

17.08.2023  
Item No.7  
Ct. No.5  
CHC  
(disposed of)

**WP.ST 107 of 2023**

**The State of West Bengal & ors.  
Vs.  
Amit Kumar Bhowmick**

Mr. Tapan Kr. Mukherjee, Sr. Advocate & AGP  
Mr. Pinaki Dhole,  
Ms. Debdooti Dutta  
...for the writ petitioners/State

Mr. Swapan Kr. Nandi,  
Mr. Debjyoti Ghosh  
...for the respondent

The writ petition is directed against an order dated June 30, 2022 passed by the West Bengal Administrative Tribunal in O.A.168 of 2022.

The writ petition is at the behest of the State.

By the impugned order, the Tribunal, directed the State to reconsider the application of the private respondent for compassionate appointment and to pass a speaking and reasoned order with regard thereto.

Learned Senior Advocate appearing for the State/writ petitioners submits that, the deceased employee died in harness on December 3, 2008. The

private respondent, applied for compassionate appointment on July 14, 2009. On the date of the application for compassionate appointment, the private respondent was 17 years 4 months and 4 days and therefore, he was a minor. There were other family members available to the family of the deceased employee for compassionate appointment. They did not apply for compassionate appointment. Consequently, the inference drawn that the family of the deceased employee did not require financial assistance and grant of compassionate appointment to tide over the financial difficulty was not misplaced. The impugned order should therefore be set aside.

Learned advocate for the private respondent draws the attention of the Court to the contents of the application for compassionate appointment. He submits that, the deceased employee left behind six heirs and legal representatives namely, the widow of the deceased employee, three daughters and two sons. The private respondent is the elder son. Therefore, grant of compassionate appointment, as directed by the Tribunal should be considered.

Learned advocate appearing for the private respondent submits that the scheme for compassionate appointment speaks of any member being able to apply for compassionate appointment.

We gave our anxious consideration to the facts of the present case.

The deceased employee died in harness on December 3, 2008. An application for compassionate appointment was made by the private respondent on July 14, 2009.

We perused the documents accompanying the application for compassionate appointment made on behalf of the private respondent. In the documents accompanying the application, there is an affidavit affirmed by the other heirs and legal representatives of the deceased employee. In such affidavit, we find that, the deceased employee died leaving him surviving six heirs and legal representatives namely, his widow, who was about 42 years of age at the time of the death. That apart, the deceased employee was survived by three daughters all of whom were adults with age ranging from 22 to 23 years. Apart from the three daughters the deceased employee was survived two sons with age ranging between 18 to 19 years. Apparently, the private respondent is the eldest son. The private respondent however, is fourth in the number of children of the deceased employee. The three other children of the deceased employee, namely, three daughters of the deceased employee, are elder to the private respondent. None of them applied for compassionate appointment although they

were entitled to do so. The widow also did not apply for compassionate appointment.

Nothing is placed on record to establish that the widow or the three daughters who were adult at the time of death of deceased employee suffered from any incapacitation rendering them disqualified to apply for compassionate appointment.

The family of the deceased employee is seeking to arrange their affairs in a manner so as to render the right of compassionate appointment as one of hereditary right.

The compassionate appointment cannot be treated as hereditary right. It is afforded and extended to an employee where, the service conditions of the deceased employee contemplates grant of compassionate appointment. In the event, service conditions of the deceased employee, contemplates grant of compassionate appointment such appointment is afforded to the family members of the deceased employee to tide over the immediate financial crisis occasioned due to the demise of the earning member.

In the facts of the present case, it cannot be construed that the family members of the deceased employee required immediate financial assistance to tide over the financial crisis, if there be any, faced by the family of the deceased. Four adult members of the

family, available on the death of a deceased employee for applying for compassionate appointment, chose not to apply for compassionate appointment. These facts, leads to an inference that the family is not in need of financial assistance. They in fact, arranged their affairs in order to allow the private respondent herein to inherit the right to compassionate appointment which the private respondent is not entitled to. That apart, on the date of the application, which was beyond the period of time prescribed for grant applied for compassionate appointment, the private respondent was a minor.

The words “any member” used in the scheme of 2008 cannot be read and construed to mean, that the family members will be entitled to treat the right as a hereditary. ‘Any member’ of the family used in the context of the 2008 scheme is of wide amplitude and they accommodate any member of the family to apply for compassionate appointment to tide over the financial crisis. It does not allow a member of the family who is a minor, particularly when, other members who are adults available to such family did not apply, to treat the right of compassionate appointment as hereditary.

In such circumstances, we set aside the impugned order of the Tribunal. We find that the

private respondent is not entitled to the relief of compassionate appointment.

WP.ST 107 of 2023 is disposed of without any order as to costs.

**(Debangsu Basak, J.)**

**(Md. Shabbar Rashidi, J.)**