

13.04.2023
Court No. 19
Item no.70
CP

W.P.A. No. 12226 of 2022

Sarama Mahara & anr.

Vs.

The State of West Bengal & Ors.

Mr. Abul Mansoor

....for the petitioners.

Mr. Susanta Pal
Ms. Ananya Neogi
Mr. Rudranil De

....for the State.

The petitioners pray for compassionate appointment. The late husband of the petitioner no. 1 was a gram panchayat karmee of Fulur Gram Panchayat. The said employee died-in-harness on February 11, 2007. The petitioner no. 1 is the widow. She applied for compassionate appointment by writing a letter.

It does not appear from the records that the petitioner No.1 at any point of time had filed an application in the prescribed form or in any other form. It appears that an application was filed on April 12, 2022 before the Birbhum Zilla Parishad. The petitioner no.1's late husband had never been appointed by the zilla parishad. On the basis of such application, no orders can be passed.

Compassionate appointment is a special mode of appointment in deviation from the usual procedure followed for recruitment to public posts. A special scheme is carved out in order to accommodate the dependants of a deceased employee under the government or under any other authority or local body to tide over the immediate financial crisis that they face on the death of the sole bread-earner. It is in the nature of a succor provided to one of the members of the family as per the scheme. Right to compassionate appointment is not heritable. The application should have been filed within the time prescribed in such scheme and in the prescribed format.

Reference is made to the decision of ***State Bank of India & Another vs. Raj Kumar***, reported in ***(2010) 11 SCC 661***, it was held that the claim for compassionate appointment was traceable only to a specific scheme framed by the employer and there was no right outside such a scheme. In another judgment ***State of Haryana vs. Ankur Gupta***, reported in ***(2003) 7 SC 704*** it was held that the court could not grant compassionate appointment dehors statutory policy.

It should be kept in mind that compassionate appointment is given in order to mitigate the

immediate financial hardship caused to the distressed family after the sudden death of the sole bread earner. Reference is made to the decision of the Hon'ble Supreme Court in ***Umesh Kumar Nagpal vs. State of Haryana***, reported in **1994 SCC (4) 138, JT 1994 (3) 525** wherein it was reiterated that as a rule, appointments in public services should be made strictly on the basis of open invitation for applications and on merit. Appointment on compassionate ground was an exception to the aforesaid rule, which was given after taking into consideration the fact of the death of the employee while in service and leaving his family without any means of livelihood. In such cases, the object was to enable the family to tide over sudden crisis. However, such appointments on compassionate grounds have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

In Jagdish Prasad vs. The State of Bihar & Anr., reported in **JT 1995 (9) SC 131**, also it was held that the very object of appointment of a dependant of deceased employee who died-in-harness was to relieve unexpected immediate hardship and distress caused to the family by

sudden demise of the earning member of the family and such appointment could not be given where the death occurred way back even if the claimant of such benefit was a minor at the time of death of deceased Government servant. The relevant portion is quoted below:-

"1. *****

2. *****

3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependant

of a deceased government servant which cannot be encouraged, de hors the recruitment rules."

The fact that the petitioner no.1 applied some time in 2022 when the death took place in 2007, itself indicates that the family of the deceased was able to meet their expenses and was not in any financial crisis.

Accordingly, the writ petition is dismissed.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)