

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

HEARD ON: 18.11.2024

DELIVERED ON: 18.11.2024

**CORAM:**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**W.P.A. 13469 OF 2022**

**Rajesh Basfore**

**Vs.**

**Punjab National Bank & Ors.**

**Appearance:-**

**Mr. Tapas Sinha**

**Mr. Arunava Pati**

**Mr. S. Ch. Dhara**

**Mr. Amitava Bhattacharya**

**.....For the petitioner**

**Ms. Parna Roy Chowdhury**

**.....For the respondents/Bank**

**JUDGMENT**

***(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)***

1. The petitioner has prayed for setting aside the order dated April 16, 2022 passed by the Zonal Manager, Durgapur Zonal Office and for a direction upon the respondent no. 2 to appoint the petitioner in the post of Peon after taking into consideration the qualification of Senior Secondary Examination or to appoint the petitioner in the post of Part Time Sweeper after taking into consideration his qualification as Madhyamik passed.
2. One Kanai Basfore, the father of the petitioner while working as Ex-HKSS in the subordinate cadre at Palasipara Branch of erstwhile United Bank of India died in harness on July 31, 2018. The petitioner applied for compassionate appointment immediately thereafter.

3. The prayer for compassionate appointment of the petitioner was considered by the authorities and the same stood rejected by the order dated April 16, 2022. The grounds for rejection of the candidature of the petitioner for compassionate appointment was two fold. Firstly, that the petitioner does not fulfil the educational qualification required for the posts of Part Time Sweeper, Peon and Clerk and secondly, that the monthly income of family from all sources is more than 60% of the last drawn monthly salary (net of taxes) of the deceased employee.
4. Mr. Sinha, learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Full Bench of this Court in the case of **Rina Dutta & Ors. v. Anjali Mahato & Ors.** reported at **2010(3) CHN (CAL) 168** in support of his contention that a higher qualification cannot be a bar in appointing a candidate. He submits that at the relevant point of time, the petitioner who passed the Madhyamik Examination possessed a higher qualification as the requisite qualification for appointment to the post of Part Time Sweeper was "**Maximum not passed 10<sup>th</sup> class/standard**".
5. Mr. Sinha submits that since higher qualification cannot be a bar in the matter of giving appointment, the order impugned rejecting the candidature of the petitioner on the ground that the petitioner does not fulfil the essential educational qualification cannot be sustained.
6. He further submits that the monthly income of the family from all sources is much less than 60% of the last drawn monthly salary of the deceased employee and therefore, the finding of the concerned authority in the order dated April 16, 2022 in that regard also calls for interference. In support of such contention, Mr. Sinha draws the attention of the Court to several

documents annexed in the affidavit in reply to show that the younger son of the deceased employee is residing elsewhere and is not rendering any financial assistance to the family of the deceased employee.

7. He further submits that in the order dated April 16, 2022, the authorities have not given any detailed calculation as to the monthly income of the family, as required under the scheme for compassionate appointment.
8. Mr. Sinha further submits that the authority should be directed to reconsider the case of the petitioner after taking into consideration the aforesaid materials and to take a fresh decision in this regard.
9. Mr. Sinha, learned advocate refers to a decision of the Hon'ble Supreme Court in the case of **Central Bank of India v. Nitin** reported at **2022 SCC OnLine SC 1873** in support of his contention that consideration for appointment must be strictly in accordance with the prevalent rules for compassionate appointment applicable to the deceased/prematurely retired employee.
10. Ms. Roy Chowdhury, learned advocate appearing for the United Bank of India, which has since been merged with Punjab National Bank submits that when the rules prescribed a qualification for appointment to the post, such qualification has to be adhered to and a higher qualification is a bar in appointing a candidate to such post and in support of such contention, she placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Chief Manager, Punjab National Bank & Anr. v. Anit Kumar Das** reported at **AIRONLINE 2020 SC 848**. She also referred to the decision of the Hon'ble Supreme Court in **Fertilizers and Chemicals Travancore Ltd. & Ors. v. Ansuree K.B.** reported at **2012 SCC OnLine 1331** in support of

his contention that while considering the claim for compassionate appointment, the authority has to examine the financial condition of the family of the deceased and only upon being satisfied that without 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.

11. She also referred to an unreported decision of the Hon'ble Division Bench of this Court in the case of **Milan Lohar v. The State of West Bengal & Ors.** delivered on March 31, 2024 in **WPST 117 of 2022** in support of her contention that compassionate appointment is not a matter of right.
12. Heard the learned advocates for the parties and perused the materials placed.
13. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in **Nitin (supra)**, **Anusree K.B.(supra)** and the decision of the Hon'ble Division Bench in **Milan Lohar (supra)** that the object underlying a provision for grant of compassionate appointment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread earner, which has left the family in penury and without any means of livelihood. It is also well-settled that an applicant for compassionate appointment does not have a right to employment but only has a right to be considered for appointment in terms of the scheme.
14. The petitioner applied for compassionate appointment in the post of sub-staff. There are two categories of sub-staff. The lowest category is that of Part Time Sweeper and the other category is Peon and Clerk. The qualification for the post of Peon and Clerk and that of Sweeper has not been specified in the scheme for compassionate appointment. The requisite

qualification for appointment to the post of Peon and Clerk, as would be evident from the advertisement published for appointment to the post of Peon and Clerk is that the candidate has to pass 12<sup>th</sup> standard (minimum and maximum) with basic reading and writing of knowledge of English and the candidates having completed higher qualification (i.e. graduation and above) need not apply.

15. From the advertisement for recruitment to Part Time Sweepers, it is evident that the educational qualification was prescribed as follows:

**“b. Educational qualification as on 01/01/2021.: Maximum not passed 10<sup>th</sup> class/standard. There is no minimum qualification and even illiterates are eligible for the appointment as PTS.”**

16. Thus, it is evident that as per the recruitment rules of the Bank, the educational qualification for appointment to the post of Part Time Sweeper is that the candidate should not have passed the 10<sup>th</sup> standard and for the post of Peon and Clerk, the educational qualification should be that the candidate has to pass the 12<sup>th</sup> standard examination. At the time of submission of the application for compassionate appointment, the petitioner passed the Madhyamik examination. Therefore, as per the recruitment rules of the bank, he was over qualified for the post of Part Time Sweeper.
17. Insofar as the post of Peon and Clerk is concerned, the petitioner did not obtain the requisite qualification of Class 12<sup>th</sup> passed at the relevant point of time.
18. In **Anit Kumar Das (supra)**, the Hon’ble Supreme Court has held that the prescription of qualification for a post is a matter of recruitment policy and

the State as an employer is entitled to prescribe the qualification as a condition of eligibility and it is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. It was further held that qualifications are prescribed keeping in view the need and interest of an institution and the Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualification. It was also observed therein that equivalence of a qualification is not a matter, which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The concerned authority while passing the order dated 16<sup>th</sup> April, 2022 took note of the aforesaid decision of the Hon'ble Supreme Court and observed that the petitioner does not fulfil the essential educational qualification required for consideration of the competent authority for the posts of Part time Sweeper, Peon and Clerk.

19. In the case on hand, the Bank, as a matter of recruitment policy, fixed the maximum qualification for the post of Part Time Sweeper to be that the candidate should not have passed the 10<sup>th</sup> class/standard. No minimum qualification has been fixed and even illiterates were eligible for appointment to the said post.
20. The Bank took a conscious decision while fixing the requisite qualification. By applying the ratio laid down in **Anit Kumar Das (supra)**, this Court holds that the respondent Bank was justified in fixing the requisite qualification. In the absence of any challenge to such recruitment policy,

this Court is not inclined to accept the contention of Mr. Sinha that higher qualification cannot be a bar in appointing a person to a particular post.

21. The Hon'ble Full Bench in ***Rina Dutta & Ors. (supra)*** recognised the right of the employer to make a rule providing for disqualification of candidates possessing qualification higher than the prescribed qualification. Therefore, the said decision cannot come to the aid of the petitioner.
22. The authority after taking into consideration the law laid down by the Hon'ble Supreme Court in that regard passed the order impugned. Therefore, the impugned order does not call for any interference by this Court.
23. After going through the impugned order this Court is of the considered view that the respondent authority was right in observing that the petitioner does not fulfil the essential educational qualification required for the posts of Part Time Sweeper, Peon and Clerk.
24. In view thereof, there is no necessity to enter into the aspect of monthly income, as urged by Mr. Sinha.
25. For all the above reasons, as aforesaid, the writ petition stands dismissed.
26. There shall be, however, no order as to costs.
27. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(HIRANMAY BHATTACHARYYA , J.)**