

(2019) 02 CAL CK 0006
In the Calcutta High Court

Case No : Tender Of Mand Appl (Mat) No. 587 Of 2017 With Can 8897, 8902 Of 2017

State Of West Bengal & Ors

APPELLANT

Vs

Sri Lakshman Let & Ors.

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 02 CAL CK 0006

Hon'ble Judges : Arindam Mukherjee, J; Biswanath Somadder, J

Bench : Division Bench

Advocate : Chaitali Bhattacharyya, Mrinal Kanti Ghosh, Biplab Guha, N. G. Mukherjee

Final Decision : Dismissed

Judgement

Biswanath Somadder, J

In Re: CAN 8897 of 2017

This is an application under section 5 of the Limitation Act.

Having heard the learned advocates for the parties and upon perusing the application for condonation of delay, it appears that sufficient cause has been shown by the applicants to explain the delay in filing of the appeal. As such, the delay is condoned. The application for condonation of delay, being CAN 8897 of 2017 is accordingly allowed.

In Re: MAT 587 of 2017 with CAN 8902 of 2017

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay.

The instant appeal arises out of a judgment and order dated 22nd December, 2016, passed by a learned Single Judge in WP 1159 (W) of 2016 (Lakhsman Let

vs. The State of West Bengal & Ors).

By the said judgment and order, the learned Single Judge was pleased to dispose of the writ petition while passing the following order:-

"On 16th August, 2012 the Chairman, Nalhati Municipality recommended that the petitioner be granted appointment on compassionate ground on the untimely death of his father on 25th August, 2009. (See page 17 onwards of the petition.)

The Director of Local Bodies was sitting tight over the matter.

In those circumstances, on 4th October, 2016 this Court made an order on a writ application filed by the petitioner asking the Director to take decision in the matter within four weeks of communication of this order. The matter reappeared in this Court on 16th November, 2016. The Director was asked to produce the records to enable the Court to ascertain the decision so taken by him.

Today, the matter is listed for further consideration. No records are forthcoming. None appears for the Director. It only goes to show that he does not have any objection to the said recommendation of the Municipality.

In any event, since the father of the petitioner died in 2009, the recommendation made in 2012 which is still pending, any objection that the State may have had to the appointment is deemed to have been waived. At this point of time, the application cannot be rejected on the ground that the State has an objection.

In those circumstances, I direct the Director of Local Bodies to recommend appointment of the petitioner in a suitable post in the said Municipality irrespective of any waiting list within four weeks of communication of this order. The Chairman of the Municipality will make the appointment within a further period of four weeks.

All the papers are before this Court.

Affidavits were not invited. The allegations contained in the petition are deemed not to have been admitted.

The writ application is accordingly disposed of."

The instant appeal has been preferred by the State of West Bengal, its Joint Secretary, Municipal Affairs and the Director of Local Bodies, Government of West Bengal.

Even a bare perusal of the impugned judgment and order reveals that the learned Single Judge has issued a mandatory direction upon the Director of Local Bodies to recommend appointment of the writ petitioner in a suitable post in Nalhati Municipality, irrespective of any waiting list within a certain timeframe.

The Chairman of Nalhati Municipality has been directed to make the appointment within a further period of four weeks.

It is well settled that an applicant cannot claim appointment in a particular group/class of post as a matter of right. Appointment on compassionate ground too, cannot be claimed as a matter of right. There can be no quarrel with the settled legal proposition that a claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and died while in service. As a rule, public appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment, but merely an exception to the aforesaid requirement, upon taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. In this context, one may take notice of the judgment rendered by the Supreme Court in *Union of India & Anr. V. Shashank Goswami & Anr.*, reported in AIR 2012 SC 2294.

Further, in *Mumtaz Yunus Mulani (Smt.) v. State of Maharashtra & Ors.* reported in (2008) 11 SCC 384, the Supreme Court, while examining the scope of employment on compassionate ground, took into consideration a scheme where a dependant of an employee was considered ineligible for the post in a case where the family received terminal /retiral benefits above the ceiling limit. This decision of the Supreme Court was referred to and relied upon by the Supreme Court in its latter decision rendered in *Shashank Goswami (supra)*.

It is, therefore, clear from the principles of law laid down by the Supreme Court that in case of compassionate appointment, such claim cannot be strictly upheld on the touchstone of Article 14 or 16 of the Constitution of India and can only be considered by an authority when a scheme for such compassionate appointment is in force. We are of the view that such a scheme should be in force at the material point of time, i.e. at the time of death of the concerned employee, being the point of time his/her dependant became eligible to be considered for such compassionate appointment based on such prevailing scheme. However, at the same time it must be observed that it is not open to any person to approach the writ Court several years after the material point of time when he/she became eligible to be considered in terms of a prevailing scheme for compassionate appointment and seek issuance of a writ in the nature of mandamus directing the concerned authority to give him/her compassionate appointment, as has been done in the facts of the instant case.

This is evident from the fact that the recommendation for appointment of the petitioner was made as far back as on 16th August, 2012, by the Chairman of Nalhati Municipality and the writ petition appears to have been filed only in the year 2016. In spite of such delay, the writ Court issued a mandatory order of

appointment on compassionate ground in favour of the writ petitioner. It is further evident from the facts of the instant case that the learned Single Judge has issued such a mandatory direction upon the Director of Local Bodies to recommend appointment of the writ petitioner in a suitable post in Nalhati Municipality irrespective of any waiting list within four weeks from the communication of the order. The Chairman of Nalhati Municipality has been directed to make the appointment within a further period of four weeks. The only reason for issuance of such mandatory direction appears to be that the writ petitioner's recommendation was pending since 2012 and no records were forthcoming and none appeared on behalf of the Director of Local Bodies when the writ Court took up the matter for final consideration.

In a fact situation similar to the instant case, a Division Bench of this Court in the case of *The State of West Bengal & Anr. vs. Poly Dutta & Ors.* reported in (2017) 3 WBLR (Cal) 516 = 2017 (2) CHN (Cal) 683 = (2017) 2 CAL.L.T.299 (HC), set aside a similar order passed by the learned Single Judge. Another judgment rendered by a Division Bench of this Court - which is squarely applicable in the facts of the instant case - has been reported in 2018 (1) CHN (Cal) 504 = 2018 (1) CLJ (Cal) 248 (*The State of West Bengal & Ors. vs. Bimal Munda*). In *Binal Munda's* case (*supra*) the Division Bench took note of another Division Bench judgment of this Court rendered on 20th December, 2017, in MAT 1159 of 2017 with CAN 8867 of 2017 with CAN 8868 of 2017 (*The State of West Bengal & Ors. vs. Goutam Dalal*).

In the light of the above discussion, the impugned judgment and order cannot be sustained in any manner whatsoever and is liable to be set aside and the same is accordingly set aside.

The writ petition, being WP 1159 (W) of 2016 consequently stands dismissed.

This order, however, shall not stand in the way of the concerned authority to consider the recommendation made on 16th August, 2012 by the Chairman, Nalhati Municipality, provided of course, the same can be considered at this belated stage, in accordance with law.

The appeal is allowed along with the application for stay.

I agree.