

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1685 OF 2010

STATE OF WEST BENGAL & ORS. .. APPELLANT(S)

VERSUS

TAPAN KUMAR BARMAN .. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 6214 OF 2019  
(Arising out of SLP(C) No. 21771 of 2010)

O R D E R

C.A. No. 1685/2010

1. The dispute pertains to compassionate appointment. The father of the respondent passed away on 16.12.1999. He applied for compassionate appointment soon thereafter, which request was rejected. Without getting into details, suffice it to say that there was some intermediate proceedings requiring the matter to be re-examined which produced the same result.

2. In terms of the impugned order, a direction has been issued to the appellant for appointment on compassionate grounds.

3. We have heard learned counsel for the parties

and perused the relevant material.

4. The impugned order is based on a reasoning that the benefits which accrued on ground of demise of father of the appellant ought not to have been taken into consideration in determining the status of the family, and matter requires to be examined for appointment on compassionate grounds. Our attention has been drawn to the circular dated 18.11.1997, which in turn has referred to two prior circulars. Neither of the two parties have taken care to place these circulars on record. In the circular in question, the benefit of compassionate appointment has to be made available if the fall in income due to the death of the Govt. servant makes the financial condition of his/her family so acute as to make the appointment essential. The process as to how the application should be processed, has been set out in paragraph 3 of the said circular, which reads as under :

"I am further directed to state that the wife son daughter near relation of the deceased Government Employee shall apply to the controlling authority of the deceased Government Employee in the enclosed form along with the death certificate. On receipt

of the said application the controlling officer should form an enquiry Committee consisting of Government Officials not less than three in number the committee so formed will enquire about the genuineness of the claim as also the financial condition of the family of the deceased Government Employee. The controlling Officer will forward the said report of enquiry along with his comments to the appointing authority through proper channel. The appointing authority will then examine the case in the light of the provisions contained in the Labour Department Circulars mentioned above and take the decision accordingly with due regard to the financial conditions of the family of the deceased government employee."

5. We may notice that benefits accrued to the family on account of demise of the employee may or may not be required to be taken would depend upon the norms. We may also notice that benefit of Rs. 4000/- as family pension has been granted to the wife during her life time to tide over the immediate difficulties of the family apart from the death benefits of Rs. 3,45,620/-. This amount includes death gratuity, leave salary, group insurance, apart from pension. In the absence of the circular, it is

not possible to determine as to what criteria should be adopted in this behalf though the impugned order passed by the competent authority does seem to indicate that these are factors which have been taken into account.

6. Learned counsel appearing for the respondent sought to persuade us by referring to paragraph 3 of the circular dated 18.11.1997 extracted aforesaid by canvassing that the process envisaged in the same has not been followed. Perusal of the order passed by the Director of Health Services, West Bengal being the competent authority, dated 08.01.2004 shows that an enquiry has been made and that material has been placed before the competent authority. However, what was the report of the enquiry has not been placed before us.

7. We have also taken note of the fact that the period of 20 years has elapsed since the cause of action arose, if at all. The very purpose of compassionate appointment is to tide over the immediate difficulties and it is not an alternative source of employment. That requirement cannot be said to persist for 20 years. The respondent himself

has also to take the blame for the same as for the last 10 years this matter has been pending, but not a single application has been move for expeditious hearing of the matter. The operation of the impugned order was stayed on 08.02.2010 and subsequently leave was granted.

8. We have also perused the impugned order and find, apart from the aforesaid, there are observations to the effect that it is not for the Director to address the immediate needs of the family and it is for the family to get over their own difficulties. Such a proposition is stated only to be rejected. It is the concerned authorities who will determine and the grant of the compassionate appointment is not an inherent right. The only reason which has persuaded the High Court to take the view in the impugned order is that family benefit scheme cannot be taken into account for benefit of compassionate appointment as observed by this Court.

9 We are of the view that for the aforesaid reasons, it is not legal and desirable at all at this stage to grant benefit of compassionate appointment to the respondent.

10. The impugned order is set aside and the claim

of the respondent for compassionate appointment is dismissed.

11. The appeal is accordingly allowed.

12. The parties to bear their own costs.

C.A. No. 6214/2019 (@ SLP(C) No. 21771/2010)

13. Leave granted.

14. The father of the respondent passed away on 19.10.2003. There is some confusion as to the date on which the application for compassionate appointment was made by the respondent. However, it was forwarded by the concerned officer of the competent authority on 14.10.2008. The respondent approached the West Bengal Administrative Tribunal vide O.A. No. 9478/2008. Thus the hiatus period between making an application, whatever may be the date, and approaching the Tribunal is at least 3 years as the respondent claims to have filed the application within a period of one year of the demise of his father. It is for this reason that the Tribunal vide order dated 27.01.2009, ruled against

the respondent on grounds of limitation apart from recording that the respondent may not need the benefit of compassionate appointment on account of the benefits received by the family on the demise of the employee plus grant of pension.

15. The Calcutta High Court, however, in terms of the impugned order dated 30.03.2010, interfered with the same on the ground that once it is assumed that the application was filed for compassionate appointment within a period of one year, the respondent should not be denied the benefit. On merits nothing has been stated in the impugned order.

16. The operation of the impugned order was stayed on 23.07.2010. No endeavour has been made by the respondent over the last 9 years for the matter to be listed by filing an application.

17. After hearing learned counsel for the parties, we are unable to sustain the impugned order. We have taken note of the aspect of delay in approaching for redressal of the grievance of non appointment on compassionate grounds. Suffice to say that compassionate appointment is not a matter of right

but to tide away the immediate needs of the family. As of now, 10 years have elapsed since then. It cannot be said that the need would continue for such a long period of time.

18. We are thus of the view that the impugned order is required to be set aside and the claim of the respondent is liable to be rejected for compassionate appointment.

19. The appeal is accordingly allowed. The parties to bear their own costs.

.....J.  
[ SANJAY KISHAN KAUL ]

.....J.  
[ K.M. JOSEPH ]

NEW DELHI,  
AUGUST 08, 2019.

ITEM NO.101, 101.1                      COURT NO.11                      SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1685/2010

STATE OF WEST BENGAL & ORS.

Appellant(s)

VERSUS

TAPAN KUMAR BARMAN

Respondent(s)

(PART-HEARD BY HON'BLE SANJAY KISHAN KAUL AND HON'BLE K.M. JOSEPH ,JJ. )

WITH  
SLP (C) No. 21771/2010 (XVI)

Date : 08-08-2019 These appeals were called on  
for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)    Ms. Astha Sharma, Adv.  
                                 Ms. Kajal Dalal, Adv.  
                                 Mr. Suhaan Mukerji, Adv.  
                                 for M/S. PLR Chambers And Co., AOR

For Respondent(s)    Mr. Shakeel Ahmed, AOR  
                                 Ms. Sadiya Shakeel, Adv.  
  
                                 Mr. Soumya Chakraborty, Sr. Adv.  
                                 Mr. Danish Zubair Khan, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are allowed in terms of the signed order.

The parties to bear their own costs.

Pending applications, if any, stand disposed of.

[ CHARANJEET KAUR ]  
A.R. -CUM-P.S.

[ BEENA JOLLY ]  
COURT MASTER

[ Signed order is placed on the file ]