

16.06.2023
Item No.23.
Court No.6.
AB

**F.M.A. 587 of 2022
With
IA CAN 2 of 2021**

**Samir Bera
Vs
The State of West Bengal & Others**

Mr. Sankar Biswas,
Mr. Debnath Mahata,
Ms. Ananya Adhikaryfor the Appellant.

A judgment and order dated July 11, 2018, whereby several writ petitions including that of the present appellant were dismissed by a learned Single Judge, is under challenge in the present appeal.

The appellant approached the learned Single Judge for a direction on the Kamarhati Municipality to appoint him on compassionate basis on the ground that the sole bread-earner of the family had died in harness.

The learned Judge dismissed the writ petition on the ground that there was no scheme for compassionate appointment.

Hence, this appeal.

In another case i.e., **Debabrata Tiwari**, this very issue, i.e., whether the next of kin of an employee of a Municipality, who dies in harness, is entitled to compassionate appointment, was carried to the Hon'ble Supreme Court of India. By a judgment and

order dated March 3, 2023, passed in Civil Appeal No. 8842-8855 of 2022, the Hon'ble Apex Court allowed the appeal of the State of West Bengal against the Division Bench order. The Division Bench order had reversed the learned Single Judge's order, which had held that unless there is a scheme, compassionate appointment cannot be granted to the next of kin of an employee of a Municipality, who dies in harness. The Division Bench had allowed the prayer for compassionate appointment. The Hon'ble Apex Court reversed the order of the Division Bench and restored the order of the learned Single Judge. The relevant portion of the judgment of the Hon'ble Supreme Court reads as follows:

"We are further of the view that the liberty granted to the local authorities in Circular No.142-Emp. to formulate their own scheme for compassionate appointment, is an acknowledgment of the fact that there was no policy existing to govern compassionate appointment to posts under local authorities.

16.5. In fine, the present appeals succeed on two counts: first, there was no policy existing to govern compassionate appointment to posts under local authorities in the State of West Bengal and hence, in the absence of such a policy, compassionate appointment cannot be granted; second, assuming that there was such a policy, it would be of no redeeming purpose to direct that the applications for appointment on compassionate grounds be considered and decided several years after they were filed.

17. In light of the aforesaid discussion, the instant appeals succeed in the following terms:

i. The impugned judgment and common order of the High Court of Calcutta dated 30th September, 2019 is hereby set aside. The order of the learned Single Judge of the High Court of Calcutta dated 05th July, 2018,

passed in W. P. No.2739 (W) of 2016 and connected matters is restored. “

In the present case, admittedly, there is no scheme for compassionate appointment insofar as the Kamarhati Municipality or the State Government is concerned.

In that view of the matter and in the light of the aforesaid judgment of the Hon'ble Supreme Court, we are unable to grant any relief to the appellant.

If in future, any scheme for compassionate appointment is framed by the competent authority, the appellant may renew his prayer for compassionate appointment.

FMA No.587 of 2022 stands disposed of along with CAN 2 of 2021.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)