

Form No. J(2)

**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

WP.ST 122 of 2014

Sri Tarjan Ghosh

Vs.

The State of West Bengal & ors.

For the Writ petitioner : Mr. Tulshi Das Ray, Advocate
Mr. Tapan Ray, Advocate

For the State : Mr. Tapan Kr. Mukherjee,
Senior Advocate & A.G.P.
Ms. Sangeeta Roy, Advocate

Hearing on : 24.08.2023

Judgment on : 24.08.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated October 1, 2013 passed in O.A.484 of 2011 by the West Bengal Administrative Tribunal, negating the claim for compassionate appointment of the writ petitioner.

2. Learned advocate appearing for the writ petitioner submits that, the writ petitioner applied for compassionate appointment subsequent to the death of his father. He refers to the Memo dated March 29, 2010. He submits that, the authorities took into consideration financial conditions of the family of the deceased in rejecting the claim of the writ petitioner. He contends that, since the date of death was on March 28, 2007, the relevant notification governing the date of death of the deceased employee should be taken into consideration. He submits that, on the date of death, there was no notification of the State empowering the State to disallow an application for compassionate appointment on the ground of financial condition.

3. Learned advocate appearing for the writ petitioner relies upon **2012 (1) Calcutta Law Journal 279 (Smt. Angurbala Maity & anr. vs. State of West Bengal & ors.)** and submits that the financial condition of the family of the deceased employee was wrongly made a ground to reject an application for compassionate appointment. He relies upon **(2000) 6 Supreme Court Cases 493 (Balbir Kaur and another vs. Steel Authority of India Ltd. And others)** and submits that, in that case also, receipt of the death benefits was kept out of the purview of the consideration for grant of compassionate appointment.

4. Learned Senior Advocate appearing for the State submits that, the date of birth of the deceased employee was October 2, 1947. The deceased employee expired on March 28, 2007. On the date of death the

deceased employee was aged in excess of 50 years. He refers to a notification bearing no. 97-Emp dated June 6, 2005 as also a notification bearing no.133-Emp dated October 1, 2007. He contends that, the notification dated June 6, 2005 was issued in exercise of powers under Section 3(c) of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 which prescribes that, the death of the employee, *inter alia*, must occur before attaining age of 50 years for the family of the deceased employee to apply for compassionate appointment. He contends that, the notification dated June 6, 2005 was subsequently modified on October 1, 2007.

5. Relying upon **(2012) 11 Supreme Court Cases 307 (Union of India and another vs. Shashank Goswami and another)**, learned Senior Advocate for the State submits that, an application for consideration of compassionate appointment is required to conform with the rules of employment governing the deceased employee. In the facts and circumstances of the present case, he submits that, family members of the deceased employee are not entitled to compassionate appointment even going by the notification dated June 6, 2005. The application for compassionate appointment was evaluated on the basis of notification of 2008 which required fulfillment of a financial criteria also. Therefore, on

such ground also the writ petitioner is not entitled to compassionate appointment.

6. Learned Senior Advocate appearing for the State points that the deceased left behind surviving his widow, a daughter and the writ petitioner. The widow and daughter were adults on the date of death of the deceased employee. They did not apply for compassionate appointment. The application for compassionate appointment was made by the writ petitioner. His date of birth is May 4, 1990. Such application was made on April 21, 2009 after a period of two years from the date of death. Therefore, according to him, there was no immediate need of financial assistance for the family of the deceased.

7. Learned advocate appearing for the petitioners draws attention of the Court to a notification bearing no.114-Emp dated August 14, 2008 where, the period of employment was waived.

8. From the materials made available on record, it is established that, the date of birth of the deceased employee was October 2, 1947. The date of death was March 28, 2007. On the date of death, therefore, the deceased employee was aged in excess of 50 years.

9. Taking into consideration, the notification prevailing on the date of death of the deceased employee, that is, the notification dated June 6, 2005 the family of an employee who attained the age of 50 years, is not entitled to grant of compassionate appointment.

10. The notification dated August 14, 2008 was issued in clarification of the notification bearing no.30-Emp dated April 2, 2008. The notification dated August 14, 2008 only waived the requirement of period of two years being left for the deceased employee for the family of the deceased employee to apply for compassionate appointment. The notification dated August 14, 2008 does not assist the writ petitioner since, age of the deceased employee was in excess of 50 years, on his date of death. Therefore, the family of the deceased employee was disqualified for compassionate appointment on the strength of the notification bearing no.97-Emp dated June 6, 2005.

11. **Shashank Goswami and another (supra)** is of the view that, grant of compassionate appointment is an exception to the rule of public service where appointment should be made strictly on the basis of the open invitation of applications and merit. It noted that, compassionate appointment can be granted only where there was an existing scheme or rules governing the deceased employee at the time of the death granting compassionate appointment.

12. **Balbir Kaur and another (supra)** is also of the same view as that of **Ahashank Goswami and another (supra)**. In the facts of that case, there was a tripartite agreement between the employer and other parties whereby it was agreed that, death-cum-retirement benefit will not be taken into consideration for the purpose of considering the financial criteria for compassionate appointment.

13. **Smt. Angurbala Maity & anr. (supra)** is also of the same view that, there must exist a scheme or a rule for compassionate appointment governing the deceased employee. In the facts of that case Principal Secretary was directed to take a sympathetic view of the situation after returning the finding that there was a rule for compassionate appointment governing the deceased employee.

14. In the facts of the present case, there exists a rule for compassionate appointment. The rules requires certain criteria to be fulfilled for family members of the deceased employee to receive compassionate appointment. One of them is the age qualification of the deceased employee. Family members of person in excess of 50 years of age at the time of his death was disqualified to apply for compassionate appointment. In the facts of the present case, the deceased employee was far in excess of 50 years of age on the date of death.

15. There is one further aspect to be taken into consideration. On the date of death, the deceased employee left behind him surviving his widow and daughter apart from the writ petitioner. None of them applied for compassionate appointment immediately on the death of date of the deceased employee. The date of birth of the writ petitioner is May 4, 1990. He was a minor on the date of death of the deceased employee. He chose to apply on April 21, 2009 after he attained the age of a major. Compassionate appointment is not to be treated as a hereditary right. It is meant to facilitate a family who falls into financial distress upon the

death of the employee to tide over the same. In the facts of the present case, it is apparent from the records that, the family was not in need of immediate financial assistance as they waited for a minor son to attain the age of major in order to apply for compassionate appointment.

16. In such circumstances, we find no merit in the present writ petition.

17. **WP.ST 122 of 2014** is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)