

21.06.2023
(as/akd)
Ct.No.12
03

**MAT 667 of 2023
with
CAN 1 of 2023**

**Chaitali Mitra
-vs-
The State of West Bengal & Ors.**

Mr. Anjan Bhattacharyya,
Ms. Anita Shaw,
Ms. Taniya Khatun.
... for the Appellant.

Mr. Avishek Prasad.
...for the State.

The appellant is the married daughter of one Gaur Chandra Dutta who died on 21.09.2013 while in service. Her father was an employee of West Bengal National Volunteer Force, 2nd (BK) BN, Kalyani. The mother of the appellant made an application dated 28th January, 2014 requesting compassionate appointment for the appellant. The said request was rejected by the respondents by the order dated 11.07.2016 on the ground that married daughter is not entitled to compassionate appointment.

The appellant challenged the said order by filing a writ petition being WPA No.567 of 2023. This Court by the order dated 16.01.2023 considered the judgment of the Special Bench of this Court in FMA 1277 of 2015 (*State of West Bengal & Ors. Vs. Purnima Das & Ors.*) wherein the word ‘unmarried’ before ‘daughter’ was struck down as violative of

Constitution. The Special Bench of this Court by the said judgment held that married daughter is also eligible for compassionate appointment provided she satisfies the criteria for appointment on compassionate ground. Considering the judgment of the Special Bench, this Court set aside the order dated 11.07.2016 and directed the respondent no.4 to consider the claim of the appellant taking into consideration the order of the Special Bench in FMA 1277 of 2015 and Government Notification dated 04.11.2022 vide Memo.No.LABR/419/Law.

The respondent No.4 by the impugned order dated 03.03.2023 rejected the request of the appellant. The appellant challenged the said order by filing the writ petition being WPA No.6499 of 2023. This Court by the order dated 03.04.2023 dismissed the writ petition.

Against the said order, appellant has come out with the present appeal.

Learned Counsel for the appellant submitted that the respondent no.4 did not consider the materials produced by the appellant especially the certificate of Murgram-Gopalpur Gram Panchayat stating the appellant was dependent of her father and mother. Learned Counsel for the appellant further contended that no enquiry was conducted. The appellant did not give any statement to the respondent no.4. The order of the respondent no.4 dated 03.03.2023 does not

match with the materials on record. The respondents have not produced any minutes of the meeting conducted by them and produced the statement signed by the appellant. Without considering the materials the respondents erroneously rejected the prayer for compassionate appointment of the appellant and prayed for setting aside the order dated 03.04.2023 of the learned Single Judge of this court in WPA 6499 of 2023.

Learned Counsel for the appellant relied on a judgment of the Karnataka High Court dated 15.12.2020 in Writ Petition No. 17788/2018 (*Smt. Bhuvaneshwari V. Puranik vs. The State of Karnataka & Ors.*) which was affirmed by the Hon'ble Apex Court in *The State of Karnataka & Ors. vs. C. N. Apporva Shree & Anr. (Special Leave to Appeal (C) No. 20166/2021)* dated 17.12.2021. Learned Counsel for the appellant also relied on a judgment of the Madurai Bench of Madras High Court in *State of Tamil Nadu & Anr. vs. Ms. R. Parvathavarthini* in W.A. (MD) No. 145 of 2022 and CMP (MD) No. 1417 of 2022 dated 13.03.2023 in respect of his contention.

Per contra, learned Counsel for the State submitted that after order of this court dated 16.01.2023 the appellant was called for an enquiry on 20.02.2023 and the appellant attended the enquiry. Based on the statement given by the appellant to the respondent no.4, the respondent no.4 found that she

is not dependant on her father and mother and rejected the request of the appellant. The compassionate appointment is given only to meet the indigenous circumstances of the family on the death of the employee. In the present case, father of the appellant died on 21.09.2013. Now, ten years have lapsed and still the appellant survived and there is no necessity for giving compassionate appointment. The respondents considered the entire materials and found that the appellant is not dependent on her father and mother and rejected the request by giving reason. The learned Single Judge after considering the entire materials by the order dated 03.04.2023 rightly dismissed the writ petition. There is no error in the said order.

Learned Counsel for the State has relied on judgment of the Hon'ble Apex Court in *State of West Bengal vs. Debabrata Tiwari and Others* reported in 2023 SCC OnLine SC 219 and submitted that the appellant survived for more than ten years and there is no necessity for granting her compassionate appointment and prayed for dismissal of the appeal.

Heard Mr. Anjan Bhattacharya, learned Counsel for the appellant and Mr. Avishek Prasad, learned Counsel for the State-respondents. Perused the materials on record.

It is an admitted fact that the appellant was married on the date when her father died on

21.09.2013 while in service. Her mother made first application in the year 2014 and the first application was rejected on the ground that married daughter is not eligible. Whether married daughter is eligible for compassionate appointment or not was considered by the Special Bench of this Court on 13.09.2017 in FMA 1277 of 2015.

In paragraph 113 it is held as follows :-

“Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakoli) and February 3, 2009 (governing the cases of Purnima) i.e. the adjective ‘unmarried’ before ‘daughter’, is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/mother (Government employee) on the date of his/her death and agreed to look after the other family members of the deceased, if the claim is to be considered further.”

As per the above judgment, the married daughter is also eligible for compassionate appointment if she satisfies that she is dependent on the deceased employee. In view of the said judgment, this Court by the order dated 16.01.2023 made in the writ petition being WPA 567 of 2023 set aside the order of the respondent no.4 and remanded the matter for fresh consideration.

After remand, according to the learned Counsel for the State, the appellant made statement before the respondent no.4 and based on the said statement of the

appellant it was found that she is not dependent on the deceased employee or her mother. Hence, the application for appointment on compassionate ground was rejected.

Even though the learned Counsel for the appellant disputes that no minutes of the meeting was produced and no signature was obtained from the appellant on 20.02.2023 as alleged by the respondents, it is seen from the impugned order dated 03.03.2023 that the appellant was called for personal hearing at 11:30 A.M. on 20.02.2023 at the chamber of the respondent no.4. The respondent no.4 had come to the conclusion based on the alleged statement of the appellant. In any event, the respondent ought to have conducted enquiry to find out whether the appellant was dependent on her deceased father and after his death is dependent on her mother.

This aspect is significant in view of the certificate of Murgram-Gopalpur Gram Panchayat produced by the appellant which shows that the appellant was dependent on her deceased father and subsequently on her mother. Further the appellant also produced documents to show that her husband owns less than five bigha of land as alleged to have been stated by the appellant in her statement made on 20.02.2023.

The respondents have not verified the documents produced by the appellant and having failed to conduct independent enquiry, erroneously rejected the claim of the appellant for compassionate appointment. This Court in the order dated 03.04.2023 failed to consider that the

respondents have not conducted any enquiry to find out the financial status of the appellant and her husband and whether the appellant was dependent on her father or mother.

The impugned order dated 03.03.2023 and order of this Court dated 03.04.2023 in WPA 6499 of 2023 are set aside.

The respondents are directed to grant compassionate appointment to the appellant in consonance with her educational qualification within a period of three months from the date of receipt of a copy of this order.

With the aforesaid directions, the appeal is allowed.

In view of disposal of the appeal, the connected application being CAN 1 of 2023 is also disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)