

62.
28.2.2023
S.D.

W.P.A. 19372 of 2022

**Samrat Das
Vs.
State of West Bengal & Ors.**

Mr. Balai Lal Sahoo
Mr. Amalakshya Jana
Ms. Barnali Jana
Mr. Chandan Chakraborty
... For the Petitioner

Mr. Amal Kumar Sen, A.G.P.,
Mr. Jaladhi Das
...For the State

Ms. Deblina Chattaraj
...For Respondent Corporation

The petitioner's father was an employee of the erstwhile the Calcutta Tramways Company (1978) Limited and present the West Bengal Transport Corporation (WBTC) Ltd. The petitioner's father died-in-harness on April 16, 2011. Upon the death of the petitioner's father, his mother was advised to make an application in the prescribed format for compassionate appointment. Upon receiving the said communication, the petitioner made an application in the prescribed format on October 18, 2014. Thereafter, several representations have been made by the petitioner/his mother from time to time asking about the fate of such application.

An application under Right to Information Act, 2005 was made by the petitioner's mother on April 22, 2019 asking about the fate of the application for compassionate appointment. In response to the RTI application, it was informed by a communication dated September 4, 2019 that the name of the petitioner is on the list of candidates prepared for compassionate appointment. Since the Transport Undertakings owned by the State, namely, the Calcutta Tramways Company (1978) Ltd., Calcutta State Transport Corporation and the West Bengal Surface Transport Corporation were in the process of amalgamation, there was no sanctioned Scheme for compassionate appointment. Until the process of amalgamation comes to the final stage, it would not be possible for WBTC to furnish any further information requested by the petitioner/his mother.

The petitioner was again requested to make an application to the Managing Director, WBTC. The said application was made on October 16, 2019.

Mr. Sahoo, learned counsel appearing on behalf of the petitioner submits that the petitioner's father died-in-harness in 2011 and there was a Scheme for compassionate appointment in 2011. The petitioner, therefore, should be

considered for appointment on compassionate grounds pursuant to the 2011 Scheme.

Ms. Chattaraj, learned counsel appearing on behalf of the WBTC submits that even though there was a Scheme for compassionate appointment in 2011 pursuant to a Notification dated January 13, 2011 issued by the Transport Department, Government of West Bengal, the said Scheme has been withdrawn by the Labour Department, Government of West Bengal on December 3, 2013 and at present there is no Scheme for consideration of appointments on compassionate ground.

Furthermore, she submits that the petitioner's application has been made at a belated stage, after passing of six months from the date of death of the deceased employee and, therefore, cannot be considered for compassionate appointment.

Mr. Sen, learned Additional Government Pleader appears on behalf of the State and submits that appointment on compassionate ground is an exception to the general Rule and if a dependant of a deceased Government employee applies for appointment on compassionate ground then he/she has to be eligible in accordance with the Policies relating to such appointment and must fulfil the norms laid

down by the said policy. He relies on a judgment reported in **(2020) 7 SCC 617 (N.C. Santhosh vs. State of Karnataka & Ors.)** in support of such contention. He submits that appointment on compassionate ground is a concession and not a right.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view that the application for compassionate appointment was made in December 2012. Upon waiving its right of rejection on the ground that an application has been made after more than six months from the date of death of the deceased employee, the employer/WBTC invited an application on proper format on October 13, 2014 from the dependant of the deceased employee.

The said application as made in proper format was accepted by the employer in October 2014.

Pursuant to an application made under the RTI, the employer also reiterated the fact on September 4, 2019 that the name of the petitioner was kept on the list for compassionate appointment.

From the report on affidavit, it appears that now the WBTC is seeking to resile from its position. WBTC on relying on a Notification passed by the Labour Department on

December 3, 2013 is now seeking to contend that since at the time of consideration of the application for compassionate appointment there was no Scheme, the petitioner has no right to be considered for appointment. Such a shift in stand by the WBTC cannot be accepted by this Court. This Court is of the view that the Policy/Scheme that was applicable on the date of death of the deceased employee pursuant to the Notification dated January 13, 2011 is the applicable Scheme for consideration of the petitioner's appointment. This Court relies on a judgment of the Apex Court reported in **(2022) 2 SCC 157 (State of Madhya Pradesh vs. Ashish Awasthi)** whereby, it has been categorically held that the applicable Policy or Scheme is the Policy that is prevalent at the time of the death of the deceased employee for consideration of appointment of compassionate grounds. Reliance is also placed on judgments reported in **(2020) 2 SCC 729 (Indian Bank & Ors. Vs. Promila & Anr.)** and **(2020) 10 SCC 496 (State of Madhya Pradesh & Ors. Vs. Amit Shrivastava)**

The decision cited by Mr Sen being **N.C. Santhosh** (supra) is distinguishable on facts. In the said Case, the dependants had not attained majority on the date of death of the deceased employee. No application could have been made within one year from the date of death of the deceased

employee as the dependants did not attain majority by that time. Such a deficiency on the part of the dependent was not condoned by the employer. No vested right accrued in favour of the dependent of the deceased employee to be considered for compassionate appointment as the dependent did not attain majority on the date of death. The employer did not waive its legal rights to reject the said application. On such facts, it has been held that a dependant of a Government employee, in the *absence of any vested right* accruing on the death of the Government employee can only demand consideration of his or her application in accordance with the norms as applicable and not in accordance with the norms on the date of death of Government employee.

This Court is of the view that in the present case the *vested right* of the petitioner to be considered for appointment on compassionate ground crystallized on the date of death of the deceased employee as per the applicable Scheme. The said right could have been defeated had the employer not waived its right of rejection of the application for not being made within the stipulated time. Here, the employer chose to waive its right of rejection and invite application in proper format in October 2014 after the Labour Department's Notification dated December 3, 2013. Therefore, the decision

in **N.C. Santhosh** (supra) does not come to the aid of the State respondents for frustrating/rejecting the prayer of the petitioner.

In the light of the discussions above, this Court directs the application for compassionate appointment to be considered by the authorities concerned within three months from the date of the order in the light of the Apex Court's judgment in **(2022) 2 SCC 157 (State of Madhya Pradesh & Ors. Vs. Ashish Awasthi)** and keeping in mind the 2011 Policy.

The petitioner will be given a personal hearing and a reasoned order shall be passed and communicated to the petitioner within two weeks of passing thereof.

With the directions aforesaid, **W.P.A. 19372 of 2022** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

