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27.4.2023
S.D.

W.P.A. 960 of 2023

**Amrita Roy Bhattacharjee
Vs.
West Bengal State Electricity Distribution
Company Limited & Ors.**

Mr. Anjan Bhattacharya
Ms. Anita Shaw
Ms. Taniya Khatun

..For the Petitioner

Mr. Srijan Nayek
Ms. Rituparna Maitra

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

The petitioner's father was an employee of West Bengal State Electricity Distribution Company Limited (WBSEDCL). He died-in-harness on November 11, 2009. The petitioner approached WBSEDCL for compassionate appointment being a married daughter of the deceased employee. Since the said prayer was rejected, the first writ petition being W.P. 23629 (W) of 2012 was filed before this Hon'ble Court. The said writ petition was disposed of with an order for the respondents to pass a reasoned order and in compliance to the order of this Hon'ble Court, a reasoned order was passed on April 30, 2013 rejecting the prayer for compassionate appointment. Second writ petition was filed before this Hon'ble Court being W.P.

23170 (W) of 2013 is pending adjudication before this Hon'ble Court.

Mr. Bhattacharya, learned counsel appearing on behalf of the petitioner submits that a Special Bench of this Hon'ble Court on September 13, 2017 in F.M.A. 1277 of 2015 (**State of West Bengal vs. Purnima Das**) has struck down the adjective '**unmarried**' before the word '**daughter**' being violative of the Constitution of India. It was held in the said judgment that a daughter who was married on the date of death of a Government employee while in service must succeed in her claim for compassionate appointment in the event she was entirely dependent on the earnings of her father/mother (Government employee) on the date of death of his/her parents.

Relying upon that judgment, the petitioner made a prayer for compassionate appointment on October 17, 2022. The said prayer was rejected on November 21, 2022 on the ground that the prevailing rules of the Recruitment Policy, 2010 is not applicable to the case of the petitioner. The petitioner again made a prayer on November 30, 2022. The said prayer was again turned down on December 27, 2022 and it was notified her that no further prayer/reference would be entertained in that regard.

Mr. Nayek, learned counsel appearing on behalf of the WBSEDCL submits that the petitioner's prayer has to be considered in accordance with the office order dated April 4, 2008. Under such office order, unmarried daughters were not eligible for being considered for compassionate appointment. The judgment of **Purnima Das** (supra) has been pronounced in 2017 and cannot be held to be operated retrospectively. Furthermore, the petitioner's prayer for compassionate appointment by setting aside of the impugned order passed in April 2013 is still pending adjudication. The petitioner has filed the present writ petition on a selfsame cause of action.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the applicable Policy for compassionate appointment is the Policy stipulated by the office order dated April 4, 2008. The applicable Policy is the Policy that was prevalent on the date of death of the deceased employee on November 11, 2009. Under the said Policy, the unmarried daughters were not *eligible* to be considered for compassionate appointment since they did not come within the purview of the term *dependant*. The said view has been reiterated time and again by the Apex Court. Beneficial references can be made to the decisions reported in (2020) 7 SCC 617 (**N.C. Santosh vs. State of**

Karnataka & Ors.) and (2020) 10 SCC 496 (**State of Madhya Pradesh & Ors. vs. Amit Shrivastava**) where it has been reiterated that the applicable policy is the policy at the time of death of the deceased employee.

The writ petitioner in the present writ petition has sought to rely on a Full Bench judgment passed in 2017. Based on a judgment passed in 2017, the writ petitioner has made a prayer in 2022 before WBSEDCL for compassionate appointment. As such, there is a delay of at least 5 years in making a prayer before the employer, WBSEDCL even if it is assumed that the cause of action in 2013's writ petition is different from the present writ petition.

The objective for grant of compassionate appointment is to help a bereaved family in tiding over the immediate financial crisis that may have arisen due to the sudden death of the breadwinner of the family. It is to provide immediate succour to the bereaved family. An appointment on compassionate ground is not a matter of right. Since the applicable Policy that was dated April 2008 was applicable at the time of death of the petitioner's father, the employer, WBSEDCL cannot be pulled up for committing any perversity in rejecting the prayer of the petitioner for the said appointment on October 17, 2022 or November 21, 2022. The

Employer may have wrongly described the policy as 2010's Recruitment policy but the effect of the order would have been the same whether it was 2008's policy or 2010's policy as the 'eligibility' criterion of the married daughter to be considered for compassionate appointment remained unchanged in both the policies. This Court cannot adjudicate the propriety/validity of the order dated April 30, 2013 since the same is admittedly pending adjudication in W.P.A. 23170 (W) of 2013.

The death of the petitioner's father occurred on November 10, 2009. After 14 years from the date of death of the petitioner's father, her prayer for compassionate appointment cannot be directed to be considered by the respondent authorities. Also the fact that the petitioner has filed the present writ petition in 2022 relying on a special Bench's judgment passed in 2017 in the matter of compassionate appointment cannot be lost sight of.

With the directions aforesaid, **W.P.A. 960 of 2023 is dismissed.**

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

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

(Lapita Banerji, J.)