

(2021) 06 CAL CK 0052
In the Calcutta High Court
Case No : W.P.S.T. No. 29 Of 2019

State Of West Bengal & Ors.

APPELLANT

Vs

Sujit Pal

RESPONDENT

Date of Decision : 03-06-2021

Acts Referred:

Administrative Tribunal Act, 1985 — Section 21

Citation : (2021) 06 CAL CK 0052

Hon'ble Judges : Rajesh Bindal, J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Joytosh Majumder, Susanta Pal, Kakali Samajpaty

Final Decision : Allowed

Judgement

1. This writ petition assails the impugned order dated July 20, 2017 (for short, the impugned order) passed by the West Bengal Administrative Tribunal, Kolkata, (for short, the Tribunal) in OA 48 of 2017 (Sujit Pal vs. The State of West Bengal & Ors.) [for short, the Original Application] whereby the case of the respondent for compassionate appointment in place of a work charged employee was directed to be reconsidered by the State employer.
2. Parameswar Pal since deceased, the father of the respondent was working as a Driver, Group-I in the Office of the Superintending Engineer, Public Works Department, South Western Circle, District Paschim Medinipur. The employee was appointed on May 12, 1992 and expired while in service on October 5, 2006. At the time of demise, the employee left his widow and three sons. The respondent is the second son of the employee.
3. Immediately after the death of the employee the elder son Prasenjit applied for compassionate appointment in his favour. During pendency of his claim Prasenjit died on January 12, 2008. After the death of Prasenjit the

respondent being the second son of the employee applied for his compassionate appointment in 2011. After the death of the employee the widow was receiving family pension. The widow died in 2015 and since, then the younger brother of the petitioner being the youngest son of the employee had started receiving pension. Though the respondent was asked to appear before the relevant authority of the State employer for consideration of his case in 2012, no positive step was taken.

4. In 2014 the respondent filed an Original Application being OA 250 of 2014 before the Tribunal in which an order was passed on July 3, 2014

directing the second petitioner herein to consider the claim of the respondent for his appointment on compassionate ground. The case was considered and rejected vide order dated May 6, 2015.

5. Being aggrieved by the said order Original Application was filed, which was disposed of by the impugned order.

6. Mr. Joytosh Majumder, Learned Government Pleader, appearing for the State writ petitioners submitted that, the father of the petitioner was a

temporary work charged employee and was not employed on any permanent post on a regular basis. The policy of the State does not permit and on

the contrary prohibits compassionate appointment in place of a temporary/work charged employee. Mr. Majumder, drew attention of this Â Â Court

to the Memorandum No. 251-Emp dated December 3, 2013, and referring to clause 5(f) thereof submitted that, a government employee appointed on

regular basis and not the one working on daily wages or casual or apprentice or ad hoc basis or contractual or employment basis, can only be

considered for granting compassionate appointment to his immediate family members. He further submitted that the object of granting compassionate

appointment is to provide immediate relief to the family of the permanent government employee from the financial distress suffered due to untimely

and sudden death of such a permanent government employee. In the present case it is evident that after the demise of the said work charged

employee the widow was receiving pension. Therefore, it was in any event not a case for providing compassionate appointment for survival of the

family. The Learned Government Pleader further submitted that, from the records of this proceeding it would be evident that the application both

before the appropriate authority claiming compassionate appointment and also

before the Tribunal were grossly belated.

7. After hearing the learned government pleader and on perusal of materials before this Court, at the outset, it appears that, on previous occasions no one had represented the respondent despite notices. Even today the situation is same.

8. The law is well settled that unless deceased employee is a permanent government employee no compassionate appointment can be claimed by the family member of such deceased employee. In the instant case the employee was a temporary/work charged employee. The relevant clause from the said Notification No. 251 Emp dated December 3, 2013 in this regard is reproduced below:

5(f)- "Government employee" for the purpose of this scheme means a Government employee appointed on regular basis and not the one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis".

Hence, the question of granting compassionate appointment to the petitioner did not and could not arise. In as much as, the policy as referred to by the learned government pleader also shows the same.

9. In any event from the records it is evident that at all material time the applications made by or on behalf of the respondent seeking compassionate appointment were belated. Be it before the employer or the Tribunal. In so far as the said Original Application is concerned the same was filed before the Tribunal in January, 2017 whereas the order impugned in the Original Application was dated May 6, 2015. This clearly shows that the said Original Application was also barred by the provisions of limitation as laid down under Section 21 of the Administrative Tribunals Act, 1985. Thus, the Tribunal ought not to have entertained the Original Application which was barred by limitation. Therefore, the impugned order is bad in the eye of law and not sustainable.

10. In view of the above the present writ petition being W.P.S.T. 29 of 2019 succeeds and the impugned order passed by the Tribunal dated July 20, 2017 stands set aside. The claim of the respondent stands rejected consequently.