

J U D G E M E N T

1. The instant application has been filed praying for following relief:
 - (a) A direction by setting aside the impugned Memo dated December 14, 2015 by which the claim of the applicant No.1 for compassionate appointment was rejected.
 - (b) An order directing the respondent to reconsider the case of compassionate appointment of the applicant No.1 taking into consider the application of her mother dated August 7, 2003 as an application of the applicant No.1 and direct the respondent to appoint the applicant No.1 on compassionate ground.
 - (c) And/or to pass any such other order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper.
 - (d) Leave may be granted to move this application jointly.

2. As per the applicant, the father of the applicant No.1 died on 17th July 2003 leaving behind his wife (applicant No.2), one son (applicant no.1) and one daughter, both of whom were minor at the time of death of the employee. Thereafter the applicant No.2 (wife) applied for compassionate appointment in favour of her minor son on 07.08.2003 (Annexure B). Subsequently, applicant No.2 again applied for herself in place of her minor son (Annexure C) which was received by the department on 26.12.2005. However, her candidature was rejected for want of required educational qualification. Subsequently, the applicant No.2 made an application seeking compassionate appointment of applicant No.1 (son) after attaining his age of majority on 10.05.2012 (Annexure E). But, his candidature was rejected by the authority vide communication dated 14.12.2015 (Annexure G) on the ground that the application for compassionate appointment was made beyond the period of six months from the date of death. Being aggrieved with, he has filed the instant application.

3. As per the applicant No.1, his candidature was rejected under the Labour Department Notification No.251 Emp dated 03.12.2013 whereas the date of death of the deceased employee is 17.07.2003. Therefore, his case should not be considered under the Department's Notification dated 03.12.2013. During the course of hearing, counsel for the applicant has referred the following judgements and prayed for extension of benefit of those judgements;-

**I) CANARA BANK AND ANOTHER -VS- M. MAHESH
KUMAR reported in SCC (2015) 7 SCC 412**

**II) THE STATE OF WEST BENGAL & ORS. -VS-
DEBARGHYA CHAKRABORTY & ORS. reported
in 2017 SCC 2 Cal LJ 521**

4. The respondents have filed their reply wherein it has been stated that the applicant No.1 was 10 years old at the time of death of the deceased employee. However, his mother subsequently approached before the authority but, was not found fit both in educational qualification as well as in physical measurement and her case was rejected on 06.09.2010. Moreover, instead of challenging the said rejection order, she made prayer in favour of the applicant No.1 on 10.05.2012. Subsequently, the case of the applicant No.1 was also considered and forwarded to the appropriate authority on 09.01.14 (Annexure R7) and the competent authority rejected the case of the applicant on the ground of being minor at the time of death of the deceased employee as well as delayed application. Therefore, as per the counsel for the respondents, the authority has rightly rejected the claim of the applicant as even in 2002 Notification also, the issue of minor was dealt with and there is a specific provision not to wait for minor.
5. The applicant filed their rejoinder and reiterated their submission in the application.
6. We have heard both the parties and perused the records as well as judgements placed by the respective parties. It is an admitted fact that the applicant No.1 was minor at the time of death of his father who died on 17.07.2003. Though the applicant No.2 applied for compassionate appointment in favour of her son (applicant No.1) on 7th August 2003, but, subsequently she offered her own candidature before the authority on 26.12.2005. However, she was not found fit and her candidature was rejected on 06.09.2010, which was never being challenged by her before this Tribunal. In the above background, the applicant No.2 (wife) again made representation praying for compassionate appointment in favour of her son on 10.05.2012, which is also admittedly after a long time and after rejection of her candidature. Therefore, in our considered opinion, there was a valid ground to reject the candidature of the applicant No.1 being a delayed application.
7. With regard to the issue of minor, it is noted that the applicant No.1 has claimed that his candidature should not be rejected under Labour Department's Notification dated 03.12.2013 as the concerned employee died in the year 2003. If this submission has to be accepted in that case the claim of the applicant has to be considered under

Labour Department's Notification being 301 Emp dated 21.08.2002. However, after perusal of the said Notification, it is noted that the Notification dated 21.8.2002 stipulates inter alia;

“Dependents of employees dying in harness: A solely dependent wife/son/daughter/near relation of an employee who dies in harness leaving his family in immediate need of assistance.

A near relation of the deceased employee may be considered for employment on compassionate ground only when the son/daughter/wife of the deceased employee cannot be considered for employment **owing to minor age** or other disabilities. In such a case the employment of a near relation of the deceased employee may be considered only for providing assistance immediately needed by the family left behind by the deceased.”

From the perusal of the above, it is observed that as per the aforesaid notification, minor cannot be considered for compassionate appointment. It is a settled principle of law that the compassionate appointment is not a matter of right but has to be considered as per the scheme of the different departments. Therefore, the case of **Canara Bank (Supra)** is quite distinguishable as in the said case, the scheme of the bank itself contains provision to keep the case of compassionate appointment open till the minor attains majority. But, in the instant case, as per 2002 scheme, if the dependant of the deceased is minor, near relative can be considered and in the instant case, the mother of the applicant approached the department. However, she was not found fit. Therefore, the scheme under 301 Emp dated 21.08.2002 cannot also come for rescue of the applicant. Further, the case of **Debaghya Chakraborty & Ors. (Supra)** is also distinguishable as the Hon'ble High Court has observed that the applicant of the said case was covered by the Labour Department's Notification No.80 Emp. Dated 02.04.2008, wherein there is no whisper of any minor issue. In view of the above, in our considered view, the respondents have rightly rejected the claim of the applicant. Accordingly, the OA is **dismissed** with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)