

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

- a) **An order do issue setting thereby aside, quashing the impugned Memo. No. PHE/1495/IC-23/2013 dated 26-06-2015 passed by the respondent authorities rejecting the candidature of the applicant for compassionate appointment only on the single arbitrary point of delay.**
- b) **An order do issue mandatorily directing the Respondent Authorities to forthwith accord appointment to the applicant on compassionate ground in any suitable post under the respondent authorities.**
- c) **Any other order/orders, direction/directions be passed as this Hon'ble Tribunal may deem fit and proper to secure the ends of justice.**

As per the applicant, her husband while working as Duplicating Operating of Special Investigation Department, Public Health Engineering Directorate, Govt. of West Bengal died in harness on 24-04-2009 at the age of 45 years. Thereafter the applicant made a prayer for compassionate appointment on 29-06-2009(Annexure-A3) before the Executive Engineer of the concerned department which received by the department on the same date and the Executive Engineer in turn, issued a Memo dated 19-08-2009(Annexure-A4) whereby a 3(three) Men Enquiry Committee was formed to enquire the claim of the applicant. Subsequently, the applicant submitted the application in prescribed proforma as stated in the Memo of Superintending Engineer, Planning Circle-I dated 10-02-2010(Annexure-A5). Thereafter the Chief Engineer of the

concerned directorate vide his letter dated 24-01-2011 addressing to the Joint Secretary, Public Health Engineering Department had recommended the name of the applicant being found fit for compassionate appointment and had requested the Joint Secretary to take necessary steps for issuance of government order. However since no appointment letter was issued in favour of the applicant, he has approached this Tribunal in OA-822 of 2013 which was disposed of vide order dated 19-02-2015. However, the applicant prefer a writ application being W.P.S.T. No. 113 of 2015 before the Hon'ble High Court for modification of the order of the Tribunal but in the mean time the respondent authority passed the impugned order dated 26-06-2015(Annexure-D). Thereafter the Hon'ble High Court vide their order dated 29-06-2015 was pleased to allow to withdraw the said writ petition with a liberty to the applicant to prefer an application before this Court(Annexure-C). In the above circumstances, the applicant has filed the instant application.

As per the applicant, the respondent in the impugned order has rejected the claim of the applicant on the ground that the applicant had filed the application in prescribed proforma on 23-11-2009 i.e. after an expiry of six months as per 251-Emp dated 03-12-2013.

However according to the applicant, she had already filed application for compassionate appointment within 2(two) months from the date of death of his husband and thereafter the Executive Engineer after considering her application, had forwarded the same to his higher authority i.e. Superintending Engineer even before 6(six) months of time i.e. on 19-08-2009. Therefore, as she had already submitted the application within 6(six) months of time as she was found fit otherwise, which would be evident from recommendation of the Enquiry Committee. Therefore, her candidature cannot be rejected on this ground. Moreover in the earlier proceedings also the respondent never took this plea that the applicant had filed the application belatedly.

The respondents have filed their written statement, wherein though they have admitted that the applicant had filed the application on 26-06-2009 but according to them she had submitted the proforma application on 23-11-2009. As per Serial No. 4 of Notification No. 30-Emp dated 02-04-2008 issued by the Labour Department, Government of West Bengal, the dependent of the deceased employee seeking appointment on compassionate appointment should make an application in the prescribed proforma within 6(six) months from the date of death of the government employee. Since the proforma application has not been submitted within the stipulated period of time, the authority had rightly rejected her claim. Therefore the respondent has prayed for dismissal of OA.

We have heard both the parties and perused the records. It is noted that this is the second round of litigation and the respondent has rejected for compassionate appointment on the ground that as per Labour Department's Notification, the legal heirs of the deceased employee should have filed the application for compassionate appointment in prescribed proforma within 6(six) months.

In the earlier occasion, this Tribunal in their order dated 19-02-2015 passed in OA No. 822 of 2013 held inter alia :-

“We have perused the rejoinder also filed by the petitioner, wherein, she has reiterated her case. It is clear from the application and the annexure thereto as well as the reply filed the State Respondents that the matter is still under process and has not been rejected by the authority concerned. On the contrary, we find that there is a strong recommendation in favour of the petitioner by the Chief Engineer, Mechanical /Electrical, P.H.EnggDte. We fail to understand why the application is not tenable in the eye of law as submitted by the Ld. Counsel on behalf of the State Respondents. There is no whisper also in the reply that there is no vacant post in order to accommodate the petitioner.

In such a circumstances, we think that this application has to be allowed. Accordingly, we allow the prayer. The application succeeds. The respondents, in particular the Respondent no. 2, are directed to take a final decision over the issue as per scheme and to pass a reasoned order within a period of three months from the date of communication of this order. He is also directed to communicate the decision in writing to the petitioner within one month thereafter. We dispose of this application. No order as to cost is passed.

Plain copy to the parties present”.

In the above facts and circumstances, it is observed that the applicant made an application for compassionate appointment on 29-06-2009, which is within 2(two) months from the date of death of her husband, who died on 24-04-2009. Even one of the respondent i.e. Executive Engineer vide his Memo dated 19-08-2009 had constituted a 3(three) Men Enquiry Committee to enquire the claim of the applicant which is within the 6(six) months period from the date of death of the concerned employee. Moreover, from the perusal of the Memo dated 10-02-2010 issued by the Superintending Engineer to the Chief Engineer, Mechanical/Electrical, P.H.E. Department, it is observed that the said officer had sent the application in prescribe format along with other documents for taking necessary action. From the above, it is clear that admittedly the applicant had filed the application for compassionate appointment before the authority within 2(two) months from the date of death of her husband. Even the officer concern constituted 3(three) Men Enquiry Committee within 6(six) months and the Superintending Engineer also sent the application in prescribed format along with the enquiry report. Therefore the reasons of rejection order on the ground that the application in prescribe format was received on 23-11-2009 is not sustainable as the prescribed format has to be provided by the department as she has no control over the supply of the prescribed format moreover the applicant had already filed the application within the stipulated period of time. Therefore, the respondent cannot reject her claim on this ground if she would have been found otherwise fit.

In view of the above, we quashed and set aside the impugned order dated 26-06-2015 and direct the Principal Secretary, Public Health and Engineering Department, Govt. of West Bengal to reconsider the case of the applicant for compassionate appointment if she would be otherwise found fit and subject to the available of vacancy and to take a decision in this regard and communicate the same within 6(six) weeks from the date of receipt of the order.

Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)