

(2001) 02 CAL CK 0041

In the Calcutta High Court

Case No : M.A.T. No. 3957 of 2000 and C.A.N. No. 679-80 of 2001 with M.A.T. No. 3963 of 2000 and C.A.N. No. 678 and 10015 of 2001

State of West Bengal and Others

APPELLANT

Vs

Sambhu Nath Sardar

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 CALLT 532 : (2001) 2 CHN 249 : 107 CWN 444 : 105 CWN 1024 : (2001) 91 FLR 993

Hon'ble Judges : Tarun Chatterjee, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Mr. Bharati Mutsuddi, for the Appellant;Mr. Samapti Chatterjee and Ms. Chaitali Mukhopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

T. Chatterjee, J.—Let us first take up the hearing of the application for condonation of delay in filing the instant appeal. On the question of condonation of delay, we have heard the learned counsel for the State and learned counsel for the writ petitioner/respondent. We have carefully perused the averments made in the application for condonation of delay. After hearing the learned counsel for the parties and after going through the averments made in the application for condonation of delay, we hold that sufficient cause has been shown by the State of West Bengal and others for condoning the delay in filling the appeal. Accordingly, the application for condonation of delay is allowed: and delay in preferring the appeal is condoned.

2. Let the appeal be registered if it is otherwise in form. There will be no order as to costs.

Re : Application for stay (CAN 679/2001)

3. When some arguments were advanced on the prayer for grant of interim relief

during the pendency of the appeal, the learned counsel for the parties suggested before us that instead of disposing of the application for grant of interim relief, the appeal itself can be disposed of by treating the same as on day's list. Accordingly, by consent of parties, the appeal is treated as on day's list and taken up for final disposal.

4. Late Jiban Krishna Sardar, the father of the writ petitioner/ respondent, was appointed as a Chowkidar under Sankarpur No. 2 Gram Panchyat on 21st September, 1979. The said Jiban Krishna Sardar died on 17th September, 1991. An application was made before the concerned Block Development Officer to provide that writ petitioner with an employment on compassionate ground. Since the said application was not decided on merit by the concerned Authority and was kept pending, a writ application was moved in this Court which was registered as W.P. 528/(W) of 1999 and the same was disposed of by the following order:--

"It is contended in the supplementary affidavit that the representation was made on 12th October, 1993, a copy of which was annexed thereto as annexure "X". If it is so, in that event the respondents concerned may consider and dispose of the same in accordance with law having regard to the eligibility of the petitioner. The respondents shall decide and dispose of the petitioner's case within a period of 3 months from the date of communication of this order. If the decision is in the negative, the same should contain reasons and be communicated to the petitioner, within 3 weeks from the date of taking such decision"

5. The State of West Bengal and its officers who are aggrieved by this order of the learned trial Judge have preferred this appeal.

6. Ms. Mutsuddi, learned counsel for the State-appellants submits before us that since the application was a belated one, no direction can be given by this Court to consider and dispose of such application for appointment on compassionate ground. In support of this contention, Ms Mutsuddi first relied upon a decision of the Supreme Court in the case of Haryana State Electricity Board and another Vs. Hakim Singh, . She also relied on a decision of the Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, and on an unreported decision in the case of Paresh Roy v. State of West Bengal and Ors. MAT 350/2000 disposed of on 27th July, 2000. Lastly, Ms. Mutsuddi relied upon a decision of the single Bench of this Court in the case of Usha Das v. State of West Bengal and Ors. 1998 II CHN 376.

7. Relying on the aforesaid decisions of the Supreme Court as well as of this Court. Ms. Mutsuddi, therefore, contended that the Court could not retain its jurisdiction to direct the Authorities to consider and dispose of the application filed by the writ petitioner for appointment on compassionate ground on the ground of delay in making the application. In this case, Ms. Mutsuddi, had contended that, since the application was filed after three years from the date of death of his father late. Jiban Krishna Sardar, the application ought to have been

rejected by the learned trial Judge on the threshold and the question of giving directions to consider the same in accordance with law, therefore, could not arise at all.

8. This submission of Ms. Mutsuddi was hotly contested by Ms. Chatterjee, appearing on behalf of the writ petitioner/respondent. On the other hand, Ms. Chatterjee submitted that the writ petitioner has made representation within the time viz. in 1993, after the death of his father which had occurred in the year 1991. Ms. Chatterjee further contended that the writ petitioner was given to understand by the Authority that the writ petitioner would be given appointment, but the impression that was given to the writ petitioner proved to be wrong when the writ petitioner had seen in a newspaper publication that persons who died after 1988 in harness would give rise to the cause of action to the heirs of such deceased to apply for appointment under the "die in harness" category, the writ petitioner/ respondent was advised to move this Court. Therefore, even assuming that there was some delay in filling the application, the same should be condoned on the facts stated above. Ms. Chatterjee also had drawn out attention to the supplementary affidavit filed by the writ petitioner/respondent before the trial Court where it has been categorically stated that the application for appointment on compassionate ground was also made on 12th October, 1993 a copy of which was annexed with the supplementary affidavit which was marked as annexure "X". Therefore, Ms. Chatterjee contended that the application for appointment on compassionate ground was made within a reasonable period of time and get the question of rejecting the same without directing the Authorities to dispose of the same in accordance with law could not arise at all. Before we proceed further, we may keep it on record as noted here in earlier, that according to the writ petitioner/respondent, the application for appointment on compassionate ground was filed by the writ petitioner/respondent within a reasonable time that is to say within two years of the death of the late Jiban Krishna Sardar, the application was made before the concerned Authority by the writ petitioner/respondent. In the case of Haryana State Electricity Board and another Vs. Hakim Singh, on which Ms. Mutsuddi had strongly relied upon, we find that the said decision was rendered on a different facts situation. There, a circular was issued by the Haryana State Electricity Board extending the period for submitting the application from one to three heirs provided a request was made by the widow of the deceased within one year of death of the employee. From the above facts, it is clear to us that there has been a circular issued by the Haryana State Electricity Board limiting the period within which an application can be made for appointment on compassionate ground. So far as this case is concerned, we do not find any such circular issued by the State for making an application within a fixed period. Therefore, this decision has no manner of application to the present case.

9. Next we consider the other decision of the Supreme Court as relied on by Ms. Mutsuddi in the case of Sanjay Kumar Vs. The State of Bihar and Others, . This decision, in our view is also easily distinguishable on facts. In that case, the

mother of the writ petitioner who was an excise constable died when the writ petitioner was only 10 years old. The writ petitioner in that case made an application for appointment on compassionate ground. The said application was filed on 2nd June, 1985 and was rejected on 10th December, 1996 as time-barred. The writ petitioner in that case made a fresh application on 26th December, 1996 and that was also rejected on 21st April, 1997 for the same reason. It was contended before the Supreme Court that the right of an applicant for appointment on compassionate ground could not be defeated on the ground of delay caused by the Authorities which was beyond the control of the applicant. In the above facts-situation, the Supreme Court in that decision held that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis due to death of the breeder nor who had left the family in penury and without any means of livelihood. It was also observed in that decision that when the employee died, the writ petitioner in that case was a minor and was not eligible for appointment as there could not be any reservation of a vacancy till such time as the writ petitioner in that case became a major after a number of years unless there were some specific provisions. That being the admitted position in that case, the Supreme Court in that case held that the application for appointment on compassionate ground could not be allowed otherwise the very basis of compassionate appointment was to see that the family gets immediate relief.

10. From the aforesaid decision of the Supreme Court, it is, therefore, clear that practically on two grounds, the prayer of the writ petitioner was rejected by the Supreme Court. First, at the time of death of the employee, the writ petitioner of that case was a minor that is to say he was only 10 years old when the employee died. Therefore, the application itself could not be filed before the Authorities by the writ petitioner before attaining the majority. Therefore, admittedly, there was at least delay of more than 8 years. Secondly, the application of the writ petitioner was rejected on the ground that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breeder nor who had left the family in penury and without any means of livelihood. In view of the admitted facts in that case that the writ petitioner was a minor at the time the employee died and the application was filed long after 8 years and in view of the aforesaid principle enunciated by the Supreme Court, the application for appointment on compassionate ground was rejected by the Supreme Court. Again this is not the case here. In this case, the employee died in the year 1991. It appears from the record that an application was made by the writ petitioner/respondent in the year 1993. Therefore, there is no question of inordinate delay which had occurred in the aforesaid decision reported in *Sanjay Kumar Vs. The State of Bihar and Others*, nor a situation has arisen where the writ petitioner/respondent was at the time of death of the employee a minor. Therefore, this decision also cannot have any manner of application to the facts and circumstances of the present case. Next, in the single Bench decision cited by the learned counsel for

the appellant in the case of *Usha Das v. State of West Bengal & Ors.* 1998 II CHN 376, the learned Judge in paragraph 15 clearly has observed that the rule that the Court may not enquire into belated claim is not and cannot be said to be inviolable rule, in prevailing where general apathy of the respondent authorities is apparent. It has been also observed by the learned Judge in paragraph 15 that there has been no statutory rule or circular issued by the Authorities as to when an application for appointment on compassionate ground from the date of death may be made by an applicant and accordingly, the learned Judge held that considering all these aspects of the matter and in the absence of any statutory rule in this regard, a period of three years or so from the date of making of an application for employment, the period prescribed in the residuary Article 137 of the Limitation Act, should be taken as a rough measure to provide guideline for judging delay in filing writ petition in this Court. From the aforesaid observation of the learned single Judge in the decision reported in 1998 II CHN 376 (*supra*) it, therefore, appears that reasonable time to file such application for appointment on compassionate ground was taken to be a period of three years from the date of death of the employee. Admittedly, from the records, it appears to us that the application for appointment on compassionate ground was made well within three years from the date of death of the employee. Be that as it may, we can not go into such question of limitation at this stage as the learned trial Judge has not gone into such question and directed the Authorities to decide the application for appointment on compassionate ground on merits and in accordance with law. It is needless to say that the Authority, while considering the application for appointment on compassionate ground on merits, it would be open to them to consider the same also on the question of delay in filing the application.

11. We would be failing in our duties if we do not keep it on record that the Authorities is under a statutory obligation to appoint a person who comes under the "die in harness" category if he satisfies the conditions laid down by the State of West Bengal. In our view, in order to avoid consideration of such application, the Authorities are throwing the ball to the Court or reject the application merely on the ground of delay when there is nothing on record to show that a fixed period has been prescribed by the Authorities to make an application for appointment on compassionate ground or such an application can be thrown out on the ground of delay although in a particular case, the applicant has properly explained his delay in filing such an application. That being the position, we do not accept the attitude taken by the State and its Authorities by throwing the ball to the Court that the Court should dismiss the application for appointment on compassionate ground without deciding the same on merits merely on the ground of delay.

12. Before we part with the decisions cited by the learned counsel for the State-appellant, we may also deal with another Division Bench decision of this Court in the case of *Paresh Roy v. State of West Bengal and Ors.* (MAT 350/2000) disposed of on 27th July, 2000. In our view, in that decision a Division Bench of

this Court in the exercise of its discretionary jurisdiction held that the said case did not invite the Court to allow the application for appointment on compassionate ground. Therefore, this decision of the Division Bench (MAT 350/2000) of this Court in our view, cannot be applied to the facts and circumstances of the present case. In any view of the matter, we are of the view that at this stage there is no reason to go into the question as to whether the application for appointment on compassionate ground should be thrown out on the ground of inordinate delay in making such application as we find from the record that the application has not yet been disposed of by the concerned Authorities and that the application at this stage cannot be said to have been filed not within a reasonable time as the parties have disputed the date of filing the said application before us. It is needless to say that if the concerned Authorities are not satisfied with the condition that the application has not been filed within a reasonable time and there has been no explanation as to the delay in filing the application, it would be open to them to reject the same on the ground of inordinate delay in filing the same and for the reason that delay in filing the same has not been properly explained. That apart, the order impugned in this appeal has been passed by the learned trial Judge in the exercise of his discretionary power under Article 226 of the Constitution and such being the position, it is not open to us to interfere with the order which has been passed in the exercise of the discretionary power of the learned trial Judge.

13. That being the position, we do not find any merit in this appeal. Accordingly, the appeal is dismissed.

14. Before we part with this judgment, we direct the concerned Authorities to dispose of the application for appointment on compassionate ground within a period of four months from the date of communication of this order after giving hearing to the writ petitioner and other interested parties, if there be any and after passing a reasoned order in accordance with law.

15. We however, make it clear that the observation made by us in this judgment regarding the question of delay shall not be taken to be a final decision so far as the consideration of the application for appointment on compassionate ground is concerned. All questions including the question of delay are kept upon to be decided by the concerned Authorities.

There will be no order as to costs.

In view of the order passed in this appeal, the application for stay becomes an fruituous and accordingly, it is disposed of without any order as to costs.

In view of the order passed in this appeal, the other appeal being MAT 3963/2000 and its interim applications are also disposed of without any order as to costs as we find that similar fact and law had arisen in the aforesaid appeal being MAT 3963/2000.

Urgent xerox certified copy of his judgment be given to the parties if it is applied

for obtaining the same.

H. Banerjee J.

1. I agree.

2. Appeal dismissed