

02.07.2025
Sl. No.190(DL)
Ct. No.42
srm

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 4795 of 2024

Sanjay Halder

Versus

The State of West Bengal & Ors.

Mr. Dhananjay Nayek,
Mr. Abhinaba Mukherjee

...for the Petitioner.

Mr. Jyoti Prakash Chatterjee,
Ms. Indrani Nandi

...for the State-respondents.

Report in the form of affidavit filed by the State is taken on record.

Exception to the said report filed by the petitioner is also taken on record.

This writ petition is filed seeking for direction upon the respondent authorities to provide appointment to the petitioner on compassionate ground on the basis of the application dated 3rd October, 2005.

The brief fact of the case is that the father of the petitioner Jatindra Nath Halder was appointed in the post of *Chaukidar* in Sindrani Gram Panchayat, Bagdah Development Block, South 24-Parganas on 19th February, 1971. The father of the petitioner while discharging his service as a peon died-in-harness on 2nd August, 2005 leaving behind his wife Binodini Halder and his son Sanjay Halder (writ petition herein)

and three daughters. At the time of his death, the father of the petitioner was 58 years old. Upon demise of his father, the petitioner made an application on 3rd October, 2005 seeking for his appointment on such consequence. Since such application was not considered and decided, subsequently the petitioner once again filed an application in proper format on 22nd June, 2010. The respondent No.2, the Assistant Secretary to the Government of West Bengal, Panchayat and Rural Development Department by its letter dated 13th January, 2023 rejected the prayer of the petitioner for compassionate appointment in die-in-harness category on the ground of delay in submission of proforma application as per provision laid down in the notification no.251-Emp. dated 03.12.2013 and notification no.26-Emp. dated 01.03.2016 of Labour Department, this Deptt's memo no.4097/PN/O/III/2A-63/2014 dated 29.09.2014 and Labour Deptt's U.O. no.46 Emp. dated 07.07.2022. Being aggrieved by and dissatisfied with such order, the petitioner has preferred the present writ petition.

Mr. Dhananjay Nayek, learned Advocate for the petitioner submits that the application on compassionate ground has been submitted by the petitioner on 3rd October, 2005, i.e. within a period of three months from the date of death of his father. The said application was forwarded to the concerned authority by the Pradhan of local Gram Panchayat for

necessary action. Since no steps were taken in the meantime, the petitioner on 22nd June, 2010 filed an application in proper format in continuation to his earlier application for appointment on compassionate ground. Therefore, there is no delay in seeking appointment on compassionate ground on the part of the petitioner and hence the impugned order rejecting the prayer of the petitioner for appointment on compassionate ground is not tenable. Relying on a decision of Hon'ble Supreme Court passed in ***Shreejith L. versus Deputy Director (Education) Kerala & Ors.*** reported in ***(2012) 7 SCC 248*** he submits that the authority is supposed to consider the application in its substance and not the form. The appointment on compassionate ground is made under a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Further he indicates that there was no communication made from the State authorities to cure any defect in the application dated 3rd October, 2005 within a reasonable period and after a lapse of almost 18 years the application of the petitioner for appointment on compassionate ground has been turned down. He seeks for setting aside of such rejection with a direction upon the respondent authorities to take appropriate steps for appointment of the petitioner on compassionate ground within a stipulated period.

On the contrary, Mr. Jyoti Prakash Chatterjee, learned Advocate for the State submits that the proforma of the application for appointment on compassionate ground was submitted in the year 2010 which is almost after five years of demise of the father of the petitioner. The notification of the Government clearly indicates that the application for appointment on compassionate ground is to be made within a period of six months from the date of demise of the employee. Therefore, the aforesaid order rejecting the prayer of the petitioner for appointment on compassionate ground has been rightly made and should not be interfered with. He seeks for dismissal of the writ petition.

Having heard learned Advocates for the respective parties, the only issue which is to be examined is whether the letter of the respondent No.2, the Assistant Secretary to the Government of West Bengal, Panchayat and Rural Development Department dated 13th January, 2023 rejecting the prayer of the petitioner for appointment on compassionate ground is legal, proper and correct or not.

From Annexure P4 at page 26 of the writ petition, it is found that the petitioner made an application before the Block Development Officer, Bagdah, North 24-Parganas for his appointment upon demise of his father on 3rd October, 2005. The said application was forwarded by the Pradhan, Sindrani

Gram Panchayat for necessary action with an endorsement of recommendation on the said date itself. Needless to mention that an endorsement has also been made on such letter to the Sub-Divisional Officer to enquire and report. From such period, i.e. October, 2005 till issuance of the letter dated 13th January, 2023 rejecting the prayer of the petitioner for appointment on compassionate ground, no such steps were taken by the State authorities pertaining to enquiry and report. It is pertinent to note that admittedly no communication was made to the petitioner regarding any defect in his application dated 3rd October, 2005. Furthermore the authority, if in the event found that the application submitted in the year 2005 by the petitioner was not in proper format, it could have issued a letter asking the petitioner to cure such defect, which has not been made in the instant case.

In the decision of *Shreejith L. (supra)* the Hon'ble Supreme Court observed as follows:

“24. We regret our inability to accept that submission. The Manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognised that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however, granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application

was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the prayer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.

x x x

38. *Having said that, we have no manner of doubt that in case an application is made by the legal heirs of a deceased employee claiming the benefit of the scheme for compassionate appointment, the deficiencies and defects, if any, in the said application ought to be pointed out to the person concerned to enable him to remove the said within a reasonable time. But if the defects are not removed within the time granted, an adverse inference could be drawn against the person in default. On the contrary, where an application is filed, entertained and eventually declined for a reason other than the form in which the said ought to have been filed, the rejection cannot be supported before the higher authority or in the court on the ground that application non est as the same was not in the prescribed form. The application for appointment filed on behalf of the respondent could not therefore have been rejected on the ground that the same was not in the prescribed form.”*

Keeping in mind the above proposition laid down by the Hon’ble Supreme Court, this Court finds substance in the submission of learned advocate for

the petitioner that what is important is the substance and not the form. The scheme is meant to be a beneficial scheme aimed at helping those who need assistance due to untimely death of the employee.

It has been vociferously argued on behalf of the State respondents that the application in proper format was submitted by the petitioner in year 2010, hence it is delayed as per notifications issued by the Government of West Bengal. Upon going through the materials on record, it appears that the notifications which have been mentioned in the letter dated 13th January, 2023 are of 2013 and thereafter. The father of the petitioner expired in the year 2005. Therefore, such notification was not in existence at the time when the application was initially submitted before the authority for appointment on compassionate ground on 3rd October, 2005.

Reliance may be placed on an earlier decision of this Court in the case of ***State of West Bengal & Ors. versus Bina Debnath & Ors.*** reported in **2009 (2) CLJ (Cal) 512** in this regard wherein this Court specifically observed:

“In any event, the claim of the writ petitioners for appointment on compassionate ground under the died-in-harness category cannot be decided in terms of the Notification dated 6th June, 2005 since the said notification was not in existence at the time of death of the deceased employee or even at the time of submission of the application by the writ petitioner No.2 claiming appointment on compassionate ground.....”

Bearing in mind the aforesaid proposition, the notification mentioned in the impugned letter since not in existence at the time of death of the employee or when the application for compassionate appointment was submitted, cannot be applied in case of the petitioner.

In view of the above, the impugned letter dated 13th January, 2023 is not proper and legal and is thus liable to be set aside.

Accordingly, the letter dated 13th January, 2023 of respondent no.2, the Assistant Secretary to the Government West Bengal, Panchayat and Rural Development Department is hereby set aside.

Accordingly, respondent No.2, the Assistant Secretary to the Government of West Bengal, Panchayat and Rural Development Department or any other responsible officer deputed by him is directed to consider the application of the petitioner dated 3rd October, 2005 together with the application submitted by the petitioner in proper format on 22nd June, 2010 within a period of two months from date of communication of this order.

The learned Advocate for the petitioner is directed to communicate this order to the respondent No.2, the Assistant Secretary to the Government West Bengal, Panchayat and Rural Development Department for necessary compliance.

With the aforesaid directions, the writ petition being **WPA 4795 of 2025** is disposed of.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)