

11.
23.11.2022
S.D.

W.P.A. 22523 of 2022

Gopal Chandra Roy
Vs.
W.B.S.E.D.C.L & Ors.

Mr. Suman Banerjee
Mr. Saiful Alam

..For the Petitioner

Mr. Debjit Mukherjee

...For the W.B.S.E.D.C.L.

Ms. Chaitali Bhattacharya

.....For the State

The petitioner has prayed for compassionate appointment on the ground that his father who was working in the post of Senior Linesman attached to Birbhum (D) circle office, died-in-harness on August 25, 2005. The petitioner prayed for appointment on January 3, 2006. There was no response to the representation made by the petitioner by the authorities concerned. The petitioner's father worked with the West Bengal State Electricity Distribution Corporation Ltd. (W.B.S.E.D.C.L.).

The applicable policy at the time of the death of the petitioner's father was issued by the Labour Department,

Government of West Bengal vide Notification dated June 6, 2005. Under Clause (3) of the said Notification, no appointment on compassionate ground was to be given to a dependant of an employee who died-in-harness or retired prematurely on being declared permanently incapacitated after completion of 20 years of service. Admittedly, the petitioner's father completed 20 years of service as per the extant Rules/Regulations applicable for the employer. Thereafter, a further notification was issued in 2008. Under the said notification also, the petitioner was ineligible considering the fact that his father had completed 20 years of service.

Thereafter subsequent notifications were published on April 16, 2010 and September 4, 2010. The said notifications were held to apply for employment under died-in-harness capacity in the event the death occurred after June 6, 2005. The upper age limit of the dependant/spouse was stipulated to be 40 years and the upper age limit for the other dependants were stipulated to be 30 years.

Mr. Banerjee, learned counsel appearing for the petitioner challenges the upper age limit of the other dependants being 30 years as per the office circulars dated April 16, 2010 and September 4, 2010.

Mr. Mukherjee, learned counsel appearing on behalf of the W.B.B.S.E.D.C.L submits that the petitioner is not entitled to appointment on compassionate ground since he was 31 years of age on the date of death of his father. Therefore, the petitioner cannot rely upon office orders/circulars dated April 16, 2010 and September 4, 2010 for consideration of his application.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds that the relevant office order to be applied in case of the petitioner for consideration of his application for appointment on compassionate ground is the office order dated June 6, 2005. Under the said office order, the petitioner is ineligible since his father had completed 20 years of service on the date of his death.

Under the office order dated April 4, 2008 in case of death occurring after June 6, 2005, the question whether the deceased employee completed 20 years of service or attained 50 years of age was the relevant factor.

By an office order dated April 16, 2010, the office order dated April 4, 2008 was modified. The dependants who were eligible to apply for compassionate appointment in the spouse category would have an upper age limit of 40 years and

dependants eligible to apply in all other categories would have an upper age limit of 30 years. The stipulation with regard to the age of the deceased employee or the service tenure of the deceased employee was modified and/or removed by the said notification dated April 16, 2010 in supersession of the office orders passed in 2005 and 2008.

Even under the office order dated April 4, 2008, the petitioner was not eligible since his father admittedly completed 20 years of service on the date of death. Under the office order dated April 16, 2010, even though the stipulation with regard to the tenure of service was removed, a restriction with regard to the age of the dependants was imposed. The petitioner now seeks to challenge the stipulation with regard to the upper age limit of the dependants as indicated by the circular dated April 16, 2010. The petitioner seeks to take advantage/rely on the removal of the bar with regard to the tenure of service by the office dated April 16, 2010 but seeks to challenge the bar imposed by setting an upper age limit of the dependants in the same office order.

This court finds that the petitioner cannot seek to take advantage of the removal of the bar with regard to service tenure and then challenge the bar which have been imposed with regard to the upper age limit of the dependants by the

same office order. The modification sought to be implemented by the office order dated April 16, 2010 is a policy decision that has been implemented by the W.B.S.E.D.C.L. after keeping in mind social and economic factors. This court finds no perversity or arbitrariness or mala fide intention in issuance/implementation of the office order dated April 16, 2010 and the prayer for rescinding/cancelling or setting aside clause (b) of the said office order is disallowed.

The representation made by the petitioner was disposed of by an order dated December 20, 2019 upon consideration of the applicable office orders.

This Court finds that the petitioner is not entitled to appointment on compassionate ground after a conjoint reading of the office orders dated June 6, 2005, April 4, 2008 and April 16, 2010. The office order dated September 4, 2010 allowed the candidates under April 2008 or April 2010 Circulars to apply. The petitioner is found to be ineligible under both the Circulars.

In the light of the discussions above, **W.P.A. 22523 of 2022** is **dismissed** without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all the formalities.

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

(Lapita Banerji, J.)