of record, the Court shall not intervene with the decision of the State authority. Scheme for compassionate appointment has to be followed in its strict compliance.

10. The learned State counsel then refers to the order of granting appointment dated **July 8, 2013** passed by the Commissioner of School Education and submits that, the authority by passing the order had considered all the material facts available before him and none of those facts were disputed by the parties. The decision is otherwise well versed, founded and reasoned. The petitioner has accepted the said decision and joined his employment after receiving the compassionate appointment. The petitioner has acted upon the said decision for compassionate appointment.

11. The learned State counsel in support of his contention that, the roster has to be strictly followed for compassionate appointment has relied upon a

judgment of the Hon'ble Division Bench ***In the matter of : State of West Bengal Vs. Goutam Dalas reported at (2017) 5 CHN 82 (DB).***

12. The learned State counsel further submits that, the petitioner is eligible to receive all the benefits relating to his employment only from the date of his appointment and not beyond that. He submits that, this writ petition is devoid of any merit and should be dismissed.

Decision :

13. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the facts recorded above are not disputed. It is admitted that, pursuant to the direction for appointment made by the Commissioner of School Education dated **July 8, 2013** the petitioner had joined at his employment and ultimately retired on **July 31, 2016**. So, prior to **August 14, 2014** admittedly the petitioner did not work as he did not receive the appointment.

14. The law is well settled that, claim for compassionate appointment is not a matter of right. Compassionate appointment is the benevolent policy of the State. If there is no scheme for compassionate appointment for a particular sector of employment, no compassionate appointment can be granted for that sector. Therefore, if there is a scheme for compassionate appointment, each and every guideline therein has to be strictly followed. Compassionate appointment is not an alternative mode for generation of employment, it is for the immediate survival of the family of the deceased State employee who died untimely, so that the family of the deceased

employee can survive with the bare minimum requirement. The policy for compassionate appointment is a discretion of the State, but of course the discretion has to be exercised judiciously, legally and within the frame work of law.

15. In the instant case, on **May 10, 2012** until the previous rejection order for appointment of the petitioner dated **August 2, 1996** was set aside, the said order of rejection held the field. Only after this was set aside on **May 10, 2012** it had lost its force. The order of the co-ordinate bench dated **May 10, 2012** was very clear that, even after setting aside of the order of rejection, the issue was sent for **Consideration** before the State authority by passing a reasoned order. The moment the expression **Consideration** was used by the co-ordinate bench, it was incumbent upon the State authority to apply its mind and then pass a reasoned order on the basis of the materials available before it. The consideration might be affirmative or be negative. Therefore, the co-ordinate bench again left the issue at the discretion of the State authority and no right was crystallized in favour of the petitioner under the said order of the co-ordinate bench dated **May 10, 2012**. The Commissioner of School Education then at his wisdom by applying its discretion on the basis of the available materials granted compassionate appointment to the petitioner with effect from **August 14, 2014**.

16. On a careful scrutiny of the decision of the Commissioner of School Education dated **July 8, 2013** it appears to this Court that, it is very well versed, reasoned and founded. The authority had considered each and every

materials available before it including the scheme for relevant appointment and then made the direction. In as much as, compassionate appointment cannot have the retrospective effect. Since it is a result of the benevolent policy of the State and its discretion, the petitioner cannot claim any retrospective benefit with effect from **August 2, 1996** when petitioner had not even worked for and rendered its service to the employer.

17. For the foregoing reasons and discussions it appears to this Court that, on **May 10, 2012** after the previous rejection order dated **August 2, 1996** was set aside, in exercise of its equitable jurisdiction by this Constitutional Court, a notional benefit can be given to the petitioner with effect from **May 11, 2012**. Accordingly, respondent No. 4 is directed to give notional employment benefit to the petitioner with effect from **May 11, 2012** to which the petitioner shall be entitled to commensurating with his employment and the corresponding pay scale. This notional benefit shall also include arrear, if any, payable to the petitioner accordingly.

18. The entire exercise shall be carried out and completed by the respondent No. 4 and/or any other authority including the payment to the petitioner as directed above, after adjusting the quantum which has already been paid to the petitioner on his retirement, positively within a period of **eight weeks** from the date of communication of this order to the respondent No. 4. In the event, any assistance is required from the respondent No. 6, the respondent No. 4 shall call for the same and the respondent No. 6 shall

render all assistance to the respondent No. 4 in every possible manner without any delay.

19. With the above observations and directions this writ petition being **W.P.A. 30332 of 2015** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)