

**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 :-

Hon'ble Justice Ranjit Kumar Bag,
Chairman In-charge.

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member.

J U D G M E N T

-of-

Case No. : O.A. 714 of 2017 : ANUPAM DEY.

..... Applicant.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicant :-

**Mr. S. Acharjyya,
Mr. S. Bhunia,**
Learned Advocates.

For the State Respondents :-

**Mr. G.P. Banerjee,
Mrs. S. Agarwal,**
Learned Advocates.

Judgment delivered on : July 18, 2018.

**The Judgment delivered by Dr. Subesh Kumar Das,
Administrative Member.**

JUDGEMENT

1. In this application, the petitioner seeks a direction upon the respondent authorities to appoint him on compassionate ground to a suitable post by quashing the order dated May 11, 2017 issued by the Director, Directorate of State Archives, Government of West Bengal rejecting the prayer of the petitioner for compassionate ground.

2. The petitioner's father, Adhir Ranjan Dey was an employee of the Government of West Bengal, Higher Education Department and used to work as Muharrier-cum-senior Mender Grade –II under the directorate of State Archives, Government of West Bengal. The father of the petitioner applied for pre-mature retirement on health ground and also for offering job to the petitioner on compassionate ground. He was allowed premature retirement from his service on and from April 09, 2010 for being permanently incapacitated vide order No. 248-SA dated May 19, 2010, which is annexure "G" of the petition. The date of his normal retirement on superannuation was March 31, 2011. After premature retirement of the petitioner's father being declared permanently incapacitated, the petitioner submitted an application to the competent authority for appointment on compassionate ground. The proposal of his appointment on compassionate ground was sent to the administrative department by the Director, Directorate of State Archives, but the same was refused, which was communicated to the petitioner's father by the Director of State Archives vide Memo No. 540-SA(DTE) dated September 17, 2012 (Annexure –K of the original application).

3. The petitioner challenged the said order of refusal dated September 17, 2012 before the Hon'ble Tribunal by submitting Original Application No. 1089 of 2013. It was taken up for hearing by the Tribunal and after hearing both the parties, the Hon'ble Tribunal disposed of the said application on January 07, 2016 by directing the Directorate of State Archives, Government of West Bengal to consider the prayer for compassionate appointment of the petitioner by way of treating the entire Original Application as a representation and take a decision after giving an opportunity of hearing to the petitioner. Subsequently, the petitioner filed a contempt petition before the Hon'ble Tribunal which is registered as CCP No. 221 of 2016 for non-implementation of said order of the Tribunal dated January 07, 2016. During pendency of the said contempt proceeding the

Director of State Archives, Government of West Bengal considered the prayer of the petitioner and passed a reasoned order dated May 11, 2017 and rejected the claim of the petitioner on the ground that the father of the petitioner had less than two years of service left at the time of his premature retirement while para 6(b) of the Labour Department Notification No. 251-Emp dated December 03, 2013 requires that the government employee prematurely retired should have at least two years of service left to reach age of superannuation at the time of premature retirement on being permanently incapacitated for giving appointment to a dependant of the family on compassionate ground subject to other conditions.

4. In the present application registered as OA 714 of 2017, the petitioner is seeking for quashing the order dated May 11, 2017 (Annexure 7 of the application) issued by the Director, Directorate of State Archives, Government of West Bengal and to give direction upon the said authority to offer a job to the petitioner on compassionate ground for premature retirement of his father on medical incapacitation. Ld. Counsel for the petitioner made two fold submissions for challenging the order dated May 11, 2017 passed by the Director, Directorate of State Archives, Government of West Bengal: first, the Director, Directorate of State Archives, Government of West Bengal was wrong in considering the case of the petitioner in terms of the Labour Department Notification No. 251-Emp dated December 03, 2013 and secondly, the claim of the petitioner cannot be rejected on the ground that his father had less than two years of service left to reach age of superannuation at the time of premature retirement as delays were caused by the respondents to retire his father on the ground of permanent incapacitation.

5. Ld. Counsel for the petitioner submitted that the Hon'ble Tribunal by its order dated January 07, 2016 never directed the Director of State Archives, Government of West Bengal to consider the case of the petitioner for compassionate appointment in terms of Labour Department Notification No. 251-Emp dated December 03, 2013. The Director, Directorate of State Archives, Government of West Bengal was wrong in disposing the matter in terms of order No. 251-Emp dated December 03, 2013. Before we examine whether the Director, Directorate of State Archives could have considered the application in terms of some other circular, we examine the reasoned order of the Director, Directorate of State

Archives, Govt. of West Bengal in rejecting claim of the petitioner. The application for compassionate appointment of the petitioner was rejected on the ground that the petitioner's father had less than two years of service left to reach normal age of superannuation at the time of his premature retirement on the ground of permanent incapacitation. The application was rejected by the Director in terms of para 6(b) of the circular.

6. If we accept the Notification No. 251-Emp dated December 03, 2013 is not applicable in case of the petitioner as the said notification was not in force when the cause of action for compassionate appointment of the petitioner arose in the year 2010, then notification that was in force at the time of premature retirement of petitioner's father should be taken into consideration. Since the petitioner's father retired prematurely on April 9, 2010, the notification which was in force at the relevant point of time is the Labour Department Notification No. 30-Emp dated April 02, 2008. In terms of this notification, the issue of providing employment on compassionate ground to a dependant of a government employee who retires prematurely on being declared permanently incapacitated will be determined in terms of the Labour Department Notification No. 303-Emp dated August 21st, 2002. For the sake of convenience, relevant portion of the said circular is quoted below:

“Notification No. 303-EMP/1M-10/2000 dated 21st August 2002 of the Labour Department, Government of west Bengal.

Dependants of employees who retired being incapacitated: (1) *The benefit of the offer of employment on compassionate ground to a dependant wife/son/daughter/near relation of an employee retiring prematurely owing to being disabled permanently or otherwise incapacitated rendering him/her unfit to continue in service will be available, if and only if such employee fulfils all the following conditions:*

(i) On premature retirement he/she would not be entitled to the full pensionary benefits to which he/she would have been entitled if he/she had retired at his/her normal age of superannuation;

(ii) He/she has fully exhausted all kinds of leave with pay including commuted leave on medical ground;

- (iii) He/she had two years of service or more left to reach the normal age of superannuation; and*
- (iv) The financial conditions of the family is so acute as to make the appointment essential consequent upon the fall in income due to such retirement.”*

The conditions laid down in the said notification are the same as the notification of the Labour Department No. 251-Emp dated December 03, 2013. Further, on scrutiny of the copy of the PPO enclosed in the Original application (Annexure M), we find that the father of the petitioner received full pensionary benefits to which he would have been entitled if he had retired at his normal age of superannuation. Moreover, there is nothing on record to indicate that the petitioner's father exhausted all kinds of leave with pay including commuted leave on medical ground. In view of the above, two conditions for employment on compassionate ground in terms of Labour Department Notification No. 30-Emp dated April 02, 2008 have not been fulfilled.

7. Ld. Counsel for the petitioner submitted that the father of the petitioner submitted application for premature retirement on September 26, 2008 along with a prayer for appointment on compassionate ground for the petitioner which was forwarded to the competent authority after lapse of six months on March 16, 2009. The competent authority asked the father of the petitioner to appear before a Medical Board on May 15, 2009 but the same was not communicated to the father of the petitioner on time. Subsequently the father of the petitioner appeared before the Medical Board on April 09, 2010 and was declared permanently incapacitated. He submitted that the respondents delayed the process of medical examination intentionally to cover up the limitation period of two years and there was no lapse on the part of the petitioner's father. As the delay in declaring the father of the petitioner to be permanently incapacitated was due to laches and lapses on the part of the authority, the respondents cannot reject the application on the ground that the tenure of service of the petitioner's father was less than two years at the time of his retirement being permanently incapacitated. Had there been a prompt action on the part of the authority concerned, the rejection of claim of the petitioner on the ground of less than two years of

service left at the time of premature retirement cannot arise. He concluded that in view of such delay caused by the authority concerned in retiring the father of the petitioner on the ground of permanent incapacitation, the order of the Director, Directorate of State Archives, Government of West Bengal should be quashed and direction may be given to the respondents to offer a job to the petitioner on compassionate ground for premature retirement of his father on medical incapacitation.

8. The respondent no. 3 has submitted reply to the original application. Ld. Counsel for the respondents relied on the reply submitted by the respondent no.3 in his submission. In the reply the respondents have submitted that the allegation of the delay in medical examination of the petitioner's father is inconsistent and incorrect. The petitioner's father had enough scope to agitate the matter before appropriate forum at the relevant point of time but instead the petitioner has now come up with the plea of delay.

9. Ld. Counsel for the petitioner has drawn our attention to the case of "Coal India Ltd –Vs- Sumit Majumder" decided by a Division Bench of the Hon'ble High Court Calcutta reported in {2017(3) CHN(CAL)138} where the Division Bench upheld the order passed by the Single Bench for payment of consequential benefits along with back wages to an employee of Coal India Limited, who was deprived of promotion in time due to latches attributed to the authorities. This referred case relates to giving promotional benefits with back wages with retrospective effect while the instant case relates to compassionate appointment of a dependant of a retired Government employee, who has been declared permanently incapacitated by the competent authority. It is well established that appointments on compassionate ground have to be given in accordance with rules and administrative instructions issued by the Government and by taking into consideration financial condition of the family of the person permanently incapacitated and retired. The ratio of the judgment of the referred case is not applicable in the present case.

10. The Ld. Counsel for the petitioner cited the case of "Khulesh Chandra Mondal (D) through his legal heir and son Sri Bibek Mondal –Vs- State of W.B. and others" reported in 2007 SCC On Line Cal 775 in which following premature retirement of a Head Teacher of a primary school, the

Chairman, District Primary School, Malda rejected the prayer of his son for appointment on compassionate ground. In considering such prayer, the Division Bench of the Hon'ble High Court set aside the order of the single Bench and directed that the son of the Head Teacher should be given appointment on compassionate ground. In the referred case, the concerned teacher submitted an application for declaring him to be permanently incapacitated before two years of retirement, but the authority could not get him examined in time to ascertain whether he could be declared permanently disabled. Ultimately, the Medical Board declared the said teacher as permanently disabled only few months after attaining the age of 58 years (retirement age 60 years). The Hon'ble Division Bench observed that the authority concerned was responsible for the delay and laches and cannot be permitted to take advantage of its own laches in denying the claim of the petitioner.

11. We have considered the principles laid down in the above case of “Khulesh Chandra Mondal”(Supra). In the said case the son of a permanently incapacitated teacher was given benefit of compassionate appointment on the basis of the provisions relating to compassionate appointment for the dependents of the Primary School Teachers in West Bengal. Under the West Bengal Primary Teachers Recruitment Rules, 2001, the rule 14(2) provides for appointment on compassionate ground of one member of the family of a prematurely retired teacher who has been declared permanently incapacitated. The relevant provisions of the Rules as have been quoted in the Judgment (para 7) dated March, 23, 2011 of the Hon'ble Calcutta High Court in the case of “Arpita Sen vs. the State of West Bengal and others” in WP No. 5326 (W) of 2009 are quoted below:

“(2) when a primary teacher applies for being declared permanently incapacitated on medical ground, to the council for appearing before the Medical Board set up according to the procedure laid down in the Government Board, before attaining 58 years of age and discontinues to attend the school for such incapacitation, he may be allowed by the Council to retire on and from the date of submission of such application, provided that the Council is satisfied with such incapacitation and other conditions through Enquiry Committee, and provided further that, after receiving the report from the Council, the Medical Board set-up for this purpose declares

him permanently incapacitated to continue in further service for a reasonable time and if his family is in extreme financial hardship after such retirement, the (a) wife, or (b) husband, or (c) son, or (d) unmarried daughter, or (e) the divorce dependent daughter - divorced at least one year before submission of application for declaration of permanent incapacitation, of the incapacitated prematurely retired primary teacher, possessing requisite qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach may be appointed as primary teacher on compassionate ground on submission of prayer in writing within three months from the date of issue of certificate by the competent Medical Board. Only one member of the family of the declared permanently incapacitated teacher may be appointed.

Government orders issued from time to time for appointment on compassionate ground shall also duly be considered in making such appointment. But if the Medical Board does not declare the teacher to be permanently incapacitated to continue in further service the Council will allow him to rejoin duty provided he does not attain superannuation. In such a case the period of absence will be regularized as per existing leave rules."

13 We have carefully examined the provisions of compassionate appointment of a family member of a primary school teacher who have been prematurely retired on being permanently incapacitated under the West Bengal Primary Teacher Recruitment Rules, 2001. According to the provisions of the scheme the conditions for compassionate appointment are: (1) application for being declared permanently incapacitated is to be made before attaining 58 years of age i.e. two years before normal age of retirement, (ii) the concerned teacher discontinues to attain his duties because of such incapacitation, (iii) the Medical Board declares him permanently incapacitated, and (iv) prayer for compassionate appointment as a primary teacher is made within two years of retirement. Interestingly, the same Rule 14(2) provides for both premature retirement on the ground of permanent incapacitation and appointment on compassionate ground establishing a link between the two. As it will appear the conditions for appointment on compassionate ground of a family member of a government

employee who has been prematurely retired on being permanently incapacitated is different from these provisions.

12. In case of a Government employee, the provision for retirement on permanent incapacitation is provided under the West Bengal Services (Death-cum- retirement benefit) Rules, 1971. The relevant rule 56 is quoted below :-

“56. Officer submitting medical certificate under rule 49 to be discharged –(1) An officer who has submitted under rule 49 a medical certificate of incapacity for further service shall, if he is on duty, be invalided from service from the date of relief of his duty, which should be arranged without delay on receipt of the medical certificate. If he is on leave other than leave not due at the time of submission of the medical certificate he, should, except as provided in sub-rule (2), be invalided from the service on the expiration of the leave already granted to him. If he is on leave not due, his date of retirement should take effect from the date of the medical report...”

13. It may be noted from the provisions that an employee who has submitted a medical certificate of incapacity for further service is to be invalidated from the service from the date of relief of his duty. It is clear that the concerned employee is not allowed to retire from the date of application for early retirement. This provision is different from the provision under the Rule 14(2) of the West Bengal Primary School Teachers Recruitment Rules, 1991. Further, the provision for compassionate appointment is dealt with separately and independently which is provided under the Notification of the Labour Department, Government of West Bengal.

14. It is settled principle that if any scheme is framed for granting any relief, the decision making authority must take a decision in accordance with such scheme. In the referred case, the rules meant for appointment on compassionate ground of the early retired primary teachers cannot be applicable in deciding the merit of such application made by dependant of a Government employee whose case will be governed by the notification of the Labour Department, Government of West Bengal. Therefore, the principles laid down for appointment on compassionate ground in case of dependent of Primary School Teachers will not be applicable in deciding the

merit of application made by the dependant of Government employee, who has retired on being permanently incapacitated.

In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court in "Bhawani Prasad Sonkar vs-Union of India" reported in {(2011) 4 SCC 209}, which is as follows:

"It is well settled that compassionate appointment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Article 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve".

15. By applying the test laid down in the Notification No. 30-Emp dated April 2, 2008 issued by the Labour Department, Government of West Bengal, by which the case of the petitioner will be governed, we find that the petitioner has not fulfilled all the conditions laid down in the said notification for getting compassionate appointment.

16. We, therefore, do not find any infirmity in the order of rejection of the prayer of the petitioner for compassionate appointment by the respondent authorities and, accordingly, we do not find any ground to interfere with the said order of rejection.

17. In the result, the application fails, which is hereby dismissed.

18. The urgent Xerox certified copy of the judgement and order may be supplied to the authorities, if applied for, subject to compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J).