

32 13.6.2023
Sc Ct. no.22

WPA 6481 OF 2018

Abharani Pal

Vs.

The State of West Bengal & Ors.

Mr. Malay Bhattacharyya

....For the Petitioner

The petitioner claimed compassionate appointment.

The mother of the ***petitioner was a Class-IV staff of one Jagadalla Garabari, M. G. S. Vidyalaya (HS), Bankura*** (for short the school).

The petitioner is the married daughter. The petitioner admittedly got married prior to the demise of her deceased mother. The mother of the petitioner died on ***October 30, 2016*** as would be evident from the ***Death Certificate*** at page 24 to the writ petition. The married daughter of the petitioner then on ***February 6, 2017*** applied for compassionate appointment at ***page 26*** to the writ petition. The State authority did not take any step.

The petitioner then filed the first round of writ litigation being ***W.P. No. 21661 (W) of 2017***. The said first writ petition was disposed of by a coordinate Bench by its order dated ***November 3, 2017*** directing the respondent no.3 to decide the issue after granting an opportunity of hearing to the parties.

Pursuant to and in terms of the said direction made by the coordinate Bench the ***impugned order dated March 12, 2018, Annexure-P6 at page 34 to the writ petition was passed by the respondent no.3.*** The respondent no.3 rejected the claim of the petitioner for compassionate appointment with the following observation :

“01. Khanika Kumbhakar mother of the Petitioner was an approved Gr. D staff of Jagadalla Gorabari M.G.S. Vidyalaya (HS), Bankura.

02. Khanika Kumbhakar mother of the Petitioner died-in-harness on 30.10.216.

03. The Petitioner got married before the date of death of her mother who was a Gr. D staff Jagadalla Gorabari M.G.S. Vidyalaya (HS), Bankura.

04. The Petitioner submitted a representation dated 06.02.2017 to the District Inspector of Schools (SE), Bankura for appointment under died-in-harness category wherein she stated that she is the married daughter of Late Khanika Kumbhakar, ex Gr. D staff of the said school and presently she resides with her husband at Vill-Sairi, PO-Puipal, Bankura. Hence at the time death of her mother, she belongs to her husband's family. As the Petitioner got married before the date of her mother so at that material point of time she was not the member of her deceased mother's family.

*05. Para 1 of SCHEDULE-V (Procedure, manner of application and preparation of panel for appointment on compassionate ground) as per provision of Rule 20 & 21 under The West Bengal School Service Commission (Selection of persons for appointment to the post of Non Teaching staff) Rule, 2009 vide School Education Department, Secondary Branch's memo no. 697-ES/S/1S-189/08 dated 09.07.2009, vividly states as : - “when a teacher or non teaching staff dies-in harness before the date of his superannuation i.e. at the age of 60 years leaving a family which is in the opinion of the District Inspector of Schools (Secondary Education) in such extreme ‘financial hardship’ that it fails to provide two square meals and other essentials to **the surviving members of the deceased teacher's family the i.***

Spouse ii. Son iii. Daughter of the deceased teacher or non teaching staff's family who is possessing required educational qualification as laid down in SCHEDULE-I for the post of Clerk or Gr. D staff and unemployed and not below 18 years of age and not above 45 years of age may within two years from the date of such death, make an application in writing to the District Inspector of Schools (SE) for appointment as non teaching staff on compassionate ground.

As per the above stated rule **the surviving members of the deceased teacher or non teaching staff's family, the i. Spouse ii. Son iii. Daughter of the deceased teacher or non teaching staff is eligible for appointment to the post of non-teaching staff on compassionate ground. In this instant case as the Petitioner got married before the date of death of her mother and as she is residing with her husband's family at Vill- Sairi, PO- Puipal, Bankura so she does not belong to her deceased mother's family. Accordingly she cannot be treated as a surviving member of her deceased mother's family.**

Hence as per the above stated rule, the petitioner should not get appointment on compassionate ground under died-in-harness category and thus her representation dated 06.02.2017 should be rejected.

Accordingly in the light of the above stated observations and in compliance with the order dated 03.11.2017 passed by His Lordship the Hon'ble Justice Tapabrata Chakraborty in WP No.21661 (W) of 2017, Abharani Pal –vs.- The State of West Bengal & Ors. it is ordered that the petitioner is not entitled to get appointment on compassionate ground and the petitioner's representation dated 06.02.2017 is thus rejected.

The matter is thus disposed of. All concerned be informed accordingly.”

Mr. Malay Bhattacharya, learned counsel appearing for the writ petitioner referring to the said impugned order dated March 12, 2018 submitted that, the earlier order of the coordinate Bench dated **November 3, 2017** took note of the decision of the **Larger Bench** rendered **In the matter of : State of West Bengal and Ors v. Purnima**

Das & Ors., FMA 1277 of 2015 along with other writ petitions.

The judgment of the **Larger Bench**, *inter alia*, decided that the married daughters were eligible to receive compassionate appointment subject to following other relevant criteria under the scheme for compassionate appointment framed by the State.

Learned counsel for the petitioner also relied upon another judgment of the Hon'ble Division Bench of this Court **In the matter of : Antara Banerjee v. The State of West Bengal and Others, WPST 80 of 2022** and submitted that, following the ratio decided by the Larger Bench in the matter of **Purnima Das & Ors. (Supra)**, the Hon'ble Division Bench also directed for compassionate appointment of a married daughter.

Mr. Bhattacharyya, learned counsel for the petitioner submitted that, while passing the impugned order dated March 12, 2018 the respondent no.3 had failed to consider both the law laid down by the Larger Bench in the matter of **Purnima Das & Ors. (supra)**. The later Division Bench judgment was of 2022 and was not there when the impugned order was passed.

Learned counsel further submitted that, the claim of the petitioner for compassionate appointment was solely rejected on the ground that, she was a married daughter and she was not eligible to claim compassionate appointment in terms of the scheme framed by the State

but had failed to consider the law laid down by the Larger Bench in the matter of ***Purnima Das & Ors. (supra)***. Mr. Bhattacharyya further submitted that, no inquiry was ever made by the respondent no.3 which is his obligation to cause before considering the case for compassionate appointment as to whether the petitioner being the married daughter was otherwise eligible to receive the claim for compassionate appointment fulfilling the '*financial distress*' criterion as mentioned under the scheme.

Learned counsel for the petitioner submitted that, the impugned order passed by the respondent no.3 rejecting the claim of the petitioner was illegal, wrongful and dehors the provision of law and as such, is liable to be and should be set aside. He further submitted that, necessary direction be made for granting compassionate appointment to the petitioner in the facts of this case.

None appeared for the respondents.

Considering the submissions made on behalf of the petitioner and considering the materials on record, this Court first proceeded to assess the impugned order dated ***March 12, 2018, Annexure-P6 at page 34*** to the writ petition passed by the respondent no.3. This Court in exercise of its power under judicial review has a limited jurisdiction to assess the decision making process of the respondent no.3 while passing the said impugned order. Accordingly, after due scrutiny of the said impugned

order it is apparent that, the law laid down by the Larger Bench in the matter of ***Purnima Das & Ors. (supra)***, which is holding the field till today after the ***SLP (C) 17638-17639/2018*** being dismissed by the Hon'ble Supreme Court by its order dated ***July 23, 2019***, was not at all considered by the respondent no.3 while passing the said impugned order dated March 12, 2018.

Inasmuch as, it is further *ex facie* apparent from a reading of the said impugned order passed by the respondent no.3 that, no inquiry was conducted by the respondent no.3 as required to be done in law for considering the case for compassionate appointment in the facts of the instant case as to whether the petitioner being the married daughter is otherwise eligible to receive the claim for compassionate appointment after fulfilling the '*financial distress*' criteria in terms of the prevailing scheme for such appointment.

In view of the above, this Court is of the firm view that, the said impugned order dated ***March 12, 2018, Annexure-P6 at page 34*** to the writ petition suffers from serious infirmities and cannot sustain in law.

For the foregoing discussions and reasons the ***impugned order dated March 12, 2018, Annexure-P6 at page 34 to the writ petition stands set aside and quashed.***

The respondent no.3 is further directed to revisit the issue after causing necessary inquiry in accordance

with law as to whether the petitioner being the married daughter is eligible to receive the claim for compassionate appointment in the facts and circumstances of the case after fulfilling the '*financial distress*' criteria of the family of the deceased employee in accordance with the prevailing scheme and then shall decide the issue by passing a reasoned order on the basis of the existing materials before it in the light of the ratio as laid down by the Larger Bench in the matter of ***Purnima Das & Ors. (supra)*** and the ratio decided by the Hon'ble Division Bench in the matter of ***Antara Banerjee (supra)***.

The entire exercise shall be carried out and completed by the respondent no.3 positively within a period of eight weeks from the date of communication of this order.

The petitioner and all other relevant parties shall render assistance to the respondent no.3 for causing the necessary inquiry in the manner and mode the respondent no.3 shall require.

It is further made clear that, this order shall not create any equity or right in favour of the petitioner if after conducting the necessary inquiry, the respondent no.3 finds that the petitioner does not qualify with the '*financial distress*' criteria of the family of the deceased to receive a compassionate appointment strictly in accordance with law and the scheme prevailing on the issue.

In the event the reasoned decision goes in favour of the petitioner then the respondent no.3 and all other appropriate State authority shall take all consequential steps in accordance with law positively within a further period of four weeks from the date of communication of the reasoned order.

It is further made clear that this Court has not gone into the merits of the claim of the petitioner in any manner and the respondent no.3 shall be free to decide the issue without being influenced by the observation made by this Court, if any.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms this writ petition, **WPA 6481 of 2018** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)