

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

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 245 of 2023

**Padma Mohanta (Roy)
Vs.
The State of West Bengal & Ors.**

**For the Petitioner : Mr. Bhaskar Roy Mahashaya,
Mr. Bappa Dutta,**

**For the State : Mr. Subir Kumar Saha,
Mr. Pretom Das.**

**Heard on : 1st February, 2023
Judgment On : 6th February, 2023.**

(Bibek Chaudhuri, J.)

The petitioner has approached this Court under constitutional writ jurisdiction praying for a direction upon the respondent authority to consider favourably her representation for compassionate appointment.

The father of the petitioner, since deceased during his lifetime was a Bana Sramik in the district of Jalpaiguri. While on employment the father of the petitioner died on 31st July, 2009 at the age of 48 years. Subsequent to his death his elder daughter, i.e., the sister of the petitioner had prayed for appointment on compassionate grounds and

submitted an application on 20th April, 2015. Having received the relevant documents and in terms of the prayer as submitted by the legal heirs of the deceased employee, an inquiry was fixed on or about 10th Mach, 2017. Thereafter, on or about 12th April, 2018 the elder sister of the present petitioner received a communication from the respondent No.3 requesting her to submit her income certificate. Accordingly, she filed her income certificate issued by the Block Development Officer, Malbazar. Subsequently, however, the elder sister of the petitioner did not receive any communication as to her prayer for appointment on compassionate ground. Sometimes in February, 2020 he came to know that the entire file containing her representation and other documents were not traced out. She was constrained to file a fresh application with the same prayer. In the mean time, the elder sister of the present petitioner was favoured with a letter of appointment on or about 22nd January, 2020 from the department of Health, Government of West Bengal and she preferred to join such post. Subsequently, the petitioner being the younger daughter of the deceased employee filed a fresh application praying for her appointment on compassionate ground. The respondent authority acknowledged the receipt of application filed by the petitioner and in terms of the notification dated 3rd December, 2018 the petitioner was directed to state as to whether she was unmarried at the time of death of her father. Petitioner stated producing her marriage certificate that she was unmarried on the date of death of her father.

However, for unexplained reasons the petitioner has not been given appointment on compassionate grounds in the establishment of the respondents. So is the instant writ petition.

Though, the learned Advocate praying on behalf of the respondents has not filed any affidavit-in-opposition, he has submitted a written instruction issued by the Divisional Forest Officer, Jalpaiguri Forest Division dated 31st January, 2023. It is submitted by the learned Additional Government Pleader that the said written instruction may be taken into consideration to dispose of the writ application.

It is submitted by the learned Advocate for the respondents relying on Labour Department Notification No.251-EMP dated Kolkata, 3rd December, 2013 that the issue of compassionate appointment is governed under the West Bengal Scheme for Compassionate Appointment, 2013. In Clause 3(d) of the said notification, married daughter is defined as the married daughter who on the date of death or incapacitation was unmarried. The Clause 10 prescribes the detailed procedure for compassionate appointment. Clause 10(a) states:-

“If the family of the deceased or the employee retired on being permanently incapacitated is in need of financial assistance and the same is absolutely necessary to support the family, application for employment is to be submitted within six month from the date of death of retirement on permanent incapacitation. If no application is submitted within the said period it will be presumed that the family does not require any financial assistance. In no case application submitted after expiry of the above period will be entertained.”

Learned Advocate for the petitioner, on the other hand, submits that the case of the petitioner was considered favourably by the respondent authority and only for these reasons the respondent authority was asked for submission of a report as to whether the petitioner was unmarried on the date of death of the deceased. The principles relating to compassionate appointments are succinctly summarized in **V. Sivamurthy vs. State of A.P & Ors** reported in **(2008) 13 SCC 730** in the following words:-

“18(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are:

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the

law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.”

Thus, it is explicitly stated by the Hon’ble Supreme Court that compassionate appointment shall be strictly in accordance with the scheme governing such appointment and against existing vacancies. The scheme, referred to above specifically states that application on compassionate ground shall be filed by the dependent of the deceased employee within six months from his death. The elder sister of the petitioner initially made an application for compassionate appointment after almost five years. Therefore, initial application cannot be considered.

It will also not be out of place to mention that the present petitioner is a married lady. He resides at her matrimonial home. There is no assertion in her application that her mother stays with her and her financial condition is not stable to meet the expenses of her mother. The

writ petitioner has failed to prove that her appointment is absolutely necessary to meet the crisis occurring in the family of her father on account of his death. Compassionate appointment is an exception to general rule which can only be allowed in accordance with the scheme and it cannot be permitted to be converted into a boon for seeking appointment.

In view of the above discussion, I do not find any merit in the instant writ petition. Accordingly, the writ petition is dismissed on contest, however without costs.

Since the learned Advocate for the respondent does not wish to file any affidavit-in-opposition and restricts his arguments on the basis of the reports submitted by the Divisional Forest Officer, Jalpaiguri Forest Division, all allegations made in the writ petition shall be deemed to be denied.

The parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)