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| Serial No. andDate of order. 1 | Order of the Tribunal with signature2 | Office action with date and dated signature of parties when necessary3 |
|  328.02.2018SCN.  | For the Applicant : Shrimati Sonali Mitra Learned AdvocateFor the Respondent : Shri Apurba Lal Basu Learned AdvocateThe applicant has filed this original application under Section 19 of the Administrative Tribunals Act, 1985 challenging order dated January 25, 2017 passed by the respondent No. 3 and praying for direction upon the respondents to give compassionate appointment to the applicant. It appears from the materials on record that on August 4, 2016 this Tribunal gave direction to the respondent No. 3 to take a decision in respect of prayer of the applicant for compassionate appointment after giving the applicant an opportunity of hearing within a period of twelve weeks from the date of communication of the order. The said order was passed in O.A. No. 1255 of 2015. The said respondent No. 3 rejected the prayer of the applicant for appointment on compassionate ground by passing the impugned order which is under challenge in the present original application. Mrs. Sonali Mitra, Learned Counsel for the applicant submits that the respondent No. 3 refused the prayer of the applicant for compassionate appointment on the basis of the revised guidelines contained in paragraph 14 (bb) of Labour Department Notification No. 26-Emp dated March 1, 2016. By making interpretation of the said paragraph of the notification, Mrs. Mitra contends that the said notification has no manner of application in case of the applicant as the applicant died before April 2, 2008. On the other hand, Mr. Apurba Lal Basu, Learned Counsel representing the respondents submits that paragraph 14 (bb) of the Labour Department notification dated March 1, 2016 is applicable in the case of the present applicant as the present applicant died before coming into force of the said notification of 2016. In view of such contradictory submission from the Bar, we have a duty to make an interpretation of the relevant paragraph No. 14 (bb) of the Labour Department Notification No. 26 – Emp dated March 1, 2016, which is as follows : “Any undisposed case where the death / incapacitation has occurred prior to issue of this order, but after the issue of order No. 30-Emp dated 02.04.2008, could be looked into afresh, if it complies with the revised instructions.” On perusal of the above paragraph of the notification of the Labour Department we find that the said notification of 2016 is applicable in connection with any undisposed case “ (i) if the death of the employee took place before March 1, 2016, but after April 2, 2008 and (ii) if the conditions laid down in the notification of 2016 are complied with.” In the instant case, the father of the applicant, Sahadev Mahata died on May 30, 2007 and the applicant submitted application in the prescribed format for compassionate appointment on February 8, 2008. So, the death of the father of the applicant did not take place after April 2, 2008 in order to attract the provisions of paragraph No. 14 (bb) of the Labour Department Notification No. 26 –Emp dated March 1, 2016. The natural corollary of our above observation is that the case of the applicant cannot be governed under notification No. 26-Emp dated March 1, 2016. We are of the view that the respondent No. 3 was not justified in deciding the case of the applicant for compassionate appointment on the basis of paragraph 14 (bb) of Labour Department notification No. 26-Emp dated March 1, 2016. Accordingly, we set aside the order dated January 25, 2017 passed by the respondent No. 3 (Annexure ‘J’ collectively to the original application). The respondent No. 3, Director, Directorate of District Distribution Procurement & Supply, Department of Food & Supplies, Government of West Bengal is directed to reconsider the case of the applicant for compassionate appointment on the basis of Labour Department notification No. 97 – Emp dated June 6, 2005 and corrigendum issued from time to time by the Labour Department till May 30, 2007 and on the basis of materials already available on record within a period of twelve weeks from the date of communication of the order and communicate the result of the same to the applicant within a period of two weeks thereafter. With the above direction the original application is disposed of. Let a plain copy of the order be supplied to both parties. (S.K. Das) (R.K. Bag)MEMBER (A) MEMBER (J) |  |