

22.11.2023
Sl. No.19
srm

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

W.P.A. No. 2510 of 2023

Sri Samir Kumar Basak

Versus

The State of West Bengal & Ors.

Mr. Nabankur Paul,
Mr. Abhishek Sarkar

....for the Petitioner.

Mr. Subir Kumar Saha,
Mr. Pretom Das

.....for the State-respondent.

Affidavit-of-service is taken on record.

The petitioner is the brother of a deceased employee who was allegedly working under the irrigation directorate. The petitioner's brother served as a group-c employee under Dhupguri Agri-Irrigation Department. The brother of the petitioner died-in-harness on July 2, 2011, leaving behind his mother and wife.

According to the petitioner, the wife is not interested to apply for the job on compassionate grounds under the died-in-harness category and she has granted a 'no objection' in favour of the petitioner.

It also appears that some criminal complaints had been filed by the petitioner, his mother and also the wife of the deceased, against each other. Ultimately, the parties were acquitted. Due to pendency of the criminal case, the petitioner could not make any application for appointment on compassionate ground. After a lapse of seven years from the date of death, the petitioner has written a letter before the authority, although, the wife of the deceased is alive and could apply for compassionate appointment as per the definition of the expression 'dependent'. Moreover, the records do not reveal that there has been any application in the prescribed form with all required documents which are necessary to be filed within the prescribed period under the scheme.

The definition of dependent in terms of the Labour Department notification dated December 3, 2013 is as follows:-

“3) Definition.

‘Dependent Family Member’ means

- (a) spouse; or
- (b) son (including legally adopted son before death or incapacitation); or
- (c) unmarried daughter (including legally adopted unmarried daughter before death or incapacitation); or
- (d) married daughter who on the date of death or incapacitation was unmarried; or
- (e) 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.

-who was wholly dependent on the Government employee at the time of his death in harness or incapacitation, as the case may be, and is in need of immediate financial assistance at the time of making application and also at the time of consideration.”

In the Standard Operating Procedure on compassionate appointment based on West Bengal Scheme for Compassionate Appointment, 2013 with up-to-date amendments, made by various Notification from time to time, till March 31, 2022, only divorcee daughter has been added to the definition.

Compassionate appointment is granted according to a scheme. It is a special mode of appointment in contravention to the rules of selection followed for appointment to public offices. Such appointment is given strictly in accordance with the scheme and is a deviation from the usual procedure. It is neither heritable nor transferable.

In this case, the petitioner has not been able to satisfy that he is entitled to compassionate appointment in lieu of the spouse as per the scheme. Secondly, the definition of dependent would not include a brother as the deceased was married and had left behind a living spouse who is covered by the definition.

Compassionate appointment is an exception to the general rule of appointment. The said appointment is given to a dependant of a family member in terms of a particular scheme. Neither the authorities nor the court can go beyond the scheme and direct appointment of the petitioner. There are no rules apart from the applicable schemes which are adopted by different departments to engage a dependant family member in order to tide over the immediate financial hardship which the family faces due to death of the bread winner.

The delay of seven years in filing a representation on account of compassionate appointment itself is indicative of the fact that the family of the deceased had been able to tide over the financial crisis. It also appears that all the death benefits have been given to the family, including the family pension.

In the matter of Bhawani Prasad Sonkar vs. Union of India & Ors. reported in (2011) 4 SCC 209, it was held as follows:

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee’s family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and

comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. “

In the matter of Fertilizers and Chemicals Travancore Ltd. & Ors. vs. Anusree K.B. reported in 2022 SCC OnLine SC 1331, the Hon’ble Apex Court held as follows:

“15. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of *Director of Treasuries in Karnataka v. V. Somyashree*, 2021 SCC OnLine SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in *N.C. Santhosh v. State of Karnataka*, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:—

- (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the basis

of the principle in accordance with Articles 14 and 16 of the Constitution of India;

- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."

Thus, the writ petition merits no consideration and the same is dismissed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)