
(1995) 05 CAL CK 0029
In the Calcutta High Court
Case No : C.O. No. 19064 (W) of 1992

Ila Sarkar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-05-1995

Acts Referred:

Citation : 100 CWN 483 : (1996) 74 FLR 1993 : (1996) 2 LLJ 1122

Hon'ble Judges : R. Bhattacharyya, J

Bench : Single Bench

Advocate : H.N. Mukherjee, T.K. Bhattacharyya, for the Appellant; A.P. Sircar and S. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhattacharyya, J.—The petitioner is sought to have explored the constitutional remedies in the shape of Mandamus, Certiorari and other appropriate reliefs under the womb of writ for compassionate appointment.

2. To understand the contentions, a few antecedent facts need be stated;

3. Narayan Chandra Sarkar, since deceased, was an erstwhile primary teacher of Dakshin Chakra Circle who died in harness on July 31, 1981. He was survived by his sons, daughters and widow. The progenies of Late Narayan were all minors when he breathed his last. There was no adequate means to their livelihood.

4. In the predicament, compassionate appointment was longed for which was deferred or postponed on account of their minority. The D.I. of School, Birbhum, portrayed a rosy picture of her appointment on the footing that she would be absorbed in place of her father when she would come of age where time would not shield her appointment.

5. The petitioner not only passed in the mean-time the Higher Secondary Exam in the year 1990, but also inducted herself to basic training. The representations galored for compassionate appointment. But all her hopes were nipped in the

bud, as shown by annexures "A" to "D".

6. The compassionate appointment worn out thin despite her eligibility. The pecuniary benefits available to them on account of death of her father became a distant claim. The petitioner to redress her grievances has been constrained to file the writ application, the affidavit-in-reply of the petitioner is the repetition and reiteration of claim acknowledging the payment of pecuniary. benefits to the members of his family.

7. The claim has been resisted by the respondents principally on the ground of maintainability among which limitation is one, apart from, defect of parties, in absence of distress and immediate financial assistance. The prescribed qualification, if remains alive, could only project such claim.

8. The submission of claim in the shape of letter and the hopes held out by the D.I. of Birbhum, as alleged, is a fanciful imagination. The petitioner is guilty of culpable delay which is not curable by the operation of administrative justice and law. The respondents cannot confer any benefit, as the annexures "A" to "D" dominate the field. The claim of the petitioner is unenforceable and is liable to be rejected, thus.

9. The whole claim of the parties is to be adjudged in the background of the factual and legal exposure of the case.

10. The learned counsel for the petitioner in his pointed argument has mainly canvassed the minority of the petitioner which was a handicap for her to be appointed in the place of her father who died in harness. It was an insuperable obstacle, according to the learned counsel for the petitioner, to be appointed on compassionate ground as the minority or the disability pervaded the case.

11. The promise held out by the D.I of School, Birbhum for her appointment in future subject to her coming of age was a weighty factor to enliven her claim. The learned counsel for her has referred to annexures "A" to "D" of the writ petition to enrich her claim for appointment.

12. To gather strength, he has relied on Bimal Kumar Gain and Anr. v. The State and Ors. (1)1995 Cal. LT. 23 and Smt. Phoolwati Vs. Union of India and Others, . The facts of the case of Bimal Kumar Gain (supra) cannot fetch any value as the application was made almost within the proximity of the death of Sankar Kr. Gain who died in harness on February 23, 1984 and the application was filed on April 23, 1984 for the intended purpose. But there is no prima facie tangible material on record in the case at hand that any application for compassionate appointment was made within the close proximity of time of the death of Narayan who died on July 31,1987 or within the time prescribed. In the instant case, the petitioner preferred the writ application in the year 1992 i.e. long after 12 years of the death of Narayan. It is admitted on all hands that the petitioner was 12 years of age at the time of her father's death who may be reasonably expected to attain her majority sometime in the year 1987. She did not come

even within the reasonable period of the prescribed period for compassionate appointment after her attaining majority. The filing of the writ on April 26, 1992, long after the death of Narayan is the maiden attempt which itself is the earlier blush, to the case of the petitioner. The running of time is not saved after, her attaining majority as she did not prefer any application within the time provided by the Rules, Regulations and Statutes. It is undisputed that limitation is an act of the parties to stimulate their claim in a Court of law or to any other authority for the desired objective, before the lapse of time. In the instant case, the attempt of the petitioner has been drawn to a blank who for the first time preferred the writ in the year 1992. She woke up from her slumber in 1992, when much water had flown into the Ganges. Therefore, the facts of the present case are quite distinguishable from the facts of the case of Bimal Kumar Gain (supra). The next case cited by the learned counsel for the petitioner is no longer held to be the good law by the reason of the decision of the Apex Court in Umesh Kumar Magpal v. State of Haryana (1995 I LLJ 798) where the Court held that compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future, the object being to enable the family to get over the financial crisis which it faces at the time of demise of the sole breadwinner. The compassionate employment cannot be claimed after the lapse of time and after the crisis is over. The case of the petitioner is enfeebled when she claims herself as the only earning member in the family.

13. The above is suggestive of the fact that the time prescribed by the Rules, Regulations and the Circulars are inelastic. It does not afford any vested right to a party to seek relief where time is the essence factor to stir such claim.

14. The Apex Court again, has not only discouraged but also deprecated the compassionate appointment de hors the Rules, Regulations, Instructions and Statutes in State of Haryana Vs. Naresh Kumar Bali, ;

15. The learned counsel for the petitioner has laid much stress in Phoolwati (supra) to excavate the relief. But the decision instead of helping the petitioner helps the adversaries where the immediacy has been given the publicity which is meticulously silent in the case before us. The case of Phoolwati is founded on the law laid down by the Apex Court in Sushma Gossain v. Union of India (1990 1 LU169) where the Court spoke for the immediacy and hardship in making compassionate appointment.

16. I am tempted to cite one decision which may add fuel to the claim of the respondents where caution has been sounded. The Supreme Court in its celebrated judgment has laid down the law which has not been disturbed by any decision subsequent thereto. The Court in Life Insurance Corporation of India v. Asha Ramachandra Ambedkar (Mrs.) and Anr., (1994LU 173) has held that "the High Courts and the Administrative Tribunals cannot confer benefaction impelled by sympathetic consideration. The Courts should endeavour to find out whether a

particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregard of law, however hard the case may be, should never be done. In the very case itself, there are regulations and instructions governing the matter. The Court below has not even examined whether a case falls within the scope of relevant statutory provisions. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered," Therefore, none of the cases cited by the petitioner could come to her rescue. It should be borne in mind that the Court is not a charitable institution to accord relief to a party to attain his desired objective come what may, in supersession of Rules, Regulations, Circular and Instructions. If it is encouraged, it will open the flood gate where the Rules, Regulations, Instructions, and Statutes would be reduced to a mockery. Equitable relief is not one way traffic as equitable relief is always evenly balanced between the petitioner and the adversaries, having regard to the facts and circumstances of each case.

17. For the reasons indicated above, I do not find any force in the contention of the learned counsel for the petitioners as I do find in respect of the contentions urged by the learned counsel for the adversaries. Thus after considering the conspectus of the facts and circumstances of this case, the writ application stands dismissed and the affidavit-in-opposition sustained. Considering the facts and circumstances, I do not award any cost.