

WP.ST 19 of 2023

**The State of West Bengal & Ors.
Vs.
Sayantika Das**

Mr. Somnath Naskar, Advocate
... ... For the Petitioner/State

Mr. Dependra Narayan Basu,
Mr. Soykat Kundu,
Ms. Kakali Dutta, Advocates
... ... For the respondent

The writ petition is directed against Order no. 5 dated April 25, 2022 passed by the West Bengal Administrative Tribunal in OA no. 32 of 2022.

The writ petition is at the behest of the State. State is aggrieved by an order setting aside a rejection order of an application for compassionate appointment and directing the State to reconsider the application of the writ petitioner in light of the judgment of the Division Bench passed in WP.ST no. 70 of 2017 (The State of West Bengal & Ors. Vs. Arun Kumar Chakraborty).

Learned Additional Government Pleader appearing for the State submits that, the private respondent was guilty of suppression of material fact. The employee concerned died in harness on September 22, 2014. The widow of the deceased employee applied for compassionate appointment on February 20, 2015 but not to herself rather to a minor daughter. He contends that the private respondent is the daughter of the deceased employee. An application for compassionate

appointment was made by her on January 24, 2018 which was rejected on September 29, 2021. He submits that, the application dated January 24, 2018 was suppressed before the learned tribunal. An impression was given to the learned tribunal that, the application for compassionate appointment dated February 20, 2015 was not considered appropriately and, therefore, the learned tribunal erred in law and in fact in passing the impugned order.

Learned Additional Government Pleader contends that, the appointment of compassionate appointment is dependent on satisfaction of two factors. One of the factors is that the rules lies on compassionate appointment and the other is that there should be financial hardship for the family to ride over. In the facts of the present case, although there subsist rules governing compassionate appointment so far as the post of the deceased employee is concerned, the private respondent by her conduct established that the family did not face any financial stringency. The widow was capable of compassionate appointment at the material point of time chose to apply for herself rather she wanted the compassionate appointment to be given to her daughter upon she attaining majority. He contends that, that a compassionate appointment cannot be treated as hereditary right to be passed on the legal heirs of the deceased employee ad infinitum.

Learned advocate appearing for the private respondents contends that, there was no suppression of material facts as contended on behalf of the State. He submits that the application dated January 24, 2018 was made available to the learned tribunal for consideration since, the rejection order was directed against the application dated January 24, 2018.

Learned advocate appearing for the private respondents relies upon the judgment of the coordinate Bench dated December 6, 2017 passed in W.P.S.T. 70 of 2017 (The State of West Bengal & Ors. Vs. Arup Kumar Chakraborty). He submits that, the learned tribunal by the impugned order directed the state authorities to follow the direction passed in such judgment and order. He draws the attention of the Court to the relevant portion of such judgment and order.

Learned advocate appearing for the State relies upon another judgment and order of the coordinate Bench dated February 4, 2019 passed in WP.ST 35 of 2018 (Arindam Choudhury vs. The State of West Bengal & Ors.) He submits that, the application for compassionate appointment dated February 20, 2015 remains indisposed of. Therefore, the learned tribunal was right in allowing the original application by setting aside the order of rejection for compassionate appointment dated September 29, 2021.

The facts of the present application for the purpose of determination of the writ petition can be adumbrated as follows: deceased employee expired on September 23, 2014 leaving behind his widow and other heirs and legal representatives. The widow applied for compassionate appoint on February 20, 2015 for the minor daughter. This application apparently was not considered.

When the minor daughter attained adulthood, he applied for compassionate appointment on January 29, 2018. Such application for compassionate appointment was rejected on September 29, 2021. The rejection of the prayer for compassionate appointment was assailed before the learned tribunal by OA no. 32 of 2022. OA

no. 32 of 2022 was disposed of by the impugned order dated April 25, 2022 by setting aside the order of rejection dated September 29, 2022 and directing the State to reconsider the application for compassionate appointment in law and judgment of Arup Kumar (supra) and issued suitable order within 12 weeks from the presentation of the copy of the order.

The facts of the present case is same as obtained in **Arup Kumar Chakraborty (supra)**. Therefore as also here, the wife of the deceased employee was suffering from medical condition and, therefore, unable to take up the compassionate appointment. In such view, the wife of the deceased employee requested grant of compassionate appointment to one of the children.

In light of the **Arup Kumar Chakraborty (supra)**, the learned tribunal directed the authorities to consider the application for grant of compassionate appointment of the writ petitioner.

In **Arindam Choudhury (supra)**, two separate applications for compassionate appointment in respect of two different families were considered. In the meantime, it was found that, the husband of the deceased employee applied for compassionate appointment and was over-aged as also the family of the deceased was not in financial distress. In the other, the original applicant passed away and subsequently notification of 2005 came into being.

The fact scenario obtaining in present case is different from **Arindam Choudhury (supra)**. In such circumstances, we find no merit in the present writ petitioner.

WP.ST 19 of 2023 is accordingly **dismissed**.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)