

16.05.2023
DL-19
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9753 of 2023

Bhargab Kumar
Vs.
Union of India & Ors.

Mr. Kushal Paul
....for the petitioner.

Mr. Bhupendra Gupta
....for Union of India.

Mr. Baidurya Ghosal
....for the respondent nos.3-5.

The petitioner's father died-in-harness on March 23, 2017 as an Assistant manager of Bangiya Gramin Vikash Bank (BGVB). An application for compassionate appointment was made on September 5, 2017 by the mother of the petitioner for appointment of any of the family members on compassionate ground. The said application has not been considered till date.

Mr. Paul, learned counsel appearing on behalf of the petitioner submits that the prayer of the petitioner's mother for compassionate appointment may be considered and the petitioner may be appointed by BGVB.

Mr. Ghosal, learned counsel appears on behalf of the respondents/BGVB and submits that no scheme

was applicable for compassionate appointment on March 23, 2017, the date of death of the petitioner's father.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that by an order dated March 15, 2021 passed by a coordinate Bench in WPA 3116 of 2021 (**Subhajit Bayen vs. Union of India & Ors.**) it was held that the scheme dated March 6, 2019 was applicable to an employee who died 5 years before the implementation of the said scheme. The coordinate Bench referred to Clause 8 relating to time limit for considering the application for compassionate appointment. Clause 8(2) reads as thus:

“However, Bank can consider request for compassionate appointment even when the death or retirement on medical grounds of the employee took place long back, even five years ago. While considering such belated requests, it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the employee in order to relieve it from economic distress. The very fact that the family has been able to manage somehow, all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment

on compassionate grounds in such cases may, therefore, be taken only at the Board level.”

The said order of the coordinate Bench dated March 15, 2021 was carried in appeal, being FMA 1226 of 2021. The Hon’ble Division Bench held that the scheme for compassionate appointment was applicable to the claim of the petitioner. Even in that case, the father of the writ petitioner died in 2017, prior to the scheme coming into force in March, 2019. The Hon’ble Division Bench was of the view that the coordinate Bench correctly noted the provisions of the scheme and extended the coverage of the same since the father of the writ petitioner died within a period of 5 years prior to the implementation of the scheme. However, the Hon’ble Division Bench was also of the view that the provisions of Clause 8.2 have to be considered before such appointment was granted and Clause 17(iii) were also to be considered conjointly. Clause 17(iii) reads as thus:

“An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the employee has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the

benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family etc.”

In the light of the discussions above, this Court is of the view that in the event an application is made in the appropriate form within 2 weeks from date by the petitioner, then the General Manager/BGVB/respondent no.3 or any other authority delegated by him will consider the case for compassionate appointment of the petitioner. In considering the prayer for compassionate appointment, the order dated March 15, 2021 passed in WPA 3116 of 2021 and the order passed by the Division Bench in FMA 1226 of 2021 will be taken into account.

The application of the petitioner will be disposed of by a reasoned order within 6 weeks from date of making of the application upon giving a personal hearing to the petitioner. The reasoned order shall be communicated within 2 weeks of passing thereof.

With the directions aforesaid, **WPA 9753 of 2023 is disposed of.**

Since no affidavits have been directed to be exchanged in the writ petition, the allegations

contained therein are deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

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

(Lapita Banerji, J.)