

(2012) 04 CAL CK 0046
In the Calcutta High Court
Case No : W.P.S.T. No. 202 of 2011

Lalita Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 04 CAL CK 0046

Hon'ble Judges : Subhro Kamal Mukherjee, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Prokash Chandra Mondal, for the Appellant; Pradip Dutta and Mr. Pinaki Dhole, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The challenge in this Writ Petition is to the decision of the West Bengal Administrative Tribunal passed in O.A. No. 1427 of 2002 on 4th March 2011. The petitioner's claim for appointment on compassionate grounds has been rejected. The case of the petitioner is that she was married to Krishnapada Das who was employed as Group - D staff in the office of Respondent No.3. Krishnapada Das expired on 27th October 1997, while in service. The petitioner claimed family pension and other benefits to which she was entitled on the death of her husband on the basis of "died-in-harness category". Pursuant to the order passed by the Administrative Tribunal in O.A. No. 951 of 2000 on 19th December 2000, the petitioner was granted family pension and other benefits. She had also claimed employment in the place of her deceased husband by preferring an application on 21st June 1998. As the application went unheeded, she submitted several other representations. Ultimately she filed Original Application No. 1427 of 2002 before the Administrative Tribunal. The application has been dismissed by the tribunal, concluding that the petitioner was not entitled to compassionate appointment as there was no immediate need for assistance after the death of her husband 13 years earlier.

2. What the tribunal ignored was that the application for compassionate appointment was made within eight months of the death of the employee. As the respondents failed to pay any heed to the application the petitioner was constrained to file the application before the Administrative Tribunal in 2002. It took the tribunal 10 years to decide this application. We do not want to embark upon the inquiry as to why the tribunal took 10 years to decide the application. The tribunal has rejected the application due to the passage of thirteen years since the death of the employee, forgetting that ten of them were spent by the petitioner before the administrative tribunal.

3. The tribunal has also observed that the petitioner was the second wife of the deceased employee and that she had not disclosed whether she was married to him during the subsistence of the earlier marriage. The petitioner is being paid family pension @ Rs. .900/- per month as the basic family pension. This indicates that the administration had accepted the petitioner as the wife of the deceased employee. Therefore, the tribunal had no reason to question the legitimacy of the marriage between the petitioner and the deceased employee.

4. Apart from this, the tribunal has observed that the petitioner is about 45 years old and, therefore, was not entitled to government service. However, when she first applied for compassionate appointment she was well within the age limit. Another reason for denying the petitioner compassionate appointment was that she was drawing pension and, therefore, could not be considered to be in penury. Compassionate appointment and pensionary benefits are two different assistances and they are not mutually exclusive. They are two separate welfare measures available to the wife or heirs of an employee who dies-in-harness. Therefore, the petitioner could not have been denied the appointment merely on the ground that she received the paltry pensionary benefit.

5. In these circumstances the impugned order is set aside.

6. The writ petition is allowed. The petitioner shall be granted compassionate appointment if she fulfils all the eligibility criteria for such appointment. Urgent xerox certified copies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Subhro Kamal Mukherjee, J.

7. I agree.