

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. - OA 693 OF 2023

ABDUL HALIM - Vs - THE STATE OF WEST BENGAL & OTHERS

Serial No. and
Date of order

05
13.12.2024

For the Applicant : Mrs.Sonali Mitrta
Advocate
For the State Respondents : Mr.Goutam Pathak Banerjee
Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The applicant's application for an employment on compassionate ground was regretted by the respondent authorities in its communication dated 28.08.2023. The primary reason for such rejection was that the applicant had submitted his proforma application on 08.12.2021 which was more than two years late from the date of death of the deceased employee. The deceased employee, his father had died on 11.09.2019. Mrs. Mitra, learned counsel, though not disputing the fact that the proforma application was filed on 08.12.2021, but strongly argues that the respondent authorities failed to consider the fact that on 19.11.2019, the applicant had furnished a plain paper application before the Executive Engineer, NH Division No. VII. The Tribunal from the copy of this plain paper application finds that such an application was also received by the office of the Executive Engineer on 19.11.2019. This fact has not been mentioned anywhere in the rejection order passed by the Joint Secretary in his communication dated 28.08.2023.

Mrs. Mitra, learned counsel for the applicant submits that the delay which is of mere three months was due to the prevailing Covid restrictions during the years 2020-2021. She also relies on the judgment of the Hon'ble Supreme Court extending relaxations for filing application due to Covid – *Suomoto 03 of 2020*.

Mr. Banerjee, learned counsel for the State respondents has responded to the submissions of Mrs. Mitra by citing the relevant rules, precisely Emp 251 and Emp 26 published by the Labour Department does not have any provision of considering the plain paper applications. The contention is that as per these guidelines only the proforma application can be entertained which was not submitted by the applicant within the permissible two years time.

My attention has been drawn to clause 10 (bb) of Notification No.26-Emp dated 1st March, 2016, which gives clear responsibility to the office of the respondent in guiding applicants applying for appointment on compassionate ground. The relevant part is as under:-

“The concerned authority in the department/office should meet the members of the family of the deceased Govt. Servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first stage and should be advised in person about the requirement and formalities to be completed by him. A record of such meeting should be kept with the office of the controlling authority and appointing authority”.

Though the notification as cited above expresses sympathy for the legal heirs of the deceased employee, but in this case, such noble words

were not translated into action. The applicant was left at the mercy and sweet will of the respondents and it was only much later the applicant was favoured with the copy of the prescribed proforma. Given this background, can we blame the applicant and reject his application on the ground that he submitted his proforma application after delay of more than two years? In a similar case the Hon'ble Supreme Court in (2012) 7 SCC 248 in the matter of "Shreejith L. Vrs. Deputy Director (Education) Kerala and Others" observed a very important point in a similar situation. The relevant part of the judgement is as under:

"23. Mr. Rajan, learned Senior Counsel, argued that the first application submitted by Respondent 4 for compassionate appointment on 2-5-1990 was no doubt within the time prescribed but the same was not in proper format. It was, argued the learned counsel, essential that the application should be not only within the time stipulated for the purpose but also in the prescribed format. Inasmuch as that was not so in the instant case the application must be deemed to be non est.

24. We regret our inability to accept that submission. The manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognised that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however, granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application

ORDER SHEET

Form No.

ABDUL HALIM

Vs.

Case No : **OA 693 OF 2023**

THE STATE OF WEST BENGAL & OTHERS.

was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the payer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.”

Having heard the submissions of the learned counsels and considering the facts and circumstances of the matter, the Tribunal does not hesitate in considering the impugned order as non est in the eyes of law and not tenable. Such impugned order rejecting on the ground of delayed submission of proforma application, ignoring the fact that the plain paper application was submitted by the applicant well within the time, is but a mockery of justice. Therefore, the impugned Memo. 337 dated 28.08.2023 being quashable, is quashed and set aside. In the peculiar facts and circumstances of this case, the respondent No.1, the Secretary, Department Public Works Department is directed to consider the application of the applicant and give him suitable appointment

ORDER SHEET

Form No.

ABDUL HALIM

Vs.

Case No : **OA 693 OF 2023**

THE STATE OF WEST BENGAL & OTHERS.

within a reasonable time, preferably within six months from the date of communication of this order, if the applicant fulfills all other eligible criterias.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

BLR