

J U D G E M E N T

The instant application has been filed praying for following reliefs;

- a) Lordships may kindly set aside the impugned Order No. 2147-MSMET dated 7th July 2015 issued by MICRO Small & Medium Enterprises and Textiles Deptt. For its non-applicability here in the instant case and direct the Respondent No.1 to review and reconsider the prayer of the applicant for compassionate Appointment to A Group-‘C or D post on merit in pursuance of the decisions laid down in CLJ – 2014 (2) Page 85 and (2015) 7 Scc 291.
- b) A direction upon the Respondent Authority to certify and transmit all records of the case for administering conscientious justice.
- c) Any other Order or orders as the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- d) A short fall of 4 months and few days in filing the application in respect of unintentioned delay due to ignorance may kindly be condoned.

As per the applicant, his father died on 29.04.2009 leaving behind his wife, two sons and one daughter (all being minor at the time of death of their father). Subsequently, the mother of the applicant made an application for compassionate appointment in favour of the applicant, which was forwarded to the Joint Secretary of Textiles (Sericulture) vide Memo dated 4.5.2011 (Annexure B). However, their application for compassionate appointment was rejected on the ground that at the time of death of his father, the applicant was minor i.e. 17 years 3 months 15 days as per para 6© of Labour Department Notification No.25 EMP dated 03.12.2013 and 38 EMP dated 09.06.15 (Annexure F). Being aggrieved with, he has filed the instant application. As per the applicant, at the time of consideration of his application, he got majority. As per Rule 17 of DCRB Rules 1971, the case of below 18 years may also be accepted subject to condition that the service rendered before attaining the age of 16 years shall not be counted for qualifying service purpose. Thus, there is no conflict between para 6© of the Labour Department Notification No. 251 Emp. Dated 03.12.2013 and Rule 17 of DCRB Rules 1971. In support of his contention, he has referred the following judgements:

1) 2014 (2) CLJ (CAL) 85 EASTERN COALFIELDS LIMITED - VS - RAKHI MONDAL & OTHERS

2) 2015 (7) SCC 412 CANARA BANK & OTHERS - VS - M. MAHESH KUMAR

3) 2006 (9) SCC 195 SAHID KHADIM HOSSEIN - VS - STATE OF BIHAR & OTHERS

Though no reply has been filed, however, the counsel for the respondent has vehemently submitted that the compassionate appointment is guided by the scheme of the respective departments / institutions and from the very beginning, The issue of minor was considered and negated by the scheme of the Labour Department while considering the case of minor for compassionate appointment. Further the case laws submitted by the applicant are not relevant with regard to the scheme of the labour department.

We have heard both the parties and perused the records. It is noted that it is an admitted fact that the applicant was minor at the time of death of the deceased employee and as per the scheme of the respondent, department cannot wait or consider the case of any dependent if such dependent is minor in age i.e below 18 years at the time of death of the employee.

It is a settled principle of law as laid down by the Hon'ble Apex Court specially in the case of **Umesh Kr. Nag Pal – vs - State of Haryana reported in 1994 (4) SCC 138**, wherein it has been held that the main object of granting compassionate appointment is to enable the family to overcome the sudden financial crisis caused due to sudden demise of a sole bread-earner. However, mere death of an employee in harness does not entitled his family to such source of livelihood by way of compassionate appointment. Further, the provision for compassionate employment have necessarily be guided by the rules or by the executive instruction issued by the Government or the public authority concerned and cannot be granted after lapse of a reasonable period. From the above, it is clear that for the purpose of consideration of any application for compassionate appointment, the scheme of the concerned department or the public authority has to be taken care of. In the instant case, in the scheme of the state Government there is a specific bar to consider any case of compassionate appointment of a candidate who was minor at the time of death of the ex-employee.

Now, let us consider the case laws referred by the applicant. In the case of **Eastern Coal Fields Limited - vs - Rakhi Mondal supra**, Hon'ble Apex Court has observed ..

“25. Thus, in our considered opinion, the age of Gourav Mondal was approximately 13 years at the time of death of his father, namely, Nandalal Mondal. Thus, it was incumbent upon the employer, in terms of provision contained in clause 9.5.0(iii) of the National Coal Wage Agreement-VI keep Gourav Mondal on the live roster and till such time he remains on live roster the femal dependant/writ petitioner was required to be monetary compensation as provided in the clause 9.5.0.

26. Now we come to the other finding recorded by the learned Single Judge as to the arbitrariness of the provisions that there could not have any distinction to be made between a male and female dependant to keep her on live roster. In the instant case, the widow of the deceased declined compassionate appointment on the ground that she was unfit for the job. The daughter/writ petitioner was denied compassionate appointment on the ground that her age was below 18 years. However, the son, namely Gourav Mondal, was above 12 years of age at the time of death of his father. As such, it was incumbent upon the employer to offer him compassionate appointment upon his attaining the age of 18 years.”

The aforementioned judgement is quiet distinguishable as in the referred judgement the department itself has some policy with regard to consideration of the case of minors by way of keeping their names in live roster and subsequently considered their case after attaining their majority.

In the case of **Syed Khadim Hussain, supra the Hon'ble Apex Court observed inter alia;**

“.....We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellate submitted the application he was 13 years 'old and the application

was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.....”

In the case of CANARA BANK & OTHERS - VS - M. MAHESH KUMAR, the Hon’ble Apex Court held inter alia;

“.....15. Insofar as the contention of the appellant-bank that since the respondent’s family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor. The bank would keep the appointment open till the minor attains the majority.....”

From the perusal of the aforementioned judgements, it is noted that in each and every case, the public authority either have specific provision for minor to be considered or no specific bar to be considered. Therefore, the Hon’ble Apex Court had held in respective cases in favour of the minor on the basis of provision of the policy / scheme of the respective public authority. However, in the instant case, the State Government has specific bar to consider the case of the dependent who is minor at the time of death of its employee. As compassionate appointment is not a matter of right and has to be considered as per the scheme of the respective public authority and as the State Government has specific bar on such issue, therefore, in our considered view, the aforementioned judgements are distinguishable and thus no relevancy with regard to

instant case. Therefore, we do not find any reason to interfere with the decision of the authority. Accordingly, the OA is **dismissed** being devoid of merit.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

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