

10.07.2025
(D/L-16)
Ct. No.4
(B.K.N.)

W.P.S.T. 78 of 2025

**Chanchal Majumder
Vs.
The State of West Bengal & Others**

Mr. Shambhu Nath Ray,
Ms. Sharmistha Roy Chowdhury,
Ms. Munmum Das

...for the Petitioner

Mr. Tapan Kr. Mukherjee, Ld. AGP,
Ms. Sangeeta Roy

...for the State

1. Heard the learned counsel for the petitioner and the learned counsel for the State.
2. The present petitioner's father was working as a Constable and was posted in the 5th Battalion of S.A.P Durgapur. He was assigned election work on 14.06.1998. On and from this date he has gone missing. On account of his being absent from duty the authorities initiated a proceeding against him and have passed an order of dismissal exparte on 30.11.2002. The mother of the petitioner after waiting for some time for the father to return has filed the Title Suit No. 3086 of 2008 seeking a declaration of death of her husband which decree has been passed in view of the provisions contained in Section 108 of the Evidence Act on 20.09.2011. The death of the present petitioner's father is *de jure*, which can be said to have occurred on 20.09.2011 that is with

effect from the date of passing of the decree by the Civil Judge, 5th Court at Alipore declaring a civil death.

3. Thereafter the wife of the deceased has moved the West Bengal Administrative Tribunal (S.A.T) by filing O.A. 1003 of 2012 assailing the dismissal order and claiming consequential relief of various terminal/retiral benefits in respect of her husband. The S.A.T has set aside the entire proceedings culminating into the order of dismissal and directed all service benefits as a consequence of quashing of the dismissal order including family pension etc. to be paid to the applicant therein (wife of the deceased) within a period of eight weeks from the date of receipt of the order.
4. Having considered the submissions we find that after the father of the present petitioner went missing on 14.05.1998 there was no occasion to make an application for compassionate appointment. The civil death of his father can be said to be with effect from the date of passing of the decree by the Court on 20.09.2011. Since an application for compassionate appointment can only be made after death of the employee in harness, the petitioner could make an application only after 20.09.2011 for compassionate appointment. However, there was another impediment which prevented the petitioner from

making an application, being the dismissal order dated 30.11.2002, purporting to dismiss the petitioner's father from service, which was set aside by the Tribunal on 04.09.2020. Thus, before 04.09.2020 there was no scope for the petitioner to make any application for compassionate appointment.

5. The circular containing the policy of compassionate appointment applicable at the relevant time was 26-Emp. issued by the Labour Department, Government of West Bengal on 1st March, 2016. The same provides a period of two years from the date of death or retirement or permanent incapacitation of an employee for making application for compassionate appointment. The petitioner, therefore, had time till 03.09.2022 to make his application. The mother of the petitioner has made the application well within the stipulated two year period, that is on 17.08.2021.
6. The authorities have passed an order rejecting the petitioner's claim for compassionate appointment on 21.08.2023. This order of rejection was the subject matter of the proceedings before the S.A.T in O.A. 784 of 2023, out of which the present writ proceedings arises.
7. On perusal of the rejection order dated 21.08.2023 it is apparent that the order suffers from non application of mind and is a mechanical order. As on

21.08.2023 the authorities were well aware of the fact that civil death of the petitioner was declared by the Civil Court on 20.09.2011. They were parties to the earlier Original Application proceedings (O.A. 1003 of 2012) wherein the dismissal order was set aside on 04.09.2020. The authorities were, therefore, conscious of the fact that it is only after 04.09.2020 that an application could have been made for compassionate appointment on account of demise of the petitioner's father. Ignoring these facts they have proceeded to reject the petitioner's claim by considering an application submitted by the petitioner's mother on 14.05.2005, and proceeded to reject the same by assigning a reason that on the date of death of the employee which they have taken as 14.05.2005, the petitioner was a minor. The order passed by the authorities is based on a perverse consideration as it is quite apparent that the *de jure* death of the petitioner's father is of a much later date, that is on 20.09.2011 when the decree was passed. The order dated 21.08.2023 rejecting the petitioner's claim, therefore, is clearly unsustainable and is hereby quashed.

8. As taken note of above the petitioner could not have made an application for compassionate appointment prior to 04.09.2020 that is the date on which the dismissal order has been set aside by the Tribunal.

After that the mother of the petitioner has made the application within time. This application dated 17.08.2021 has not been considered, and in our considered opinion is required to be considered by the authorities.

9. To facilitate consideration the petitioner should submit the duly filed prescribed proforma within four weeks from date, before the competent authority. Upon receipt of such proforma the authority shall proceed to ensure consideration of the claim, and take a final decision thereupon within eight weeks thereafter.

10. In view of the findings recorded hereinabove we find that the order of the Tribunal dated 29.01.2025 passed in O.A. No. 784 of 2023 rejecting the petitioner's claim and upholding the order of rejection dated 21.08.2023 is clearly unsustainable and is hereby set aside.

11. The writ petition is allowed in the above terms.

(Madhuresh Prasad, J.)

(Ajay Kumar Gupta, J.)