
(2019) 03 CAL CK 0044

In the Calcutta High Court

Case No : Writ Petitions (WP) 4837 (W) Of 2018

Dinabandhu Rana

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 12-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16, 226

Citation : (2019) 03 CAL CK 0044

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Asimes Goswami, Paulumi Banerjee, Priyanka Dutta, A.P. Lahiri, S.P. Lahiri

Judgement

The petitioner is the son of late Tarak Chandra Rana, who was "Gram Panchayat Karmi" of Chanditala-II Panchayat Samity, P.O. Baksa, P.S. Chanditala, District Hooghly. The said Tarak Chandra Rana died in harness on June 12, 2009 leaving behind him his widow and the petitioner. The petitioner was 11 years old at that time.

Smt. Purnima Rana being the widow of late Tarak Chandra Rana made an application before the Block Development Officer, Chanditala-II Block, Chanditala, on November 10, 2009. As the said Purnima Rana had not studied up to Class-VIII, which was a requirement for consideration of the application of the said widow, her prayer was rejected. When the petitioner became an adult, he submitted an application for appointment on September 22, 2016. Ms. Purnima Rana, mother of the petitioner also filed an affidavit stating that she had no objection if the petitioner got the job.

On June 5, 2017 the widow filed an application before the Block Development Officer, Chanditala-II Block, inter alia; stating that as she had applied for the job by mistake, she would pray that the job would be given to her son.

The District Magistrate & Executive Officer(ZP) Hooghly by an order dated July

25, 2017 rejected the appeal filed by Purnima Rana as also the application filed by the petitioner for granting compassionate appointment under the "Died-in-Harness" category on the death of late Tarak Chandra Rana. The said order of the District Magistrate & Executive Officer (ZP) Hooghly is impugned to this writ application.

Mr. Asimes Goswami, learned Advocate for the petitioner submits that widow of the deceased was not eligible for appointment, as she had not passed Class-VIII examination. Since the petitioner became a major he applied for appointment. According to him, as the family was in extreme financial hardship the case of the petitioner ought to have been considered sympathetically.

Mr. Lahiri, learned Advocate for the State respondents submits that the scheme operating in the field no.80-Emp dated April 2, 2008 did not permit appointment of a dependant of a deceased employee on attaining the age of majority. According to the said notification which was applicable in the petitioner's case, the application ought to have been made within six months from the date of death. The relevant provision is quoted below :-

"The dependant of an employee seeking appointment on compassionate ground shall henceforth make an application in the prescribed proforma within six months from the date of death of the deceased employee or his retirement on permanent disablement. If no application is submitted within this stipulated period, it will be presumed that the family does not require immediate financial assistance.

His next submission is that whether a minor child of a deceased employee could apply for compassionate appointment on attaining the age of majority has been decided by the Hon'ble Apex Court in the decision of Sanjay Kumar Vs. The State of Bihar & Ors. Reported in (2000)7SCC 192. The relevant portion of the above decision is quoted below :

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2.....

3. "We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crises resulting due to death of the bread earner who have left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and Anr. V. Pushpendra Kumar & Ors. (Supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see

that the family gets immediate relief."

Reliance is also placed by Mr. Lahiri in the decision of Piyali Saha Vs. State of West Bengal & Ors. reported in (2013) 1 CHN 78 and the relevant portion of the above decision is quoted below :

"10. Therefore the aforesaid language of the rule is very clear as correctly contended by Mr. Sanyal, to provide for an exception to the ordinary recruitment rules as it has created classified candidates from other candidates. Apparently such a rule is an affront to Articles 14 and 16 of the Constitution of India but such a classification is discernable for valid reasons. The reasons therefor are mentioned in the said Rules. The purpose of the appointment on death-in-harness is not to provide an employment anyone and every one at any time. Its object is to save the member of the family of the deceased teacher from the acute financial hardship which had befallen because of death and particularly when there is no other means to survive but for such employment. This exceptional provision cannot be said to be a matter of right. Therefore interpretation given by the learned Single Judge while relying on the earlier Division Bench judgment in case of Sri Prithwish Samanta and ors. which in its turn has affirmed the learned Single Judge's decision extending the period of two years on any ground is not the correct interpretation of purpose of the said Rule. It seems to us that learned Single Judge in case of Arpita Sen's case and the Division Bench while affirming the learned Single Judge's decision in case of Sri Prithwish Samanta's case have been swayed by emotional argument that object is to provide with employment. According to us if any particular member can survive for a longer time without employment and could wait on any circumstances we think that family does not deserve any employment on compassionate ground. We find support of the Supreme Court pronouncement for above conclusion. In case of Commissioner of Public Instructions & others. vs. K.R. Vishwanath reported in (2005) 7 SCC 206 in paragraph 10 Apex Court observed while noting the decision of the same Court in case of Sushma Gosain vs. Union of India that the purpose of providing appointment on the compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The views of the same Court in earlier judgments in case of Phoolwati v. Union of India [1991 Supp (2) SCC 689], Union of India vs. Bhagwan Singh reported in [(1995) 6 SCC 476] have also been noted and accepted in this judgment.

15. We could not find legal support to condone delay aiming to extend the time on the concept of continuous wrong. We failed to comprehend how the department could commit any wrong let alone continuous wrong. When the rule creating some substantive right does not envisage any power to condone delay

how Court can do it. Again we add concept of continuous wrong giving rise continuous cause of action applies in judicial proceeding for assessing existing right either codified or common law against wrongdoer, not for creating substantive right now nonexistent.

16. If the period which has not been contemplated in the Rule intending to create a right cannot be extended by the Court. In other words when the legislature has fixed a time limit in relation to substantive law the Court cannot taking the task of legislature extends time limit, simply it amount to amendment of Rule. The Court cannot have any amending power of the legislation. Under those circumstances as Supreme Court has been pleased to observe in the case quoted above the aforesaid rule is a mandatory in character, we answer the aforesaid questions in the manner as follows: The time fixed in the said Rule is a rigid, subsequent application after attaining majority is not a lawful application and the same cannot be said to be a continuing process. Now we send down the writ petition for assigning finally taking note of our decision."

Lastly, he placed an unreported judgement passed in the matter of Arindam Chowdhury Vs. State of West Bengal & Ors. (In re: W.P.S.T. 35 of 2018 with W.P.S.T.38 of 2018) wherein the Hon'ble Division Bench has summarized the well-settled principles governing the field of compassionate appointment. The relevant portion the above decision is quoted below :-

"5. f) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

l) Compassionate employment cannot be granted after lapse of reasonable period, which must be specified in the scheme.

m) There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions.

s) Having regard to the fixation of minimum and maximum age by an employer answering the definition of State within the meaning of Article 12 of the Constitution for entering service, it is axiomatic that while an over-aged dependent cannot seek appointment, even an under-aged dependent cannot also seek such appointment.

s) It is only in rare cases, if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/ incapacitation, can be considered for appointment upon attaining majority."

I have considered the above provision of the notification no.80-EMP. It is the

settled principle of law that compassionate appointment was an exception to the general rule of appointment and cannot be given as a matter of right but can only be given under exceptional circumstances in order to allow the family which had lost its bread earner to tide over immediate financial crisis. In the instant case, the petitioner applied after 7 years from the date of death of his father, although, the notification prescribed that the application ought to have been made within six months from the date of death of the concerned employee.

Compassionate appointment can be given only in strict compliance of the scheme or rules in this regard.

The Court sitting in writ jurisdiction under Article 226 of the Constitution of India cannot re-write the Rules. Unless and until the rules or the guidelines or the scheme provide that a minor could apply for compassionate appointment after attaining the age of majority, the Court cannot pass any order in favour of such a dependant.

In this case the Court cannot direct the employer to condone the delay in making the application. Moreover, it is also presumed in such a case that the family could tide over the immediate financial hardship, as a lot of time had lapsed between the death and the date when the dependant attained majority.

Compassionate appointment is not a heritable right.

With the above observations and discussions, this writ application is dismissed.

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

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.