

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

W.P.S.T.122 of 2013

Smt. Niva Das & anr.
VS.
State of West Bengal & ors.

For the Petitioners : Mr. Siddhartha Sankar Mandal,
Ms. Arunima Das Sharma
Mr. Debjyoti Ghosh

Hearing on : 13.06.2023

Judgement on : 13.06.2023

DEBANGSU BASAK, J.:-

1. The challenge in the present writ petition is directed against the order dated January 14, 2013 passed in O.A. 246 of 2012.

2. By the impugned order, the learned Tribunal negated the claim for compassionate appointment of the petitioner on the ground that the petitioner was married at the time when application for compassionate appointment was considered. Since, the rules of appointment did not permit appointment of an unmarried daughter, the claim of the writ petitioner cannot be entertained.

3. Learned advocate appearing for the writ petitioner submits that, the clause of the relevant rule negating claim of unmarried daughter to compassionate appointment was considered by the Larger Bench of this Hon'ble Court in **FMA 1277 of 2015 (The State of West Bengal & Ors. Vs. Purnima Das & Ors.)** and the word 'unmarried' was struck down. He submits that, a Coordinate Bench subsequently allowed grant of compassionate appointment to married daughter of the deceased employee in **WP.ST 80 of 2022 (Antara Banerjee Vs. The State of West Bengal & Ors.)**.

4. Learned advocate appearing for the petitioner submits that, the State Government issued a fresh notification

subsequent to the decision of **Purnima Das (supra)** dated November 4, 2022.

5. None appears for the respondents even in the second call.

6. In the present case, the employee died in harness on November 13, 2008. Application for compassionate appointment was made by the married daughter of the deceased employee within a year from the date of death. An enquiry committee was constituted. The claim for compassionate appointment was rejected on October 27, 2012. The writ petitioner filed an Original Application challenging the rejection of the claim for compassionate appoint being O.A.246 of 2012. Such Original Application was dismissed by the impugned order.

7. The impugned order of the learned Tribunal proceeds on the basis that a claim of a married daughter to compassionate appointment being negated by the relevant Rules governing compassionate appointment, no relief can be granted to the petitioners. Such relevant Rule of compassionate appointment for a married daughter was considered in **Purnima Das & ors.**

(supra). Larger Bench formulated points for consideration in paragraph '6' thereof which is as follows:-

“Whether the policy decision of the State Government to exclude from the zone of compassionate appointment a daughter of an employee, dying-in-harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is solely dependent on the earnings of such employee, is constitutionally valid?”

8. Such issue was answered by the Larger Bench by holding as follows:-

“112. *Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of ‘dependent’ and ineligible to even apply, is not constitutionally valid.*

113. *Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case 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 date of 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 agree to look after the other family members of the deceased, if the claim is to be considered further.”*

9. A coordinate Bench in **Antara Banerjee (supra)** considered **Purnima Das and others (supra)**. The coordinate

Bench directed consideration of an application for compassionate appointment made by a married daughter.

10. The State Government, by a notification dated November 4, 2022 modified the offending clause in terms of employment in light of **Purnima Das and others (supra)**.

11. In light of the decision of the **Purnima Das and others (supra)**, we are unable to sustain the impugned order of the learned Tribunal. The same is set aside.

12. The authorities concerned are directed to consider the application for compassionate appointment of the writ petitioners in light of the **Purnima Das and others (supra)** along with other relevant parameters. Such consideration be made within a period of four weeks from the date of communication of this order to the authorities. The authorities will afford one reasonable opportunity of hearing to the writ petitioners. The authorities are at liberty to hear such other parties and consider such documents as it deem appropriate. The authorities will communicate the reasoned order to the writ petitioners within six weeks from date.

13. **W.P.S.T. 122 of 2013** along with pending applications are **disposed of** accordingly.

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

(Debangsu Basak, J.)

15. I agree.

(Md. Shabbar Rashidi, J.)