

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***F.M.A. 270 of 2023
(CAN 1 of 2023)***

***Smt. Sukro Oraw
-Vs-
The State of West Bengal & Ors.***

For the Appellant	:	Mr. Debjyoti Basu, Adv., Mr. Chandan Kr., Lal, Adv., Mr. Parashar Baidya, Adv.
For the State	:	Mr. Biswabrata Basu Mallick, Ld. AGP, Mr. Sanjib Das, Adv.
For the KMC	:	Mr. Alok Kr. Ghosh, Adv., Mr. Swapan Kr. Debnath, Adv., Mr. Atis Kr. Biswas, Adv.
Heard on	:	25.06.2024
Judgment on	:	25.06.2024

Joymalya Bagchi, J. :-

1. Order dated 29.11.2022 passed by the Hon'ble Single Judge dismissing the prayer of the appellant/writ petitioner to be appointed on compassionate ground is the subject matter of challenge.

2. Factual matrix giving rise to the dispute is as follows:-

3. One Bandhu Oraw died in harness on 21st June, 1999. Thereafter, his son was appointed in the Kolkata Municipal Corporation. He died on 19th June, 2010 and the appellant being his wife made an application for compassionate appointment on 23rd August, 2010. The application not being considered, appellant approached this Court in WPA 27648 of 2012. An Hon'ble Single Judge (As his Lordship then was) recording that Sukra Oraw had been appointed on compassionate ground upon the death of Bandhu Oraw directed the Deputy Municipal Commissioner (Personnel) to decide the issue of compassionate appointment within a stipulated time frame. Pursuant thereto, Deputy Municipal Commissioner by order dated 12th August, 2013 rejected the prayer on the ground that Sukra Oraw was a casual employee of Kolkata Municipal Corporation at the time of his death and as such, the appellant was not entitled to appoint on compassionate ground.

4. Mr. Basu referring to the order dated 29th January, 2013 in WPA 27648 of 2012 submits the issue that Sukra Oraw was appointed as a permanent employee on compassionate ground is no longer *res integra*. Accordingly, upon the death of Sukra Oraw, the appellant was entitled to compassionate appointment. Respondent authorities unnecessarily sat over the matter and illegally rejected such prayer.

5. In rebuttal Mr. Ghosh contends a casual observation in an order remanding matter before the statutory authority to take a decision on

compassionate appointment cannot be treated as final and binding qua the status and entitlement of the applicant. The recording in the order with regard to appointment of Sukra Oraw on compassionate ground is erroneous and was clarified before the Hon'ble Single Judge in the counter affidavit filed by the Corporation.

6. We have considered the rival submissions at the Bar. While remanding the matter for consideration of the prayer of the appellant for compassionate appointment, the Hon'ble Judge in WPA 27648 of 2012 had erroneously observed that Sukra Oraw had been employed on compassionate ground.

7. In view of the nature of the order wherein the issue was remanded before the appropriate authority for fresh and independent consideration, the aforesaid observation has to be treated as tentative and not binding on the authority. Moreover, the authority concerned i.e. Deputy Municipal Commissioner upon perusal of records of the department came to a conclusion the appointment of Sukra Oraw was as a casual employee and not on compassionate ground. As per extent policy only upon death in harness of a permanent employee, his dependents are entitled to compassionate appointment to tide over unforeseen circumstances. This privilege is not available to the dependents of a casual employee.

8. In view of the aforesaid facts, Hon'ble Single Judge rightly turned down the prayer of the appellant. We find no reason to interfere with the order impugned.

9. At this stage, learned Advocate submits the death benefits of Bandhu Oraw may be released.

10. We observe that the death benefits of Bandhu Oraw, if not already released, may be released to his claimants in accordance with law at the earliest and upon compliance of formalities.

11. With this observation, the appeal and the connected application are dismissed.

12. There shall be no order as to costs.

13. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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