

02.09.2025
Sl. No.193(DL)
Ct. No.42
srm

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

W.P.A. No. 21229 of 2023

Nilay Kumar Samanta

Versus

The State of West Bengal & Ors.

Mr. Swarup Banerjee,
Mr. Sajal Kumar Ghosh,
Mr. Arinjay Pal,
Mr. Ranit Mukherjee,
Mr. Subham Biswas

...for the Petitioner.

Mr. Santanu Kumar Mitra,
Mr. Abhishek Banerjee

...for the State.

1. This writ petition is filed seeking withdrawal and/or cancellation of Memo No.1062/PN/0/I/3S-153/2017 (Pt-I) dated 22nd February, 2022 of respondent no.4, Special Secretary to the Government of West Bengal, Panchayat & Rural Development Department, and for appointment of the petitioner on compassionate ground.
2. The petitioner contends as follows.
 - (i) The father of the petitioner, late Malay Kumar Samanta was employed as an Executive Assistant Officer, Gourhati-II Gram Panchayat, under Arambag Development Block. While working as Executive Assistant Officer, the father of the petitioner died-in-harness on 25th January, 2014.

The petitioner's father left behind his mother Mousumi Samanta, the petitioner Nilay Kumar Samanta and his sister Neha Samanta as his only legal heirs. Upon attaining majority on 24th April, 2016, the petitioner made an application for his appointment on compassionate ground on 27th June, 2016 before respondent No.9, Block Development Officer, Arambagh Development Block. Since such application was not disposed of the petitioner approached this Hon'ble Court by way of a writ petition being WP No.18218 (W) of 2017.

(ii) The said writ petition was disposed of on 24th January, 2020 with the following direction:

"In view of the above, the instant writ petition is disposed of by directing the respondent no.1 being the Principal Secretary, Department of Panchayet & Rural Development (PRI Cell) to consider the application of the petitioner for being appointed on compassionate ground strictly in accordance with law within a period of six weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to the petitioner within a fortnight thereafter."

(iii) Pursuant thereto, the application of the petitioner for appointment on compassionate ground was rejected for the following reasons; (a) the applicant was a minor at the time of his father's death, (b) late submission of *proforma* application.

(iv) Being aggrieved and dissatisfied with aforesaid decision of the respondent authorities, the petitioner has preferred the present writ petition.

3. Mr. Swarup Banerjee, learned Advocate for the petitioner submits that there is no such delay in approaching the concerned authority for appointment on compassionate ground. The mother of the petitioner on 29th January, 2014 within five days of her husband's death made an application for appointment of one of the family members on compassionate ground. There is no reflection in the impugned order of respondent authorities of the previous application filed by the mother of the petitioner, Mousumi Samanta within the stipulated period. Due to such lackadaisical approach on behalf of the State authorities the family of the petitioner is passing through financial crisis. He seeks for appropriate direction upon the respondent authorities for appointment of the petitioner or any of his family members on compassionate ground.
4. On the contrary, Mr. Santanu Kumar Mitra, learned Senior Government Advocate appearing for the State referring to Notification No.251-Emp. dated 3rd December, 2013 of Labour Department, Government of West Bengal, indicates that the applicant invariably should attain majority within six months of date of death of the concerned employee. In the present case, the petitioner attained majority after two years of death of his father. More so, the mother though has filed an application for appointment on compassionate

ground, but no such application in *proforma* 'A' was submitted before the authority to process her appointment on compassionate ground. Therefore, the impugned order passed, pursuant to the order passed in the writ petition, by the concerned authority, namely, respondent no.4, Special Secretary to the Government of West Bengal, Panchayats & Rural Development Department dated 22nd February, 2022 is legal and proper and should not be interfered with.

5. It is not in dispute that the petitioner at the time of his father's death was a minor. As per clause 6(II) of the Notification No.251-Emp. dated 3rd December, 2013 of Government of West Bengal, Labour Department, the dependant members should invariably attain the minimum age of recruitment within six months from the date of death or incapacitation of the concerned employee. In the instant case, the petitioner attained majority on 24th April, 2016 which is more two years of his father's death on 25th January, 2014. Clause 10 – Procedure – of the aforesaid notification provides that if the family of the deceased or the employee retired on being permanently incapacitated is in need of financial assistance and the same is absolutely necessary to support the family, application for employment is to be submitted within six month from the date of death or

retirement on permanent incapacitation. If no application is submitted within the said period it will be presumed that the family does not require any financial assistance. In no case application submitted after expiry of the above period will be entertained. In the writ petition, it is averred that the petitioner filed application for appointment on compassionate ground on 27th June, 2016. Thus, the petitioner was a minor at the time of his father's death and did not attain majority within six months of the death of his father and could not submit application within the stipulated period of six months from the death of the employee. Admittedly, the application has been submitted for appointment on compassionate ground after two years of the death of petitioner's father, which is beyond the stipulated period. Therefore, the reasons for not acceding to prayer of the petitioner for appointment on compassionate ground namely that the petitioner was a minor at the time of his father's death and there was late submission of *proforma* application cited by the authority concerned is proper and hence does not call for interference.

6. Be that as it may, the petitioner in his supplementary affidavit has annexed the application submitted by the mother of the petitioner namely Mousumi Samanta dated 29th January, 2014 (Annexure P-14) seeking for

appointment of any of the family members. Admittedly, her son (the petitioner) and her daughter were minor on such date and, therefore, she was the only major member who could have been considered for appointment on compassionate ground. In the letter of District Panchayat & Rural Development Officer, Hooghly being No.2157/P&RD/PN/6A-53/2016 dated 23rd November, 2016 (Annexure P7), submission of such application by the mother of the petitioner is also reflected therein. However, the authority concerned has failed to indicate the fate of the application of the mother filed on 29th January, 2014 just five days after her husband's death. Thus it is found that such application has not been processed till date.

7. Mr. Mitra, learned Senior Government Advocate has raised the issue that such application cannot be considered since it has not been submitted in *proforma* 'A', as required under the notification.
8. In considering an application for appointment on compassionate ground, 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. Reliance may be placed on the decision of Hon'ble Supreme Court passed in ***Shreejith L. versus Deputy Director (Education) Kerala &***

Ors. reported in **(2012) 7 SCC 248** wherein the Hon'ble 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."

9. Bearing in mind the scheme being a beneficial one and the observation of Hon'ble Supreme Court, this

Court is of the opinion that the application of the mother of the petitioner dated 29th January, 2014 for appointment on compassionate ground should be considered and processed by concerned authority.

10. Accordingly, writ petition being **WPA 21229 of 2023** is disposed of directing respondent no.9, Block Development Officer, Arambagh Development Block to issue a letter to the mother of the petitioner, namely Mousumi Samanta within a period of two weeks from date of communication of this order calling upon her to submit application as per *proforma* in terms of Notification No.251-Emp dated 3rd December, 2013 before the authority concerned. Upon such compliance by the mother of the petitioner, the Block Development Officer shall take proper steps in accordance with the Notification No.251-Emp dated 3rd December, 2013 within a period of two weeks of such submission of *proforma*.

11. Learned advocate for the petitioner is directed to communicate this order to respondent No.9, Block Development Officer, Arambagh Development Block.

12. Interim order, if any, stands vacated.

13. All connected applications, if any, stand disposed of.

14. There shall be no order as to costs.

15. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
16. 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.)