IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
MANDAMUS APPEAL

The Hon'ble **Justice Arijit Banerjee**
And
The Hon'ble **Justice Kausik Chanda**

F.M.A. No. 1173 of 2021
With
I.A. No. C.A.N. 1 of 2021
With
I.A. No. C.A.N. 2 of 2021

UTTAM KUMAR BARUI
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS

For the appellant : Mr. Pankaj Halder, Adv.,
Mr. Sanatan Panja, Adv.,
Ms. Rama Halder, Adv.,
Mr. Tapas Manna, Adv.

For the State : Mr. Anirban Ray, Adv.,
Mr. Biswabrata Basu Mallick, Adv.,
Mr. Sayan Ganguly, Adv.

Hearing concluded on : 23.03.2022

Judgment on : 07.04.2022

Kausik Chanda, J.:-

One Jadav Barui (since deceased) was a Gram Panchayat Karmee under Nawpara Masunda Gram Panchayat, Ranaghat-I Development Block, Nadia. He died-in-harness on October 16, 2009. At the time of his death, he was aged about 54 years.

2. The petitioner, thereafter, being one of the adult sons of the deceased employee, applied before the respondents for his appointment on compassionate ground. The Joint Director, Department of Panchayats and Rural Department, Government of West Bengal, by a memo dated October 19, 2010, recommended the proposal for his appointment on compassionate ground to the Joint Secretary to the Government of West Bengal, Department of Panchayat Rural Development.

3. Despite such recommendation, no appointment was given to the petitioner which prompted him to file a writ petition before this Court being W.P. No. 16393(W) of 2013 seeking his appointment on compassionate ground.

4. The said writ petition was disposed of by a learned Single Judge of this Court on July 29, 2013, directing the Joint Secretary, Department of Panchayat and Rural Development, West Bengal, to dispose of the matter by passing a reasoned order within 18 weeks from the date of communication of the said order and after calling for a fresh report from the three men committee which had been constituted to enquire into the suitability of the appointment of the petitioner. It was further directed that if the petitioner was found to be

entitled to an appointment, in accordance with law, which includes the notification dated 3rd February 2009, an appropriate order should be passed within four weeks from the date of passing of the reasoned order.

5. It appears that in compliance with the said order, the relevant Block Development Officer forwarded a report vide Memo No.44/RGT-I dated 09.01.2015 to the District Panchayats and Rural Development Officer.

6. The finding in the said report is as follows:-

> "It appears from the spot enquiry that:-
>
> 1. The Prayer of Sri Uttam Kumar Bauri, S / O Late Jadav Bauri, Ex-Gram Panchayat Karmee of Nawpara Masunda Gram Panchayat, is genuine.
> 2. Pecuniary condition of the family: Smt. Saraswati Bauri, W/o late Jadav Bauri has received family pension. Smt. Saraswati Bauri has received the following amounts:--
>
> | | |
> |---|---|
> | a) Death Gratuity | : 328738.00 |
> | b) Leave Salary | : Not yet drawn (but in the process of drawal and the amount fixed as Rs.104150.00.) |
> | c) Group Savings Linked Insurance | : Rs.21135.00 |
> | d) P.F | : Rs.48082.00 |
> | e) Total | : -----------------
Rs.397955.00
----------------- |
>
> 3. As per Order No.433/PN/O/III/2E-70/07(Pt-1) Dt. 03/02/09 of Government of West Bengal, Department of Panchayat & Rural Development (Panchayat wing) Jessop Building, Kolkata-1, the following information is given below:
>
> Present monthly income of the family
>
> i) Rs. 2000.00 (income from mason)

ii) Rs. 321.00 (8% Interest on PF Rs. 48,082.00)

Total Rs. 2321.00

The Gross monthly Salary before death was Rs.11,723.00
Hence present monthly income of the family falls below 90% of Gross monthly salary before death.

4. Applicant has given a declaration in writing to look after of her widow mother and affidavit for the same is enclosed.
5. Applicant is holding the assets: 02(Two) decimal Land (approximate)
   Particulars of Land: Mouza-Bidyanandapur, P.S-Ranaghat
   Plot No-143/258,Kh No-219/1
   Area- 0.02 Acres(two decimal)
   As per Patta Case No-60/82 Dt.30/09/1982
6. Residential Status:- Sri Bauri possesses a Kachha house situated on 02 decimal Land.
7. Any kind of financial assistance received:-- No other financial assistance has been received by Smt. Saraswati Bauri excepting Para no-2 mentioned above.
8. Any other relevant fact:-- Smt. Saraswati Bauri is not serving in any concern. One daughter is dependant upon her.
9. Applicant is maintaining livelihood as mason and except that he has no other income (Part-II & Part-III are verified and fact).
10. Last total pay of deceased:

a) Basic Pay : Rs.6920.00
b) Grade Pay: Rs.1800.00
c) MA : Rs. 300.00
d) HRA : Rs.1308.00

Total : Rs.11,723.00

Deduction: P.F------ Rs. 200.00

P.Tax--- Rs. 110.00
GSLI-----Rs. 15.00

Total----- Rs.325.00
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11. Death Benefit:
a) Pension (including D.A.) as on: Rs.7189.00
b) Monthly income from Salary : Nil
c) Death Gratuity : Rs. 328738.00
d) LIC : Not drawn
e) GSLI : Rs.21135.00
f) Leave Salary : Not drawn
g) P.F : Rs.48,082.00

Submitted to the Block Development Officer, Ranaghat-I Development Block in terms of Memo No-1409(9) Dated-11/06/2014 for kind perusal. Family of the deceased Jadav Bauri is suffering from financial hardship and employment may be recommended to Sri Uttam Bauri, the applicant and the son of Late Jadav Bauri."

7. Thereafter it appears that a second report was prepared by the same committee, which was submitted on July 9, 2015, vide Memo No. 1760, to the District Panchayat and Rural Development Officer through the said Block Development Officer. This time the observations of the committee were as follows:-

"The observations are noted below in the format of Part-III of the above-mentioned order:

Part-III

1. Name of the deceased employee : Jadav Bauri

2. Designation of the ex-employee : Gram Panchayat Karmee

3. Name of the Office with address : Nawpara Masunda Gram Panchayat office

Vill:-Bidyanandapur, P.O.-Nawpara, P.S.-Ranaghat Dist- Nadia

4. Date of birth of the deceased : 01.01.1955

5. Date of death of the deceased (attested Copy of death certificate to be enclosed) : 16th October, 2009 (Death certificate enclosed herewith)

6. Date of joining the Govt. service : 23-11-1976 as a Chowkidar and 01-04-1994 as a Gram Panchayat Karmee

7. Total length of service rendered : 32 years, 10 Months, 23 days

8. Whether belonging to SC/ST/OBC (*Attested copy of certificate to be enclosed*) : No.

(i) Monthly salary drawn by the deceased in the last month-Total emoluments (Pay & other allowances) : Basic Pay-Rs.6920, Grade Pay:-Rs.1800.00/- Gross Total: Rs. 11,723 D.A. Rs.1395, Deduction p. Tax-110 HRA: Rs.1308, MA: 300, GPF:200, GSLI-Rs.15.00

9. Name of the candidate praying for Appointment on Compassionate Ground : Sri Uttam Kumar Bauri

11. His/Her relationship with the ex-employee	: Son
12. Date of birth of the applicant	: 06.03.1975 (Sixth March, one thousand nine hundred seventy five)
13. Educational qualifications	: VIII Passed
14. Whether fully dependent on the Ex-employee.	: Yes
15. Whether any other dependent has been Appointed on compassionate ground	: No
16. Family Pension	:Rs. 7800.00 as on 28-02-2015
17. Other Payments Sanctioned & Received so far by the family of the deceased	:-
(i) Family Pension	: 7800.00 by the family as on 28-02-2015 (Gross)
(ii) GPF balance	: Rs. 48,082.00 (received by the family).
(iii) Group insurance	: Rs. 21,135.00 (Rupees Twenty one thousand one hundred thirty five) only (Received)
(iv) Encashment of leave	: Rs. 104150.00 (Rupees one lakh four thousand one hundred fifty) only

(v) L.I. Policies (including PLI) : Nil (Received)

(vi) Death gratuity : 3,28,738.00

18. Movable and immovable Properties an annual income there from by the family : 2.9 Decimal (House), Income-Nil

2. Brief particular of Liabilities If any (Documentary evidence to be Enclosed) : Specific information not available

3. Particulars of all dependents the deceased:-

Sl. No.	Name	Age	Educational Qualification	Relationship with the deceased	Living separately or with the family
1.	2.	3.	4.	5.	6.
1.	Saraswati Bauri	59years	nil	Wife	With the Family
2.	Jyostna Bauri	42years	nil	Daughter	With the Family
3.	Uttam Kumar Bauri	39years	VIII passed	Son(Elder)	With the Family
4.	Dilip Bauri	37years	V Passed	Son(Younger)	Living Separately

Marital Status	Particulars of occupation/employment (if already employed)	Gross Salary (if employed)
7	8	9
Widow	House Wife	Nil
Married	House Wife	Nil
Married	Mason	2800.00 P.M
Married	Mason	2800.00 P.M

Comments of the members of the enquiry committee:-

The above-mentioned particulars are true on the basis of various supporting documents, available office records and spot-enquiry. All the members of the family of Late Jadav Bauri, Ex-Gram Panchayat Karmee, have been spending their days with financial difficulties. It has been noticed during enquiry that the present income of the family of Lt. Jadav Bauri, from interest is approximately Rs.3500.00 only, excluding the family pension. So the total income of this family will be approximately Rs.14100.00 only after the sanction of the family pension. Therefore, as per para-3(a) or 3(b) of G.O. No. 4097/PN/O/III/2A-63/2014 dt. 29.09.2014, the monthly income of this family does not fall below either of 90% of the gross monthly salary last drawn by Lt. Jadav Bauri, Ex-GP Karmee of Nawpara Masunda GP before his death, or of the minimum salary of a Group-D employee.

Therefore, We, the undersigned, are of the opinion that the claim of Employment of Sri Uttam Kumar Bauri, S/O. Late Jadav Bauri, Ex-Gram Panchayat Karmee of Nawpara Masunda Gram Panchayat on compassionate ground cannot be accepted as per para 3 of notification no. 4097/PN/O/III/2A-63/2014 dated 29/09/2014 of P & RD Department.

Sl No.	Name of the Enquiring Officer	Designation	Signature
1.	Sri. Kishor Ranjan Biswas	Jt. B.D.O	Sd/- Jt. Block Dev. Officer Ranghat-I Dev. Block
2.	Sri Nirupam Pal	P.D.O.	Sd/- Panchayat Development Officer Ranghat-I Dev. Block

3.	Sri Hirak Chowdhury	P.A. & A.O.	Sd/- P.A. & A.O. Ranghat-I Dev. Block

Comments of the Controlling Officer:-

As per notification No. 97-EMP dt. 06.06.2005 & G.O. No 433/PN/O/III/2E-70/07 (Pt-1) dt. 03.02.2009 and notification no. 4097/PN/O/III/2A-63/2014 dated 29.09.14, the undersigned is satisfied with the report of the three-men enquiry committee formed as per this office Memo No. 1409(9) Dated- 11/06/2014 of B.D.O., Ranaghat-I and the undersigned hereby reject the claim for appointment on compassionate ground of Sri Uttam Kumar Bauri, S/O. Late Jadav Bauri, Ex-Gram Panchayat Karmee of Nawpara Masunda Gram Panchayat."

8. Thereafter the case of compassionate appointment of the petitioner was taken up by the relevant Joint Secretary of the said department (respondent no.2). The petitioner was afforded a personal hearing before him and the claim was rejected by an order dated September 17, 2015.

9. Challenging the said order dated September 17, 2015, the present writ petition was filed in the year 2016. The learned Single Judge by his order dated March 11, 2021, observed that compassionate employment itself is an exception to the general rule of employment and recruitment. Compassionate employment admittedly, aims at preventing the family of the deceased from falling into destitution, penury, and starvation. The learned Judge, further, found that the petitioner was about 47 years old as on the date of judgment and he was a 37-year-old man in 2010. Therefore, the petitioner could not claim that he was in starvation or was in utter destitution even at the age of 37

years. The learned Single Judge dismissed the writ petition observing that compassionate appointment is not a matter of right.

10. Challenging the order of the learned Single Judge it has been argued by the appellant before us that at the time of death, the gross salary of the deceased employee was Rs.11,723/-(Rupees Eleven Thousand Seven Hundred and Twenty Three). After the death of the employee, the family of the deceased received a family pension of Rs.5,358/- and the other sources of income were Rs.2,321/- and therefore, the total monthly family income was Rs.7,679/-.

11. As per the scheme of compassionate appointment under Clause 3 of the notification dated February 3, 2009, compassionate appointment can be given, if the monthly income of the family falls below 90 percent of the last drawer gross monthly salary of the deceased employee.

12. It was argued that after the death of the father of the petitioner the monthly family income having fallen below 90 percent of the gross monthly salary of the deceased employee, the writ petitioner ought to have been appointed on compassionate ground. Such rejection is not tenable in the eye of law since the said respondent no.2 ought to have considered the income of the deceased family at the time of death of the petitioner's father and the claim for compassionate appointment should have been considered in the light of the first enquiry report. It has, further, been suggested that the need for financial assistance of the family of the deceased employee is very much existent till date and the claim of the appellant cannot be denied on the ground that he is now

47 years old. It has been argued that compassionate appointment is a special appointment on humanitarian ground and admittedly when the appellant applied for appointment on compassionate ground, he was about 37 years old.

13. The appellant placed reliance upon a judgment reported at **(2006) 12 SCC 44 (*Abhishek Kumar v. State of Haryana*)** to suggest that appointment on compassionate ground should be considered in terms of the rules which were in existence when the application for such appointment was made. Further reliance was placed on the judgments reported at **(2014) 3 Cal HCN 313 (*Amit Kumar Roy v. State of West Bengal*), (2010) 1 CHN Cal 665 (*Swati Chatterjee v. State of West Bengal*)** and **(2019) 1 CHN Cal 343 (*State of West Bengal v. Lakshman Let*)** to argue that the unreasonable delay to take decision cannot frustrate the scheme of compassionate appointment.

14. The learned advocate representing the State reiterated the stand of the respondents in the impugned memo and argued that compassionate appointment is given to overcome immediate financial crisis. Such appointment is not a matter of right and it is an exception to the right of equality under Article 14. The claim of the petitioner was rejected on the basis of the report of the three-member committee and, therefore, there is no wrong on the part of respondent no.2 in rejecting the claim of the petitioner.

15. Before we delve into the factual aspect of the matter, we wish to clear the air by saying that the compassionate appointment is also a benefit attached to

the service of an employee flowing from the relevant statutes, rules, or from the statutory scheme like any other benefits or rights. The right of compassionate appointment should be examined in the light of statutory rules, regulations or scheme by the Court provided such rules, regulations, or scheme themselves are not unconstitutional. A family member of a deceased employee can claim such appointment as a matter of right if he satisfies the conditions provided in such rules, regulations, or scheme. Looking from this angle it may not be necessary to view a compassionate appointment on the anvil of Article 14 for this kind of appointment is made without following regular recruitment rules.

16. In the present case, there is no dispute that there was a scheme dated February 3, 2009, in place for compassionate appointment when the writ petitioner made his application. There is also no dispute that the petitioner applied within the time period prescribed in the said scheme and his case was recommended for appointment on October 19, 2010 as he was otherwise found to be eligible.

17. Clause 3 of the said scheme provides for the following terms and conditions to be eligible to be appointed on compassionate ground:-

> "3. One of the under noted conditions that needs to be fulfilled for offering appointment on compassionate ground is that the family of the deceased or prematurely retired employees is in need of immediate financial assistance.
>
> The family of a deceased or prematurely retired employee shall be considered to be in need of immediate financial assistance, if any of the two under noted conditions are satisfied.

a) The monthly income of the family falls below 90 percent of the gross monthly salary of the employee before death or premature retirement.

b) The monthly income of the family falls below the minimum salary of a Group – 'D' employee (in ease of Group – 'D' employees) or the minimum salary of a Lower Division Clerk (in case of employees other than those belonging to the Group - D).

The gross monthly salary, for this purpose shall mean basic pay along with dearness pay, dearness allowance, house rent allowance & medical allowance.

Again, the monthly income of the family shall mean the aggregate of:

(i) Total family pension per month (Basic, Dearness Pension & relief etc.).

(ii) Monthly interest income @ 8% p.a. on the total amount received by the family after death of the employee or retirement of the incapacitated employee (Gratuity, Leave Encashment, any other payments excepting G.P.F.). Provided that where an ex-employee had to incur medical expenses as indoor patient prior to and leading to his death/incapacitation, such expenses may be deducted from the amount received. All such expenses must be supported by original receipt/cash memo, hospital discharge certificates.

(iii) Monthly income from movable and immovable properties (the family members are expected to submit a declaration on the matter).

(iv) Monthly income of the dependents of the ex-employee named in the application (the family members are expected to submit a declaration on the matter)."

18. It is quite curious that the three-member committee report which was forwarded on January 9, 2015, by the Block Development Officer, Ranaghat-I Development Block, recommended the appointment in favour of the petitioner observing that at the time of the report, the monthly income of the family was

below 90 percent of the gross salary before the death of the deceased employee. The same committee comprising the same members, within a few months, in the report forwarded by memo no.1760 dated July 9, 2015, declined to accept the prayer of the petitioner holding that the monthly income of the family did not fall below 90 percent of the gross salary. Significantly, the order impugned in the writ petition dated September 17, 2015, indicates that another three-member enquiry was held on earlier occasion, and a report dated January 12, 2010, was submitted recommending the appointment of the petitioner. The respondent no.2 chose to rely upon the latest enquiry report submitted on July 9, 2015, and found that the interest income of the family of the deceased was approximately Rs.3,500/- only. The family received a pension of Rs. 7,800/- per month as on February 28, 2015, and therefore, the total income of the family was approximately Rs.14,100/-. The order goes to show that the said respondent no.2 referred to Para-3(a) and 3(b) of a Government G.O. No. 4097/PA/O/III/2A-63/2014 dated September 29, 2004, and held that monthly income of the family does not fall below 90 percent of the gross monthly salary last drawn by the deceased employee (Rs.11,723/-) before his death. He noted that the following benefits were given to the members of the deceased family.

"Pension--------------------Rs. 7,8000=00
Gratuity ------------------ Rs 3,28,738=00
GI ------------------------ Rs. 21,135=00
Encashment of Leave----Rs. 1,04,150=00"

The claim of the writ petitioner was rejected thereafter with the following observations:-

> "It is pertinent to note that appointment on compassionate ground is offered in favour of a dependent & adult family member of the deceased employee of PRI who is in need of immediate financial assistance. It appears that the deceased employee had served for about 32 years 10 months 23 days and received full salary benefits in his service life. The service tenure completed by the employee was quite substantial and well over average service life of a Government employee. The quantum of death benefits amounting to Rs. 4,54,023=00 received by the legal heir of the employee should have been adequate to overcome immediate financial distress and strain occurring at the material point of time. The offer for appointment on compassionate ground can never be a matter of right and such appointment are made without rigours of any competitive process. This is further worth mentioning that the Three Men Committee has not recommended the case of the petitioner as if does not satisfy the criteria as set in extent memorandum of the Labour Department."

19. We are of the opinion that the approach of the respondent no.2 in deciding the claim of the petitioner cannot be accepted. The claim of the petitioner for compassionate appointment should have been decided on the basis of the income of the family when the petitioner immediately after the death of his father, applied for the same in the year 2009. The approach is erroneous as the proportion of 90 percent will increase over time, since the family pension normally gets upwardly revised due to inflation or other reasons, but the last gross salary of the deceased employee is a constant factor. Therefore, delay in deciding the claim will eventually result in increase of the proportion, thereby frustrating the very object of the scheme.

20. The right of compassionate appointment should be decided on the basis of the relevant circular or scheme which was in vogue when a valid application for the same was made in accordance with the said scheme or circular. In the present case, even the enquiry report submitted on January 9, 2015 suggests that the monthly income of the family was below 90 percent of the gross monthly salary of the deceased employee before his death taking the family pension to be Rs.7,189/- and income from other sources to be Rs.2,321/- in the year 2015. Therefore, there cannot be any doubt that in the year 2009, the monthly family pension was much lesser, and income of the family was well below 90 percent of the gross last monthly salary of the deceased, particularly when admittedly some retiral dues like provident fund, group insurance and leave encashment were provided to the family at a much later point of time. The petitioner was, therefore, eligible to be appointed in terms of the scheme dated February 3, 2009.

21. We like to clarify that the right of compassionate appointment is in addition to the terminal benefits received by the family. These two rights are not mutually exclusive under the scheme dated February 3, 2009. The only consideration under the relevant scheme is whether the monthly income of the family from the retiral dues of the petitioner as well as from the other sources falls below 90 percent of the last gross salary of the deceased employee. The scheme dated September 29, 2004 also maintains the same condition.

22. No doubt that the right of compassionate appointment is aimed that providing immediate financial assistance to the family of the deceased and as

such it is the obligation of the State also to ensure that such claim is decided with utmost expedition. The petitioner had acquired a right to be appointed under the scheme of February 3, 2009, and such right cannot be allowed to be defeated by the sheer lethargy and indifference of the respondents in appointing the petitioner in due time.

23. It was the inaction of the State that compelled the writ petitioner to approach this Court to enforce his right under the said scheme and though there was an order passed by this Court on July 29, 2013, to dispose of the case of the compassionate appointment of the petitioner within 18 weeks, the authority took about two years to decide the case finally. Because of the delay on the part of the respondents in deciding the claim of the petitioner, the right of compassionate appointment of the petitioner cannot be frustrated. If such course of action is approved by this Court then in every case the State may keep the claim of compassionate appointment pending for an indefinite period and thereafter reject the same on the ground of delay. A considerable time has been consumed over this litigation. We are of the view that the learned Judge was not right in rejecting the claim of the petitioner on the ground that he was about 47 years old at the time of the judgment, since the delay in the appointment in the present case cannot be attributed to the petitioner

24. In view of the discussion above, this appeal stands allowed. The respondents are directed to issue appointment letter in favour of the petitioner to a suitable post within a period of four weeks from date.

25. The appeal being F.M.A. No. 1173 of 2021 and the connected applications being I.A. No. C.A.N. 1 of 2021 and I.A. No. C.A.N. 2 of 2021 are, accordingly, disposed of.

26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Arijit Banerjee, J.) **(Kausik Chanda, J.)**