

18.09.2025
Item No.07
Court No.11
KCP

**FMA 750 of 2024
with
IA No. CAN 1 of 2024**

**Rosnara Bibi
- Versus -
The State of West Bengal & Ors.**

Mr. Biswarup Biswas,
Mr. Kamal Mishra,
Mr. Pratap Sanfui.
...for the appellant

Mr. Shamim ul Bari
Ms. Indrani Nandi.
...for the State respondents

The order under appeal is one dated 26th February, 2024, dismissing the writ petition of the appellant herein. The writ petition was made by the daughter of a Group-‘D’ staff of Mandarpur High Madrasah, who expired on 17th January, 2013, while still in service.

The appellant, the daughter of the aforestated employee had applied on 16th June, 2016 for compassionate appointment, clearly beyond a period of two years as stipulated in the concerned rules. It was on this ground alone that the writ petition had been dismissed.

The facts in a nutshell are as under:

The father of the appellant had expired on 17th January, 2013. The mother of the appellant had

made an application for compassionate appointment on 10th June, 2013, which was forwarded by the Madrasah authorities to the concerned District Inspector of Schools, (hereinafter referred to as the DI) some time in 2014. The application was kept pending till 2016. The mother had by a letter of 6th June, 2016 intimated to the concerned authorities that she was physically unwell and that her daughter should be considered for compassionate appointment in her place and stead. The daughter, the appellant herein made an application on 16th June, 2016 for such appointment.

The concerned authority had rejected the mother's claim on 29th August, 2016 and thereafter proceeded to reject the claim of the daughter for compassionate appointment on 2nd December, 2016.

Mr. Biswas, learned advocate appearing for the appellant has argued that the order of rejection is assailable on multiple grounds.

First, on the issue that the mother's application, ought to have been decided in 2013 or at least in 2014 itself, rather, it had been kept pending till 2016.

The second point is that the lapse of two years is not a fault attributable to the appellant and thereby, she cannot be made to suffer for the same.

The third issue raised by Mr. Biswas, while assailing the order of rejection is that the rejection was made on consideration of a wrong and/or inapplicable rules, which clearly reflects non-application of mind by the concerned authority (respondent no.3).

Mr. Biswas has also drawn our attention to the appropriate and relevant rules being Rule 32 of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the Posts of Teacher and non-teaching Staff) Rules, 2010 (hereinafter referred to as the said rules).

Mr. Biswas draws our attention to rule 32 (2)(3)(4)(5) and a proviso to sub-rule 5.

Mr. Biswas seeks to draw a distinction insofar as sub-rules 4 and 5 of rule 32 are concerned read with its proviso that the mother on the date of the application, if found to be ineligible, would clothe the appellant with a right to be considered for compassionate appointment in the place and stead of her father.

In fact, he further argues, that the proviso had not been adequately considered, inasmuch as, had the ineligibility of the mother been apprised within two years, the appellant herein could have applied within the stipulated time of two years and been

considered as an eligible member of the family for compassionate appointment. He has relied upon a decision of the Hon'ble Supreme Court reported in 2022 SCC OnLine SC 684 (*Malay Nanda Sethy –vs- State of Orissa and Others*).

We have also heard Mr. Bari, learned advocate appearing for the State respondents.

Mr. Bari argues that the mother of the appellant was an ineligible member of the family for compassionate appointment, even on the date of the death of her husband and also on the date of her application. He further argues that the concerned authority has considered the application in the light of the relevant rules and has passed a reasoned order.

We have heard learned counsel appearing for the respective parties and considered the pleadings and documents on record.

We find from the records that the mother of the appellant was ineligible, being above the age of 45 years on the date of death of the husband, the father of the appellant herein on January 17, 2013. She was, therefore, clearly ineligible under rule 32 (5) of the said rules. Thus, the reservation of sub-rule 4 of rule 32 of the said rules :“Only one eligible member of the family may be appointed.....”becomes applicable. Therefore, the appellant cannot thereafter

claim a further right of appointment after the rejection of the mother's application.

The proviso of sub-rule 5 of rule 32 of the said rules is also not applicable in the instant case as the period of four years for making an application would apply only if the appellant herein was a minor on the date of death of her father on January 17, 2013.

It appears from record, that she was not a minor and had indeed attained majority by that time. Hence, her application would be restricted to a period of two years from the date of death of the employee.

Clearly, the application has been made by the appellant beyond the stipulated period of two years and such delay could not be explained by the pendency of the application made by the mother, which due to the age restriction made her ineligible.

Thus, even if the mother's application was considered within a reasonable time, it would not have given the appellant any right to seek appointment on compassionate ground in the place and stead of her late father as the very act of applying by the mother rendered any other person of the same family incompetent to seek an appointment on compassionate ground.

It is true that a benevolent legislation ought not be construed in a rigid manner, it also cannot be

denied that in the instant case there has been a delay on the part of the appellant in seeking compassionate appointment by a period of more than one year, beyond the stipulated time of two years.

The decision referred to by Mr. Biswas was in respect of a case where the applicant seeking compassionate appointment had fulfilled all criteria and conditions for being appointed. In spite thereof, the application had been kept pending. In the instant case, admittedly, the mother did not fulfill such criteria and the delay in making the application by the appellant, seeking compassionate appointment cannot be condoned.

In the above facts and findings, we are left with no option but to dismiss the appeal and the connected application.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)