

24th October, 2025
(D/L No.15)
Ct. No.4
(SKB)

W.P.S.T.180 of 2024

Himadri Chowdhury
Versus
State of West Bengal and others

Mr. Victor Chatterjee
... for the petitioner.

Mr. Tapan Kumar Mukherjee, AGP,
Mr. Somnath Naskar
... for the State.

1. Heard learned advocate for the petitioner as well as the learned AGP appearing for the State.
2. The writ petitioner was the applicant before the West Bengal Administrative Tribunal ('SAT' for short) in O.A. No.721 of 2022. The O.A. was dismissed by the SAT by its order dated 04.04.2024, which is put to challenge in the present writ petition.
3. The brief facts forming the foundation of the dispute is that the present petitioner is son of one Kanai Chowdhury, who died while in harness serving as Operator-cum-Mechanic (O.C.M.) under the office of the Block Development Officer, Habibpur at district Malda. The date of demise of the petitioner's father is 03.11.2013. The petitioner's mother made an application for

compassionate appointment, which, it is not in dispute, was within time, i.e. 09.04.2014.

4. Pending consideration of her application for compassionate appointment, the health of petitioner's mother deteriorated owing to certain illness and mental agony caused on the demise of her husband (petitioner's father). Under the circumstance, she requested the respondent authorities by a letter dated 10.02.2017 that on account of her frail health, she was ineligible to take up the appointment on compassionate ground. The letter was written by her at a time when her earlier application was returned to her for submission of certain documents/ testimonials.
5. Taking this opportunity, she intimated the authorities that her son (petitioner) had attained majority on 15.11.2016. Since the petitioner was otherwise eligible for taking up an appointment on compassionate ground, she requested the authorities to offer an appointment on compassionate ground to the present petitioner (son) in her place as she was physically unfit and, therefore, ineligible for the appointment.

6. The authorities thereafter proceeded to consider the petitioner's case. The matter was considered by the three-man enquiry committee in terms of the policy for appointment on compassionate grounds.
7. On an earlier date, we had requested the learned AGP to produce the records showing consideration by the three-man committee. In spite of two adjournments, the same was not produced. It is under such circumstance that the writ petitioner has obtained the proceedings of the three-man enquiry committee dated 01.11.2018, under the Right to Information Act, 2005. A copy of the same has been served on the learned AGP and is being relied upon by the petitioner. Attested photocopy of the same is being handed over to the court and retained with the records.
8. A perusal of the proceedings dated 01.11.2018 shows that the three-man committee, after a detailed consideration, recommended the offering of compassionate appointment to the petitioner, as the requisite conditions for grant of such benefit existed in the case of the petitioner. The three-man committee found that the monthly income of the family was below the

minimum salary for a lower division clerk and also below 90 per cent of the gross monthly salary of the employee at the time of his demise. The family, therefore, was found eligible for grant of benefit of compassionate appointment.

9. While the petitioner's claim for grant of compassionate appointment was being considered, his mother (wife of the deceased government servant), unfortunately, passed away on 01.05.2020. More than one and half years thereafter i.e. on 17.12.2021, the petitioner's claim was rejected by the authorities on a ground that the petitioner was a minor at the time of death of his father and upto the valid date/valid period of application. The proposal for the petitioner's appointment was, thus, rejected.

10. The learned advocate for the petitioner submits that the rejection of petitioner's claim is unsustainable. When the petitioner's mother expressed her physical inability to avail the benefit of compassionate appointment; at the same time she requested that in her place the claim of the petitioner, who has since attained majority, be considered. It was open to the

authorities, at this juncture, to take a decision whether the petitioner could be considered in her place. They, however, proceeded to consider the claim of the petitioner in her place. Thus, by their conduct, respondents have represented that they have accepted the withdrawal of claim by the petitioner's mother.

11. The application remained undispose for quite some time thereafter. While the application was still undisposed, amendment was affected to the earlier policies governing the grant of compassionate appointment. The amendment is by a notification dated 01.03.2016 bearing No.26-Emp. (hereinafter referred as "26-Emp." for short). Clause 10(aa) of the same reads as follows:

"10(aa) - In exceptional cases such as (i) death during action (ii) where none in family is eligible etc., departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took place upto five years ago. While considering such belated request the 3 member screening-cum-enquiry committee should, however, keep in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. Servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases could call for a great deal of circumspection at all levels. The dependent member must invariably

attain the minimum age of appointment at the time of consideration.”

12. Clause 14(bb) of the same reads as follows:

“14(bb) – Any undisposed case where the death/incapacitation has occurred prior to issue of this order, but after the issue of order No. 30-Emp dated 02.04.2008, could be looked into afresh, if it complies with the revised instructions.”

13. From bare reading of Clause 14(bb), it is apparent that irrespective of the death or incapacitation occurring prior to issuance of the date of amendment, if a case for compassionate appointment has remained undisposed and the death or incapacitation has occurred after 02.04.2008, as in this case, the same could be looked into afresh if it complies with the revised instructions.

14. The fact that the petitioner’s claim had remained undisposed being not in dispute, there can be no two opinions regarding the applicability of the amended/revised provisions contained in the notification dated 01.03.2016.

15. In this notification dated 01.03.2016, one Clause 10(aa) has been introduced, extracted above. From bare reading of the same, it shows that the amended provision provides for entertaining “belated requests” provided the

request is made within five years from the date of demise of the government servant in harness; and only in exceptional cases such as where (i) the death has occurred during action and (ii) where none in family is eligible.

16. The fact that there was none other than the petitioner eligible in the petitioner's family eligible after 09.04.2014, cannot be disputed since the request of the petitioner's mother citing her ineligibility for compassionate appointment, based on physical incapacitation was acted upon by the respondents, who proceeded to consider the petitioner's claim under 26-Emp. in his mother's place. However, after such consideration, the petitioner's claim has been rejected on 17.12.2021. The reason assigned for rejection of petitioner's claim is thus required to be considered having regard to the amended provisions in 26-Emp.

17. The rejection order dated 17.12.2021 reads as follows:

"Subject : Proposal for appointment of Sri Himadri Chowdhury, s/o Late Kanal Chowdhury, Ex – O.C.M., on compassionate ground, under the jurisdiction of Superintending Engineer (A.-M), Siliguri (A.-M.) Circle.

The undersigned is directed to refer to his Memo. No. 4445/9E-17/1/2019/Siliguri dated 13.12.2019 on the above noted subject and to say that this Department express its inability to accept the

proposal as per rule laid down in Labour Department Notification No. 251-Emp. dated 03.12.2013 as the candidate was minor at the date of death of his father and the date of valid period of application. Therefore, the proposal for appointment of Sri Himadri Chowshury, s/o Late kanai Chowdhury, Ex-O.C.M., on compassionate ground is rejected.

This may be informed to all concerned.”

18. The rejection is on the ground that the applicant was a minor at the time of death of his father and the period for making an application had lapsed meaning thereby that the application was time barred. This reason assigned by the authorities is required to be considered keeping in background the amended provisions which, applies to the petitioner's case, which was undisposed on the date (01.03.2016) of issuance of the revised provisions. Clause 10(aa) extracted above clearly contemplates consideration of belated requests provided the application is made within five years from the date of demise of the government servant in harness.

19. In the present case, the application made for the petitioner by his mother was well within the five year period, i.e. on 10.02.2017. The petitioner had attained majority, much prior thereto on 15.11.2016. The authority was, therefore, bound to consider the petitioner's

claim having regard to the revised provisions contained in 26-Emp. It would also be relevant at this stage to take notice of the fact that the petitioner's mother had passed away on 01.05.2020. Therefore, at the time of issuance of the impugned order dated 17.12.2021 rejecting his claim, there was no other eligible person in the family who could have been considered for grant of benefit of compassionate appointment.

20. The grounds for rejection of the petitioner's claim, therefore, contained in the rejection order dated 17.12.2021 is clearly unsustainable under the revised provisions contained in the notification 26-Emp. and fit to be quashed. The SAT however, has rejected the petitioner's claim by the order impugned dated 04.04.2024. The SAT has apparently glossed over the fact of coming into force of the revised provisions under notification dated 01.03.2016 bearing No.26-Emp., relevant extract of which we have already taken note of above. In terms of Clause 10(aa) and 14(bb) thereof since there was none other eligible for appointment in the petitioner's family; there was no scope for rejecting the petitioner's claim as

being belated. The law in this regard is well settled. The claim for compassionate appointment being an exception to the general rule/mode of appointment is to be considered strictly in accordance with the policy governing grant of the benefit. Therefore, rejection of petitioner's claim by the communication dated 17.12.2021 is contrary to the revised instructions dated 01.03.2016 bearing Notification No.26-Emp., and is unsustainable. On a harmonious reading of these two provisions contained in 26-Emp., the petitioner's undisposed claim for compassionate appointment was required to be considered as per Clause 14(bb) of 26-Emp. on its own merits for grant of benefit of Clause 10(aa) of 26-Emp. We, therefore, set aside the rejection order dated 17.12.2021 issued by the Assistant Secretary to the Government of West Bengal in the Water Resources Investigation & Development Department.

21. The matter is remitted to the respondent authorities for consideration afresh without raising the issue of the petitioner's claim being belated. Subject to fulfillment of other requirements, the authorities are directed to

consider/process the petitioner's application and to dispose of the same by a speaking order in accordance with law, within a period of eight weeks from the date of receipt/production of a copy of this order.

22. The writ petition is, thus, allowed in the above terms. The O.A. stands allowed accordingly.

23. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)