

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar,
MEMBER(A)**

J U D G E M E N T

-of-

Case No. OA-1190 of 2016

Santosh Rajbanshi & Another.....Applicant .

-Versus-

State of West Bengal & Others.....Respondents

For the Applicant

**:- Mr. Sujit Kumar Mitra,
Learned Advocate.**

For the State Respondents

**:- Mr. Goutam Pathak Banerjee,
Mr. Ruhul Amin Chowdhury,
Learned Advocates.**

Judgement delivered on:

14th August, 2019.

The Judgement of the Tribunal was delivered by :-

Hon'ble Urmita Datta (Sen), Member (J).

OA-1190 of 2016

J U D G E M E N T

The instant application has been filed praying for quashing of the impugned order dated 22.04.2016, whereby the claim of the applicant No. 1 was rejected and also to direct the respondents to appoint the applicant no. 1 on compassionate ground.

As per the applicant, his father died on 17.01.2008 leaving behind his wife, one son (the applicant no. 1) and one daughter. Immediately thereafter, the wife of the deceased employee, i.e. the applicant no. 2, made an application dated 29.12.2008 with a prayer for appointment of the applicant no.1 on compassionate ground (AnnexureP/2). Subsequently, the case of the applicant was forwarded by Memo dated 16.12.11 (Annexure – P/3). Further Vide Memo dated 01.02.2012, the Divisional Officer, East Division, West Bengal Fire & Emergency Services was requested by the Director General, West Bengal Fire & Emergency Services to furnish the status as well as enquiry report (Annexure-P/4). However, thereafter no action has been taken. Being aggrieved with, the applicant approached this Tribunal in OA-806 of 2014, which was disposed of vide Order dated 09.03.2016 with a direction to the authority to take decision and to communicate the same to the applicant. (Annexure-A/8). In pursuance to the said order, the Director General of West Bengal Fire & Emergency Services vide

Memo dated 22.04.2016 had communicated that the candidature of the applicant was reflected as per Clause (vi) of Labour Department's Notification No. 251-Emp. Dated 03.12.2013. Being aggrieved with, the applicant has filed this instant application.

The counsel for the respondent has vehemently submitted that as per aforementioned clause of the Labour Department's notification, the candidate should be major at the time of date of death of the ex-employee but in the instant case, the applicant was 16 years of age at the time of death of the ex-employee as his date of birth was 05.12.1992. It has been further submitted that the issue of minor was all along considered under different notifications from the very inception and since the applicant would not attained majority within six months from the date of death of his father, therefore, the respondents have rightly rejected the claim of the petitioner. It has been further submitted by the respondents that when the applicant was minor at the time of death of the ex-employee, if the family was in financial distress then his mother would have applied for the compassionate appointment, Thus, when they waited to opt for appointment after three years from the date of his father, they were not in immediate financial crisis.

It has been further submitted by counsel for the respondents Vide Labour Department's Notification No. 251-Emp. Dated 03.12.2013, whereby all previous orders/scheme of compassionate appointment was superseded by the said notification.

We have heard both the parties and perused the records. It is noted that the father of the applicant No. 1 died on

07.01.2008, when admittedly the applicant was minor as the date of birth of the applicant is 05.12.1992. Therefore, as per the scheme of the department, the minor cannot be considered for compassionate appointment. Further at the time of death of the employee concerned, if the applicants were in financial crisis, the mother of the applicant would have approached for compassionate appointment in her favour. However, instead of that the applicant No. 2 prayed for compassionate appointment of her minor son who yet to attain majority for the purpose of compassionate appointment in the Group -D post as well as the provisions of Recruitment Rules. Therefore, in our considered opinion, the respondents rightly rejected the claim of the applicants. Accordingly, OA is dismissed being devoid of merit.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER (J)