

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE
MAT No. 36 of 2019
+
CAN 3 of 2023**

10.10.2023

Sl no. 67

P.M.

**Papiya Majumdar.
- Vs -
The State of West Bengal & Ors.**

Mr. Ekramul Bari,
Mr. Debajit Kundu

... for the applicant

Mr. Subir Kumar Saha,
Mr. M. Rahaman

... for the State

Heard learned advocates appearing for the parties.

This is an application for restoration/recalling of the order of this Court dated 3rd October, 2023 dismissing the appeal for default.

On perusal of the explanation given in this application for non-appearance of the learned advocate for the appellant we find that the same is satisfactory.

Accordingly this application being CAN 3 of 2023 is disposed of by recalling the order dated 3rd October, 2023 and restoring the appeal in its original file and number.

CAN 1 of 2019

Heard learned advocate appearing for the parties.

For the sake of conveyance and the limited issue involved in this appeal against the judgement of the Hon'ble Single Bench dated 15th September, 2016, which relates to appointment on compassionate ground, both the appeal and stay application are taken up together.

It is the allegation of the petitioner that the application of the petitioner/appellant for compassionate appointment was rejected by applying the Government Order dated 9th July, 2009 while the death of the deceased occurred in the year 2007 and at the time of death of the deceased employee the scheme which was in force was not applied to the case of the petitioner. In support of his contention Mr. Bari, learned advocate representing the petitioner/appellant relies on a decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh & Ors. – Vs – Ashish Awasthi reported in (2022) 2 Supreme Court Cases 157 and particularly paragraph 5 of the aforesaid judgement which is quoted as hereunder : -

“5. As per the settled propositions of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.”

Considering the facts and circumstances of this case and submission of the parties and taking into consideration of the aforesaid judgement of the Hon’ble Supreme Court in the case of Ashish Awasthi (supra) this appeal being MAT 36 of 2019 and stay application being CAN 1 of 2019 (by treating the same as on day’s list) are disposed of by setting aside the impugned judgement dated September, 2016 and by remanding the matter to the respondent authority concerned /respondent No. 2 to reconsider the case of the petitioner on the ground of compassionate appointment by taking into consideration the aforesaid judgement of the Hon’ble Supreme Court in the case of Ashish Awasthi (supra) and to pass a reasoned and speaking order after giving opportunity of hearing to the petitioner or her authorized representatives, within 12 weeks from the date of communication of this order and if it is found that the case of the petitioner/appellant is covered by the

aforesaid judgement of the Hon'ble Supreme Court both on facts and law in that event suitable order for granting the petitioner the benefit of compassionate appointment shall be given.

(Md. Nizamuddin, J.)

(Partha Sarathi Chatterjee,J.)