

01.07.2021
Item no. 1

Aloke
Ct. no.16

(Through Video Conference)

WPST 27 of 2021

**Satadru Adhikary
Versus
State of West Bengal & Ors.**

Mr. Chitta Ranjan Chakraborty, Adv.
Mr. Dip Jyoti Chakraborty, Adv.
... for the petitioner
Mr. Biswabrata Basu Mallick, Adv.
... for the State

This writ petition is arising out of an order dated August 1, 2019 in OA No. 581 of 2018. The writ petitioner filed an application before the learned Tribunal challenging the Memo dated August 9, 2018 whereby the request of the writ petitioner for appointment on compassionate ground was rejected on the ground that the deceased employee was a work-charged employee but not a regular employee.

The learned counsel for the petitioner has submitted that on a total misconstruction of the letter of appointment, the Tribunal has arrived at an erroneous finding.

The learned counsel for the State respondents although did not file any affidavit before the Tribunal but submitted that the father of the applicant was a work-charged employee. Therefore, the applicant is not entitled to get any compassionate appointment as per the scheme of the Labour Department as there is no provision for the work-charged employee for compassionate appointment and the scheme is applicable for regular employee only.

We have considered the letter of appointment dated June 4, 1999 which clearly states that the father of the petitioner, namely, Sri Sukumar Adhikary was appointed to the post of temporary 'Cleaner' under work-charged establishment with usual pay and allowances.

The learned counsel for the writ petitioner submits that having regard to the fact that there is a scale of pay applicable to the petitioner and the nature of the employment of the father is permanent and also that the wife of the deceased employee had been receiving pension would suggest that he was a regular employee and cannot be treated as work-charged employee in order to deny compassionate appointment to the petitioner as per the scheme of compassionate appointment.

The status of a work-charged employee is different from that of a regular employee. It is settled principle of law that the compassionate appointment is governed by the scheme of department and as per the respondent the scheme of the department does not stipulate considering any dependent of the work-charged employee for compassionate appointment. The status of the work-charged employee was discussed by the Hon'ble Supreme Court in ***State of Manipur vs. Thingujam Brojen Meetei*** reported in **(1996) 9 SCC 29** and subsequently followed in ***State of Madhyapradesh & Ors. vs. Amit Shrivastava*** reported in **(2020) 10 SCC 496**.

The aforesaid decisions clearly bring out the distinction between a permanent employee and a regular employee. It has

been reiterated in the said decisions that though a permanent employee has right to receive pay in the graded pay scale, at the same time, he would be getting only minimum of the said pay scale with no increments. It is only the regularization in service which would entail grant of increments, etc. in the pay scale. Moreover, the bar regarding applicability of the scheme to work-charged employee would be applicable and the dependants of such a work-charged employee cannot claim the benefit of an appointment on the basis of the scheme for compassionate appointment.

The mere fact that the deceased father of the writ petitioner was receiving pay in the graded pay scale or that the widow of the said deceased is enjoying pension that would not entitle the said deceased to get the status of a regular employee. The law in this regard has been succinctly discussed in **Amit Shrivastava** (supra). The recent decision of a coordinate Bench in **WPST 99 of 2020** decided on June 10, 2021 in **Sri Sujit Dalui vs. Principal Secretary, Public Works Department, Government of West Bengal & Ors.** has also considered similar matter and arrived at the similar findings after relying upon the aforesaid two decisions of the Supreme Court.

The argument of the petitioner that similarly placed persons were considered for compassionate appointment cannot give any right to the petitioner to be considered for compassionate appointment as right to equality under Article 14 is not in negative terms where some persons were given

benefit wrongly, the same cannot form the basis for extending the same benefit to the petitioner.

In that view of the matter, we do not find any reason to interfere with the order passed by the learned Tribunal.

The writ petition fails and the same stands dismissed.

There will be no order as to costs.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)