

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. – OA 673 of 2021 And OA 37 of 2017

Serial No. and
Date of order

03
09.03.2022

Case No. : OA – 673 of 2021 Salma Khatun Vs. The State of West Bengal & Others.

For the Applicant : Mr.Manujendra Narayan Roy
Advocate

For the Respondent No. 1 to 4 : Ms.Ruma Sarkar
Mr.S.Debray
(Departmental Representatives)

For the Private Respondent No. 5 : Mr.Sahid Uddin Ahmed
Advocate

Case No. : OA – 37 of 2017 Rokeya Ruksana Bibi Vs. The State of West Bengal & Others.

For the Applicant : Mr.Sahid Uddin Ahmed
Advocate

For the State Respondents : Ms.Ruma Sarkar
Mr.S.Debray
(Departmental Representatives)

The matters are taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985. Since issues in both the matters are identical it is heard analogously and disposed of by a common order.

By order dated 23rd February, 2022, the application being OA-673 of 2021 was directed to appear along with OA-37 of 2017 under the heading "For Order" today. Though OA-673 of 2021 has appeared in the daily cause list today due to mistake OA-37 of 2017 did not appear in the cause list.

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The Registry has published a supplementary cause list, enlisting OA-37 of 2017 under the heading "For Order". Let a copy of the supplementary cause list be kept on record.

As prayed for by Mr.M.N.Roy, learned advocate for the applicant, leave granted to amend the cause title in OA-673 of 2021 so far it relates to Respondent no. 1.

In OA-37 of 2017, Rokeya Ruksana Bibi, the applicant has prayed for certain reliefs, the relevant portion of which is as under:

" a) A direction upon the respondent authorities to Grant the compassionate appointment with immediate effect of the applicant on the death of her father who was an employee under the Respondent No.3 as upper division clerk, died in harness;

b) An order directing the Respondent Authorities to Consider the representation dated 14.12.2015 by the petitioner and petitioner's lawyer representation dated 22.10.2016 within a stipulated period;"

In the said application, the applicant has stated that she is the elder daughter of late Rafiuddin Ahmed Gayen who died in harness on 4th July, 2012 while working as Upper Division Clerk in the office of the Block Land and Land Reforms Officer, Kakdwip. Rafiuddin Ahmed Gayen left behind his second wife, son and the daughter. It appears that on 14th December, 2015, Rokeya Ruksana Bibi, the applicant filed a representation for compassionate appointment. The brother of the applicant, Matinuddin Ahmed, who is missing since 6th July, 2013 also applied for compassionate appointment. Since the representation dated 14th December, 2015 was not considered, a letter on behalf of the applicant dated 22nd October, 2016 demanding justice was filed. Mr.

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Sahid Uddin Ahmed, learned advocate for the applicant submits as the said application of Rokeya Ruksana Bibi for appointment on compassionate ground is pending, direction be issued upon the respondents to consider the same at an early date.

In OA-673 of 2021 Salma Khatun is the applicant and Rokeya Ruksana Bibi, the applicant in OA-37 of 2017, is the private respondent no. 5. The reliefs sought for are as under:

“ a) To pass necessary order to re-consider the prayer for employment on compassionate ground in setting aside the order impugned (as Annexure ‘D’ to the application) ;

b) To call for the records, upon perusing the records to make the rule absolute.”

It appears that after the death of the father of the applicant his only son Matinuddin Ahmed made an application for compassionate appointment. While it was pending for scrutiny, Matinuddin Ahmed went missing on 6th July, 2013 and till date he is not traceable. Since his brother could not be traced out, Salma Khatun, the applicant, then a minor, was compelled to file application for compassionate appointment on 20th April, 2015. Thereafter again on 6th July, 2015, an application for compassionate appointment was filed in the prescribed format.

Subsequently, the applicant came to know that her application was processed, recommended and forwarded to the District Land and Land Reforms Officer, South 24 Paraganas. Since it was not disposed of, the application being OA-916 of 2017 was filed before the Tribunal which was dismissed on the ground that she has no locus standi to apply before the Tribunal as final decision was yet to be communicated to her. Aggrieved, the

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applicant filed a writ petition, being WPST 74 of 2019, which was disposed of on 15th July, 2019 by passing an order, the relevant portion of which is as under:

“On instructions, Mr.Majumder has submitted that the application of the petitioner shall be considered in accordance with law.

We are also of the considered opinion that having regard to the object sought to be achieved by offering appointment to a dependant of a Government servant, dying-in-harness, on compassionate ground, the petitioner’s application ought to be considered. It is not certain as to when the issue before the Hon’ble Supreme Court would be decided and even if decided, whether a married daughter could claim appointment on compassionate ground. That apart, the petitioner’s elder brother has been missing since long and waiting for the seven-year period to expire for recording a civil death, the very object of compassionate appointment may be frustrated.

In that view of the matter, while setting aside the order dated 28th January, 2019, we direct the DLLRO, respondent no.2, to proceed in accordance with law for considering the application of the petitioner. It is expected that a decision on the application shall be communicated to her within six months from the date of receipt of a copy of this order.

The siblings of the petitioner are not before us. Consequently, we hold that if the petitioner is ultimately appointed on compassionate ground, she shall be under an obligation to look

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after the family of the deceased Government servant and that the claims of her siblings may not survive if she continues to contribute to the family of the deceased for their survival. If for any reason whatsoever, the elder married sister and/ or the elder brother have any grievances, they shall be at liberty to apply before this Court for recall of this order notwithstanding the fact that they are not parties to it."

Mr.S.U.Ahmed, learned advocate appearing on behalf of the applicant in OA-37 of 2017, who is the private respondent no. 5 in OA-673 of 2021 submits that the respondent authorities may be directed to consider the case of his client for appointment on compassionate ground. It is submitted that the case of Rokeya Ruksana Bibi has to be considered in the light of the judgement passed by the Allahabad High Court on 23rd December, 2015 in Special Appeal Defective No. 863 of 2015.

Mr. Roy, appearing on behalf of Salma Khatun, the applicant, submits that at the time of date of death of Rafiuddin Ahmed Gayen that is on 4th July, 2012, the applicant was 17 years of age. Now she has attained majority. Submission is in view of the law laid down by the High Court in the judgement delivered on 13th September, 2017 in C.A.N. 12495 of 2014 in F.M.A. 1277 of 2016, (The State of West Bengal & Others vs. Purnima Das & Ors.), particularly in paragraph 113 thereof, appropriate direction may be issued on the respondents to consider the claim of his client. Further it is submitted that the judgement in The State of West Bengal & Others vs. Purnima Das & Ors. was considered by the Supreme Court along with Special Appeal Defective No. 863 of 2015 and the Special Leave Petition filed was dismissed on 23rd July, 2019.

Submission is the claim of Rokeya Ruksana Bibi has to be rejected in

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terms of the said judgement delivered on 13th September, 2017 in C.A.N. 12495 OF 2014 in F.M.A. 1277 of 2016 (The State of West Bengal & Others vs. Purnima Das & Others). According to him, the case of Salma Khatun be considered on the basis of law laid in the judgement delivered on 6th December, 2017 passed in W.P.S.T. No. 70 of 2017 (The State of West Bengal & Ors. Vs. Arup Kumar Chakraborty). Since admittedly Rokeya Ruksana Bibi was married and cannot be the dependant on his father and as from the application of Salma Khatun it is evident that the applicant is unemployed and unmarried, appropriate direction be given upon the respondents to consider the case of Salma Khatun. Submission is that the impugned order dated 25th January, 2021 rejecting the claim of Salma Khatun is a mere list of dates of the events and not a reasoned order dealing with the relevant circulars and notifications that is the notifications issued subsequent to the notification no. 30 (Emp) dated 2nd April, 2008.

It is submitted by Ms.R.Sarkar, Departmental representative that the order dated 25th January, 2021 rejecting the claim of Salma Khatun is just and proper as specific reasons have been given in paragraphs (vii) and (ix) of the said order.

Heard learned advocates for the parties. Perusing the order dated 25th January, 2021 passed by the Additional District Magistrate and District Land & Land Reforms Officer, South 24 Parganas, rejecting the claim of Salma Khatun, I find as it does not deal with the notifications issued subsequent to the notification no. 30 (Emp) dated 2nd April, 2008, it is therefore, set aside and quashed. Since the applications of Rokeya Ruksana Bibi for compassionate appointment is pending and the order dated 25th January, 2021 rejecting the claim of Salma Khatun has been set aside and quashed, considering the facts and circumstances of the case, the Original applications are disposed of by

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directing the Secretary, Department of Land and Land Reforms and Refugee Relief and Rehabilitation, Howrah, the respondent no.1 in OA 673 of 2021, to dispose of the applications filed by the applicants for appointment on compassionate ground by passing reasoned orders to be communicated to the parties within fifteen weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal after giving an opportunity of hearing to the applicants, after verifying the records and after making inquiry regarding dependency of Rokeya Ruksana Bibi and Salma Khatun on their father, Rafiuddin Ahmed, at the time of his death. In case order is issued by the respondent no.1 for appointment on compassionate ground, the successful applicant shall give a written undertaking pledging to look after the other members of the family of the deceased. However, it is made clear that I have not gone into the merits of the matter and all points are left open to be dealt with by the respondent no. 1.

BLR

(SOUMITRA PAL)
CHAIRMAN