

(2013) 06 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition No. 16494 (W) of 2013

Loknath Hansda

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2013) 4 WBLR 949

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Arabinda Bhattacharjee and Sujata Saxena, for the Appellant; Biswajit De for the State and Dipankar Pal for the Respondent Nos. 4 and 6, for the Respondent

Judgement

Biswanath Somadder, J.—Having heard the learned Advocates for the parties and upon perusing the instant application, it appears that the petitioner is essentially seeking appointment on compassionate ground under the died-in-harness category following the death of his father, who expired on 1st March, 2005, leaving behind his wife and four children including the writ petitioner. The pleadings reveal that the issue of compassionate appointment of the petitioner was earlier raised before this Court in 2011, when the writ petitioner had filed an earlier writ petition, being WP No. 20918 (W) of 2011. The case of the petitioner in the earlier writ petition was that after his father died on 1st March, 2005, and within a period of two years therefrom, an application was filed on 14th February, 2007, by his mother, praying for compassionate appointment of her elder son, being the writ petitioner. After he had attained 18 years of age in January, 2008, an intimation in this regard was given to the concerned respondent authority on 3rd March, 2008. Without considering such intimation, an order was passed on 15th December, 2008, whereby on the ground that the petitioner had not reached 18 years of age, his application for compassionate appointment was rejected. In such a factual backdrop, the writ petition, being WP No. 20918 (W) of 2011, was filed. The matter was disposed of by an order dated 30th January, 2012, with an observation, which reads as follows:

... This, however, will not prevent the respondent No. 4 from considering the petitioner's application for compassionate appointment on the basis of the Circulars on the date of the application, within three weeks from the date of receipt of this order after giving an opportunity of hearing to all the parties and by passing a reasoned order. The order to be passed be communicated to the parties within a week thereof.

It was on the basis of the above observation that the concerned respondent authority, being the Chairperson, District Primary School Council, Bankura, proceeded to take a fresh decision in the matter, as contained in memo bearing No. 1436/2 dated 4th June, 2012. The decision that was taken by the Chairperson, District Primary School Council, Bankura, was to forward the petitioner's case to the Director of School Education, West Bengal (Primary Branch), for grant of approval of appointment in favour of the petitioner.

2. Alleging inaction on the part of the Director of School Education, West Bengal (now renamed as Commissioner of School Education, West Bengal), the instant writ petition has been filed before this Court.

3. The only issue that requires consideration in the facts of the instant case is whether the petitioner -- admittedly a minor at the point of time when his father died -- can at all be considered for appointment on compassionate ground under the died-in-harness category. This question is no more *res integra* in view of the latest decision of a larger Bench of this Court in the case of Piali Saha Vs. State of West Bengal, . Referring to the relevant Rule governing compassionate appointment, the larger Bench has observed, *inter alia*, in paragraphs 11, 14, 15, 16 and 17 of its judgment as follows:

11. 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 discernible for valid reasons. The reasons therefore 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 which 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 and Others Vs. K.R. Vishwanath, 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 Smt. Phoolwati Vs. Union of India and Others,) Union of India (UOI) and Others Vs. Bhagwan Singh,) have also been noted and accepted in this judgment.

14. We have seen the earlier Division Bench judgment in case of Sajal Kumar Mondal. It appears that the Division Bench has merely observed that in view of the rule the petitioner has no legal right. But Their Lordships have no occasion to decide this legal issue as argument in this regard was not advanced whether the aforesaid time limit is a mandatory character or not. In Prithwish Samanta & Ors. the Court has not really decided anything independently rather Their Lordships had accepted basically what the learned Single Judge has done. It was opined by the Division Bench that delay in making application can be condoned by virtue of the concept of continuous wrong. The learned Single Judge in case of Sri Prithwish Samanta & Ors. while construing the said Rule 14 has been pleased to hold that the period of two years for making application is extendable applying the provision of Section 6(1) of the Limitation Act.

15. We are of the view such an interpretation given by the learned Single Judge and accepted by the Division Bench in case of Sri Prithwish Samanta and Ors. is wholly unacceptable under the scheme of the Constitution. Section 6(1) of the Limitation Act is applied for taking action before judicial fora for asserting a right which has accrued already, not for acquiring or creating right which is nonexistent. Provision of Section 6 of Limitation Act is essentially designed to provide a safeguard measure against legal disability in bringing legal action to assert right before judicial fora. We set out Section 6(1) of Limitation Act 1963:

Section 6(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.

16. 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 non-existent.

17. 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.

4. The clear law laid down by the larger Bench of this Court in Piali Saha's case (supra) leaves no manner of doubt whatsoever that in the facts of the instant case, the petitioner is not entitled to be considered for the purpose of being granted compassionate appointment upon the death of his father, who expired on 1st March, 2005, since at that material point of time he, admittedly, was a minor. In such circumstances, this Court does not find any merit in the instant writ petition, which is liable to be dismissed and is accordingly dismissed.