
(2019) 07 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 17807 (W) Of 2018

Satyajit Chauliya

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

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

Citation : (2019) 07 CAL CK 0014

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Kamala Kanta Kar, Subrata Ghosh, Arun Kumar Saha

Final Decision : Dismissed

Judgement

Shampa Sarkar, J

Let affidavit of service filed by the petitioner be kept with the records.

The petitioner claims compassionate appointment upon the death of his father, who died-in-harness on September 29, 1973. The petitioner claims to be

the younger son of the deceased. The petitioner has sisters and elder brothers and a 77 years old mother. The members of the family have given a

“no objection” in his favour for the purpose of seeking appointment on compassionate ground under the died-in-harness category.

For the first time, the petitioner made a representation before the authorities on April 18, 2017 claiming compassionate appointment on the death of his

father, who was an Assistant Teacher in Dakshin Mahendrapur S.B. High School.

The petitioner applied for appointment on compassionate ground after more than 44 years from the death of the deceased. The petitioner has also

crossed the age bar prescribed for such appointment under the scheme

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.â??

Lastly, 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) the Honâ??ble

Division Bench has summarized the well-settled principles governing the field of compassionate appointment. The relevant portion the above decision

is quoted below :-

â??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.

t) 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.â??

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

It is also noted that even if the petitioner was a minor at the time of death of the father, 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 also cannot direct the employer to condone the delay of 44 years 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.

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