

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

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T 97 of 2025

Promod Rai @ Promod Kumar Rai

Vs.

The State of West Bengal & Others

For the petitioner : Mr. Kushal Chatterjee,
Mr. Arun Shaw

For the State Respondents : Mr. Tapan Kumar Mukherjee,
Ld. AGP,
Mr. Somnath Naskar

Heard on : 20.06.2025

Judgment on : 20.06.2025

MADHURESH PRASAD, J.:

1. The petitioner's father died while in harness on 03.11.1999. There were two persons claiming to be wife of the deceased. The issue was set at rest by decision of the Civil Judge, Junior Division, 2nd Court, Alipore in Title Suit No. 1867 of 2008. The

Civil Court decreed in favour of the petitioner's mother, Smt. Kanniya Rai.

2. The petitioner's pending claim for compassionate appointment was thereafter required to be processed. There is material on record to show that the authorities had intimation regarding the decree passed in favour of the petitioner's mother in the year 2014. However, the authorities have taken nearly six and half years to consider the petitioner's claim, that also after the petitioner was compelled to seek a direction in this regard by the West Bengal Administrative Tribunal (SAT). The Tribunal's order to this effect is dated 06.09.2019 passed in M.A. 132 of 2019 (O.A. No. 446 of 2017). However, the Secretary to the Government of West Bengal in the Irrigation and Waterways Department has finally passed an order in respect of the petitioner's claim nearly two and half years after the order was passed by the Tribunal in O.A. No. 446 of 2017. The consideration of the petitioner's claim in the order passed by the Secretary on 05.05.2021 is in the following terms:

“Again, it is noteworthy to observe that Sri Pramod Kumar Rai, the applicant for such compassionate appointment under dying-in-harness category is aged over 42 years, is solely dependent upon his widow mother as submitted and it appears that the monthly income of the family of Smt. Kanniya Rai where Sri Pramod Kumar Rai is also a member, is Rs. 9255/- where Sri Pramod Kumar Rai contributes nothing as per the aforesaid Affidavit of Smt. Kanniya Rai dated 01.03.2021. The fact that Sri Pramod Kumar Rai who appears to be a healthy person with no visible physical

disability does not do any gainful work and is totally dependent on his mother's income from family pension renders him underserving for Government employment. Hence, In find this is not a fit case for favourable consideration of age relaxation for the purpose of offering a compassionate appointment."

3. The learned counsel for the petitioner submits that the petitioner's claim cannot be rejected on the ground assigned by the impugned order as such a situation has been precipitated by delay on part of the authorities in considering the petitioner's claim. The petitioner diligently approached the authorities. There was some bonafide delay in the claim based on the proceedings pending in the Civil Court, noted above. Even after decision of the Civil Court the authorities have taken more than six and half years. It is under such circumstances that the petitioner has crossed the maximum age (40 years). The petitioner cannot be made to suffer on account of lapse on the part of the authorities, since they have not considered the claim of the petitioner with due diligence.
4. Learned AGP on the other hand submits that the issue of relaxation of age was also considered by the authorities which has been rejected. He further submits age of a candidate is not the only factor which is required to be considered in terms of the various circulars of the State Government governing the field of claims regarding compassionate appointment. The respondents

are required to see that petitioner is eligible on each and every parameter for grant of compassionate appointment.

5. On perusal of the records and the submission of the rival parties we find that the timeline taken note of above is not in dispute. The petitioner had approached the authorities diligently and within the stipulated time for the benefit of compassionate appointment. There was some delay in the claim on account of pendency of proceedings in the Civil Court. The decree of the Civil Court was passed on 16.12.2014 and soon thereafter communicated to the authorities. Despite such communication they have not proceeded to consider the petitioner's claim. The petitioner was thus compelled to approach the SAT in O.A. No. 446 of 2017 and a direction was issued by the SAT on 06.09.2019 requiring consideration of his claim. Even thereafter the respondent authorities have taken nearly two and half years to consider the petitioner's claim. The delay of about six and half years is, therefore, clearly attributable to the inaction of the authorities as they have been dragging their feet in considering the petitioner's claim. It, therefore, cannot be said that the petitioner should suffer for such delay on the part of the authorities.
6. The law in this regard is by now settled. The applicant petitioner diligently made his application for compassionate appointment

within time. There is no negligence or delay on his part. On account of procrastination of the authorities, the application was not considered for about 6½ years. It is under such circumstance that during the period of inertia on the part of the respondents that the petitioner is said to have crossed the maximum age of appointment.

7. The question, therefore, arises whether the petitioner can be made to suffer for no fault of his own. Whether under such circumstance the petitioner should be deprived of his right/relief, by this Court in writ jurisdiction under Article 226 of the Constitution of India. Similar issue came up for consideration before the Apex Court in the case of ***Shekhar Resorts Limited (Unit Hotel Orient Taj) -Vs.- Union of India and Others*** reported in ***(2023) 3 SCC 220***. In that case also the appellant had made an application within the stipulated time under the scheme. The appellant was not guilty of any deliberate delay or negligence in taking the requisite steps for depositing the settlement amount under the scheme falling for consideration in the said case. The High Court, however, declined relief to the appellant on the ground that period of the scheme under which the benefit was claimed had lapsed and the High Court, in exercise of its power under Article 226 of the Constitution of India cannot extend the period of the scheme. The Apex Court

found the view of the High Court in this regard to be right to some extent.

8. The Apex Court thereafter proceeded to observe that since the appellant was otherwise entitled to benefit under scheme the High Court erred in refusing to grant any relief to the appellant.
9. In the present case also, noted above there was no negligence, delay on the part of the applicant petitioner, in making application for compassionate appointment, a claim which requires expeditious consideration, since the nature of the claim being considered to grant immediate relief to a family/dependent of a Government employee left in penury on account of sudden demise of the bread earner. The authorities, however, have dragged their feet and not considered the petitioner's claim for about 6½ years. Therefore, based on the facts and circumstances in this case also the same question arises as in the case of ***Shekhar Resorts Limited (supra)*** before the Apex Court. The question is whether the present applicant/who was otherwise eligible on the age criteria and has been made to cross the upper age limit for consideration for compassionate appointment due to lapse/inaction on the part of the respondent authorities, should be considered remediless. In this regard, we consider it appropriate to reproduce relevant extract of paragraph 24 and

para 27 of the judgment in the case of ***Shekhar Resorts Limited*** (*supra*) which reads:

“24. It is not a case where the appellant did not make any application within the stipulated time under the Scheme. This is not a case where Form 3 determining the settlement amount was not issued during the validity of the Scheme. It is not a case where the appellant deliberately did not deposit the settlement amount and/or there was any negligence on the part of the appellant in not depositing the settlement amount within the stipulated time.

27. In view of the above, and under the circumstances and for the reasons stated above, as the appellant was not in a position to deposit the settlement amount at the relevant time, more particularly on or before 30-06-2020 due to legal impediment and the bar to make the payment of settlement amount in view of the moratorium under the IBC, and as it is found that the appellant was otherwise entitled to the benefit under the Scheme as Form I submitted by the appellant has been accepted, Form 3 determining the settlement amount has been issued, the High Court has erred in refusing to grant any relief to the appellant as prayed.”

10. In view of the judgment of the Apex Court, since there is no lapse or delay on part of the applicant/petitioner, and he had made application well within time, we are of the view that he cannot be denied relief.
11. We thus quash the order dated 05.05.2021 passed by the Secretary, and set aside the order dated 07.03.2025 passed in O.A. 667 of 2021. We direct the Secretary to the Government of West Bengal in the Irrigation and Waterways Department to

accord consideration to the petitioner's claim afresh without raising the issue of the petitioner being over age.

12. The consideration on the other parameters, however, is required to be done in terms of the circulars applicable to the petitioner's claim. Let such claim be disposed of by a reasoned and speaking order within a period of three months from the date of receipt/production of a copy of this order before the Secretary, Irrigation and Waterways Department.
13. The writ petition is allowed in these terms.
14. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(SUPRATIM BHATTACHARYA, J.)