

Court No. 22

08.8.2023

(Item No. 108)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 17372 of 2019

Jahanara Bibi

VS

The State of West Bengal & Ors.

Mr. Bikash Chandra Das

Mr. Mahadeb Sarkar

.... For the petitioner

Mr. Malay Singh

Mr. Nilay Baran Mandal

.... For the State

Affidavit of service filed in Court today, is taken on record.

Mr. Bikash Chandra Das, learned advocate appeared for the petitioner.

Mr. Nilay Baran Mandal, learned advocate appeared for respondent Nos. 1 to 3.

The petitioner is the mother of a deceased School Teacher, namely, **Saukat Ali Mondal** who died on **December 14, 2009** while teaching at **Banipur Baniniketan High School, District – North 24 Parganas**. The death certificate of the deceased employee is annexed at **page 14** to the writ petition. The petitioner claimed that, she has three sons and three daughters. The eldest son was the deceased employee. The petitioner then on **December 23, 2009** applied for obtaining compassionate appointment in favour of her second son, namely, **Sajjat Ali Mondal** leaving others. The relevant school

forwarded the application before the respondent No. 3. The respondent No. 3 then asked for the necessary records and documents from the petitioner by its communication dated **January 8, 2010** at **page 16** to the writ petition. Finally the claim of the petitioner was rejected by the respondent No. 3 which was informed to the petitioner through a communication dated **April 24, 2019, Annexure P-4** at **page 19** to the writ petition. The observation of the respondent No. 3 is quoted below:

“As per your letter dated 17/12/2018 the undersigned has to inform him that brother is not a ward of a deceased employee to apply for service in compassionate ground as stated in the Govt. Order bearing Memo No. 697-ES/S/IS-18/08 dated 09/07/2009”

The said rejection has been impugned by the petitioner through this writ petition.

Mr. Bikash Chandra Das, learned counsel for the petitioner referring the **West Bengal Scheme for Compassionate Appointment, 2013 , Annexure P-5** at **page 21** to the writ petition submitted that, under the said scheme ***a brother or sister in case of death in harness of an unmarried employee provided his/her parent, all the brothers and sisters were fully dependent on him/her was included*** within the definition of ***“dependant family member”*** under **clause 3** of the said **scheme of 2013**.

On the strength of such provision learned counsel submitted that, the second son of the petitioner being the brother of the deceased employee shall receive a compassionate appointment in the facts of this case. Learned counsel for the petitioner further submitted that, keeping in mind the various constitutional provision for right to live, the schemes for compassionate appointment are framed and the Court should adopt a lenient and liberal approach for providing such compassionate appointment to the claimant because the compassionate appointment is provided for survival of the family of the deceased employee who being the sole bread earner has suffered an untimely death putting the family into tremendous financial hardship. In support, he relied upon a decision of the Hon'ble Division Bench of this Court rendered in **MAT 899 of 2022**. In the matter of: **The State of West Bengal & Anr. through the Secretary, Department of Higher Education Vs. Partha Sarathi Manna & Ors.**

The learned counsel further submitted that, necessary direction can be made upon the State authority for causing an enquiry to be made to ascertain the family income of the petitioner and then come to a finding whether such a compassionate appointment is really necessary in the facts and circumstances of this case.

Mr. Nilay Baran Mondal, learned State counsel submitted that, in the facts of this case the compassionate appointment is governed under the provisions of **“West Bengal School Service Commission (Selection of Process for Appointment to the Post of Non-Teaching Staff) Rules, 2009” (for short, the 2009 Rules)** and not under the provision of the said 2013 scheme, as referred to by the learned counsel for the petitioner. Referring to **schedule 5** framed in accordance with **Rules 20 and 21** of the said **2009 Rules** the learned State counsel submitted that, it is only spouse or son or daughter of the deceased School Teacher who can seek compassionate appointment to the post of a non-teaching staff. In the facts of this case, the petitioner sought for a compassionate appointment for her second son for **“Group-D”** post.

Learned State counsel further submitted that, when a specific Rule is there governing the field no other provision can be borrowed from any other scheme as referred by the learned counsel for the petitioner. When a specific provision is there any Act has to be done in true compliance of that provision or not at all. Any other mode or method are impermissible when a specific Rule is laid down on the issue. He submitted that, the brother of the deceased employee cannot receive a compassionate appointment for the **Group-D** post as claimed by the

petitioner. Hence, he submitted that, the writ petition is devoid of any merit and should be dismissed.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the petitioner being the mother of the deceased School Teacher sought for a compassionate appointment for the brother of the deceased employee and not for the spouse or son or daughter of the deceased employee. The petitioner contended that the deceased employee was unmarried and died as bachelor. On a comparative and harmonious reading of the provisions under the said 2013 scheme as referred to by the learned counsel for the petitioner and the said 2009 Rules, it appears to this Court that, for the post being **Group-D**, a non-teaching post for which the compassionate appointment was sought for, the said 2009 Rule shall apply as the deceased was a School Teacher. The 2013 scheme as referred to on behalf of the writ petitioner will have no manner of application whatsoever. It is true that, when a Rule permits to do an Act in a particular manner, the Act must be done in that manner and not otherwise. Any other mode is expressly forbidden.

In the facts of this case, for the compassionate appointment as was sought by the petitioner for the Group-D non-teaching post in place and stead of the deceased School Teacher, the provisions are governed

under the said **2009 Rules** under which the claimants can only be the **spouse/son/daughter of the deceased employee** and **not the brother**. Hence the case of the petitioner has to be governed and or should be considered under the said 2009 Rules and not otherwise.

Compassionate appointment is the result of a benevolent and welfare policy of the State. Such appointment cannot be claimed as a matter of right otherwise unless a specific scheme is there. Compassionate appointment is not a mode for generation of an alternative employment, therefore, the scheme should be the guiding factor. In the facts of this case, 2009 Rule is the Scheme under which the compassionate appointment has to be determined.

This Court in exercise of its power in judicial review under Article 226 of the Constitution of India while assessing the decision of the State Authority, has a limited authority and jurisdiction and it cannot seat on appeal over the same. If there is *ex-facie* and glaring illegality in the decision making process of the State authority and a glaring perversity on the face of it then only this Court shall intervene with the decision of the State authority. In the light of the above principle this Court proceeded to scrutinize the impugned decision of the respondent No. 3 dated **April 24, 2009, Annexure P-4** at **page 19** to the writ

petition and on such assessment this Court is of the firm view and find that the said decision is well reasoned. The decision mentioned about the said **2009 Rule** dated **July 9, 2009** and that is sufficient while rejecting the scheme of the compassionate appointment of the petitioner. For this foregoing reasons and discussions impugned decision of the respondent No. 3 dated April 24, 2009, **Annexure P-4** at **page 19** stands affirmed without interference by this Court.

This Court is also of the considered view that this writ petition is totally devoid of any merit.

Resultantly this writ petition being **W.P.A. 17372 of 2019** stands dismissed, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)