

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 4336 of 2014

Sarfaraj Ahmed

Vs.

The State of West Bengal & Ors.

For the Petitioner: **Mr. Sounak Bhattacharyya, Adv.,
Mr. Anirban Sarkar, Adv.**

For the State: **Mr. Avishek Prasad, Adv.**

Reserved on: **18.01.2024**

Judgment on: **05.02.2024**

ANIRUDDHA ROY, J.:

Facts:

1. This is a hearing matter on affidavits.
2. The father of the petitioner was working as an approved Headmaster at one **Babupur High School (H.S), District- Malda** (for short, the school). The father of the petitioner died in harness on **September 25, 2010, Annexure P-1 at page 15** to the writ petition, leaving behind, inter alia, the petitioner.
3. In **May, 2011** the petitioner applied for compassionate appointment, **Annexure P-2 at page 16** to the writ petition. The application was processed by the

school authority and was submitted for compassionate appointment of the petitioner before the appropriate authority **Annexure P-3 at page 18** to the writ petition. On May 15, 2012 the respondent no.3 rejected the prayer for compassionate appointment on the ground that the family of the petitioner appeared to be not in a financial distress, **Annexure P-4 at page 19** to the writ petition.

4. Challenging the said impugned decision of the respondent no.3 the petitioner moved a writ petition being WP No. 18767(W) of 2012 when a Coordinate Bench by its order dated December 6, 2012 quashed the said impugned order passed by the respondent no.3 and directed the matter to consider afresh in the light of the decision of the Hon'ble Supreme Court ***In the matter of: Govind Prakash Verma vs. Life Insurance Corporation, reported at 2005 SCC (L&S) 590, Annexure P-5 at page 23*** to the writ petition.
5. Pursuant to and in terms of the said direction of the Coordinate Bench the respondent no.3 passed its reasoned order dated **December 20, 2013, Annexure P-6 at page 25** to the writ petition and rejected the claim of the petitioner for compassionate appointment.
6. Assailing the said impugned order dated December 20, 2013 the instant writ petition was filed. The reliefs claimed in this writ petition were for setting aside of the said impugned decision of the respondent no.3 and to grant compassionate appointment to the petitioner.
7. The petitioner has filed a supplementary affidavit affirmed on March 23, 2023. On behalf of respondent no.3 a report in the form of affidavit affirmed on

August 14, 2023 was filed. The petitioner has also filed an exception thereto in the form of affidavit affirmed on September 20, 2023.

Submissions:

8. Referring to the said impugned order dated December 20, 2023 Mr. Sounak Bhattacharyya learned counsel for the petitioner submits that, the respondent no.3 while passing the impugned order had misconstrued the ratio laid down by the Hon'ble Supreme Court ***In the matter of: Govind Prakash Verma (supra)***.
9. Mr. Sounak Bhattacharyya submits that, the computation of the income of the family of a deceased employee on the basis of the employment benefit earned by the family on account of the death of the deceased employee cannot be taken into account, while considering the case of the compassionate appointment for the ward of the deceased employee.
10. In support, learned counsel for the petitioner had relied upon a judgment of the Hon'ble Division Bench ***In the matter of: Tapan Kumar Barman vs. The State of West Bengal, reported at 2008 SCC OnLine 52: (2009) 1 CHN 23.***
11. Mr. Bhattacharyya then on the same proposition relied upon a further judgment of a Coordinate Bench, ***In the matter of: Sreyashi Banerjee vs. The State of West Bengal & Ors, dated April 11, 2014 rendered in W.P. No. 9657 (W) of 2014,*** which is made a part of the supplementary affidavit filed by the petitioner affirmed on March 23, 2023.
12. In the light of the above submissions Mr. Bhattacharyya submits that the impugned decision of the respondent no.3 dated December 20, 2013 should be

set aside and the compassionate appointment should be granted to the petitioner.

13. Mr. Avishek Prasad learned State Counsel appearing for respondent nos. 1 to 3 submits that, granting of compassionate appointment is a benevolent policy decision of the State, unless such policy/scheme exists for granting compassionate appointment, such an appointment cannot be granted. Granting of compassionate appointment is not a rule or right. It is the discretion of the State and largely depends upon the provisions laid down in the relevant scheme for appointment. The scheme for the appointment should be strictly construed. Unless the provisions of the scheme are strictly complied with and the criteria of the appointee matches with the said scheme, in strict compliance thereof, no compassionate appointment can be granted. He submits that, the provisions laid down under the relevant scheme for compassionate appointment are mandatory in nature.
14. Referring to the previous order of the Coordinate Bench dated December 6, 2012 he submits that, the decision of the Hon'ble Supreme Court ***In the matter of: Govind Prakash Verma (supra)*** was subsequently, declared not to be a good law by the Hon'ble Supreme Court. Hence he submits that, the respondent no.3 while rejecting the case of the petitioner for compassionate appointment by not following the ratio ***In the matter of: Govind Prakash Verma (supra)*** had not acted illegally or arbitrarily. In support, of his contention Mr. Prasad had relied upon the decision of the Hon'ble Supreme Court ***In the matter of: State of Himachal Pradesh & Anr. Vs. Shashi***

Kumar, reported at (2019) 3 Supreme Court Cases 653 and In the matter of: State Bank of India & Ors. vs. Surya Narain Tripathi, reported at (2014) 15 Supreme Court Cases 739.

15. While dealing with the judgment of the Hon'ble Divison Bench ***In the matter of: Tapan Kumar Barman (supra)***, Mr. Prasad learned State Counsel submits that, the ratio laid down ***In the matter of: Tapan Kumar Barman (supra)*** was, inter alia, relying upon a previous judgment of the Hon'ble Supreme Court ***In the matter of: Balbir Kaur vs. Steel Authority of India Ltd., reported at 2000 (6) SCC page 493.*** Referring to the said previous Hon'ble Supreme Court judgment ***In the matter of: Balbir Kaur (supra)*** Mr. Prasad submits that, subsequently the Hon'ble Supreme Court declared the observation made therein were general observations and the judgment was distinguished both on facts and law. In support, learned State Counsel had relied two judgments of the Hon'ble Supreme Court ***In the matter of: Union Bank of India & Ors. vs. M.T. Latheesh, reported at (2006) 7 SCC 350 and In the matter of: Steel Authority of India Limited vs. Madhusudan Das & Ors., reported at (2008) 15 SCC 560.***
16. Mr. Prasad then referred to the impugned order passed by the respondent no.3 submits that the same was passed after considering all the relevant factors and materials before him and after considering the ratio of the judgment ***In the matter of: Govind Prakash Verma (supra)***. The impugned order is otherwise well reasoned and well founded, hence no interference is called for.
17. Hence, he submits that this writ petition should be dismissed.

Decision:

18. After considering the submissions made on behalf of the parties and upon perusal of the materials on record, it appears to this Court that, the Coordinate Bench by its order dated December 6, 2012 had set aside the decision of the respondent no.3 rejecting the claim of the petitioner for compassionate appointment and directed the respondent no.3 to revisit the issue in the light of the law laid down by the Hon'ble Supreme Court ***In the matter of: Govind Prakash Verma (supra)***. The said order was accepted and acted upon by the parties. Pursuant to the said direction the respondent no.3 passed its reasoned decision dated December 20, 2013, which is impugned in this writ petition. The relevant portion from the said impugned order dated December 20, 2013 is quoted below:

"It appears that in the matter of Govind Prakash Verma (Supra) initially the authority of Life Insurance Corporation of India rejected the petitioner's claim for compassionate appointment and later on according to Hon'ble Patna High Court's order an officer made enquiry & submitted report and the Learned Single Judge considered the terminal benefits of the family on account of death of the petitioner's father found it sufficient to maintain the family and dismissed the writ application. But later on the apex Court had the other views. The apex court has the opinion that there is no need to weigh how much financial benefits the representatives of the deceased are getting consequent upon sad demise of the deceased i.e. amount received by the representative/s of the deceased towards family pension & other terminal benefits should not be taken into account while considering compassionate appointment.

But it appears that, Life Insurance Corporation of India is not a purely Government organisation and naturally there is no statutory rules regarding appointment on compassionate ground. On the other hand, there is a clear policy of the Government of West Bengal. There is provision to appoint one member of a Teacher's family when the Teacher dies-in-harness and only if the family is in extreme financial hardship that it fails to provide two square mea s & other essentials to the surviving members of the deceased Teacher's family. The expression 'financial hardship' is also clarified in the relevant G.O. dated 09.07.2009 (Schedule-V).

After considering above, in my view, after comparison, the context of the two cases i.e. Govind Prakash Verma (Supra) and the instant matter are not the same.

It may be mentioned here that the Hon'ble High Court in the instant order dated 06.12.2012 didn't tell that the Notification dated 09.07.2009 cannot be dealt with on this matter.

So, considering all the above, respondent no. 3 herein is unable to give relief to the petitioner in accordance with the rules.

Hence the matter is disposed of”.

19. The Hon'ble Supreme Court ***In the matter of: Shashi Kumar (supra)*** had observed as under:

“15. The High Court while dealing with the first issue which it framed for decision, held that the State is not entitled to take into account family pension and other terminal benefits in determining whether compassionate appointment should be granted to the dependant of a deceased employee. In coming to this conclusion, the High Court has relied upon a decision of this Court in Govind Prakash Verma v. LIC and on two subsequent decisions in A.P. SRTC v. Sarvarunnisa Begum³ and in Canara Bank v. M. Mahesh Kumar⁴. Having held that the State is not entitled to consider the family pension and other terminal benefits received by the dependants of the deceased employee, the High Court has held that the income slab which was prescribed by the Finance Department did not constitute an amendment of the policy and

that, consequently, it must be disregarded in deciding upon cases of compassionate appointment.

21. The decision in subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryanas. The principles which have been laid down in Umesh Kumar Nagpal have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case, SCC pp. 139-40, para 2)

"2. ..As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on

compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

33. For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma in issuing a direction to the express terms of the scheme which require that the family pension received by the dependants of the deceased employee be taken into account.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place".

20. The Hon'ble Supreme Court ***In the matter of: Surya Narain Tripathi (supra)*** had observed as under:

"8. He relied upon the judgment of this Court in Govind Prakash Verma v. LIC where a view has been taken that the compassionate appointment cannot be refused on the ground that another member of the family had received appropriate employment and the service benefits were adequate. We may humbly state that this view runs counter to the view which was taken earlier in Umesh Kumar Nagpal which was not cited before the Court in Govind Prakash. The subsequent two judgments which were referred above also take the same view as in Umesh Kumar Nagpal. Mr. Vikas Singh has drawn out attention to the

judgment in SBI v. Somvir Singh where the 1998 scheme has been considered”.

21. In view of the above declaration of law by the Hon’ble Supreme Court, as quoted above, there is no further scope to decide the issue following the law laid down ***In the matter of: Govind Prakash Verma (supra)***. Though the respondent no.3 referred to the said decision ***In the matter of: Govind Prakash Verma (supra)*** but since the same cannot be construed to be a governing law any further, no further discussion is necessary, in the considered opinion of this Court, with the regard to the application of the said decision ***In the matter of: Govind Prakash Verma (supra)***.
22. The Hon’ble Division Bench while delivering the judgment ***In the matter: Tapan Kumar Barman (supra)*** and decided the issue that the payment of terminal benefit on account of the death cannot be equated with the scheme of compassionate appointment referred to a judgment of the Hon’ble Supreme Court ***In the matter of: Balbir Kaur (supra)*** and relied heavily thereupon for granting the compassionate appointment. Later, the said decision ***In the matter of: Balbir Kaur (supra)*** was considered by the Hon’ble Supreme Court ***In the matter of: M.T. Latheesh (supra)*** wherein the Hon’ble Supreme Court had observed as under:

“35. Learned counsel for the respondent cited the decision in Balbir Kaur v. Steel Authority of India which also deals with compassionate appointment. In this case, this Court held that the family benefit scheme assuring monthly payment to the family of the deceased employee was not a substitute for compassionate appointment and, therefore, compassionate appointment could not, therefore, be denied on the ground that the Family Benefit

Scheme was available and that non-payment of gratuity and provident fund to the family at the time of death of the employee runs counter to the object of the beneficial legislation contained in the Payment of Gratuity Act and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and that lump sum payment of provident fund is an insulating factor for the family to cope with the situation arising out of the death of the employee. This Court also held that the socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning and that the law courts cannot be a mute spectator where relief is denied to the horrendous sufferings of a family which has lost its breadwinner and the constitutional philosophy should be allowed to become part of every man's life and then only the Constitution can reach everyone. This is a general v observation made by this Court in the context of compassionate appointment. The above judgment, in our view, is distinguishable on facts and on law. This apart, the case on hand is directly covered by the Scheme formulated by the Bank in regard to compassionate appointment".

23. ***In the matter of: Madhusudan Das & Ors.(supra)*** the Hon'ble Supreme Court had also considered the decision ***In the matter of: Balbir Kaur (supra)*** and had observed as under:

"16. Mr Braj K. Mishra, learned counsel appearing on behalf of Respondent 1, however, placed strong reliance on a decision of this Court in Balbir Kaur v. SAIL, wherein it was opined: (SCC p. 504, para 19)

"19. Mr Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the employee concerned. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be

otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

17. *It may be that such a provision was made as a measure of social benefit but it does not lay down a legal principle that the court shall pass an order to that effect despite the fact that the conditions precedent therefor have not been satisfied. This aspect of the matter has been considered by this Court in Umesh Kumar Nagpal v. State of Haryana in the following terms:(SCC pp. 139-40, para 2)*

"2.... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased".

24. In the instant case there is a specific scheme for compassionate appointment in place of a deceased teacher which prescribes for a particular cut of income criteria to receive compassionate appointment. Inasmuch as, law is well settled that compassionate appointment is granted to the family of the deceased employee to meet the imminent financial crisis caused to the family due to the

untimely death of the principle bread earner of the family. Thus, there is a justification behind framing the rules fixing the income criteria. The rules are mandatory. Inasmuch as, the relevant scheme fixing income criteria has not been challenged at any point of time by the petitioner. In the second round of writ litigation the scope of scrutiny of the impugned order is very limited. The scrutiny has to be restricted in the light of the previous order of the Coordinate Bench dated December 6, 2012 under which the respondent no.3 was directed to decide the issue in the light of the judgment of the Hon'ble Supreme Court ***In the matter of: Govind Prakash Verma (supra)*** . As discussed above, since the ratio ***In the matter of: Govind Prakash Verma (supra)*** has subsequently been declared by the Hon'ble Supreme Court not to be a good law any further, this Court shall not travel any further.

25. In view of the foregoing reasons and discussions, this Court is of the considered view that there is no infirmity in the impugned order passed by the respondent no.3 dated December 20, 2013 rejecting the claim of the petitioner for compassionate appointment. The said order dated **December 20, 2013** stands **affirmed** without any interference.
26. Accordingly this writ petition being **W.P.A. 4336 of 2014** stands **dismissed**, without any order as to costs.

(Aniruddha Roy, J.)