

**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

FMA 135 of 2022

***West Bengal State Co-operative Agriculture and Rural
Development Bank Ltd. & Ors.***

-Vs-

Amit Das & Ors.

For the Appellants : Mr. Malay Kumar Roy, Adv.,

Heard on : 01.08.2024

Judgment on : 01.08.2024

Joymalya Bagchi, J. :-

1. Appellant-bank is aggrieved by the order dated 25.1.2021 passed by the Hon'ble Single Judge whereby the managing director of the bank was directed to consider the prayer of the writ petitioner-respondent for compassionate appointment after due enquiry on the basis of financial condition of the family of the deceased without taking into consideration the terminal benefits of the deceased.
2. Learned counsel for the bank contends relevant scheme for compassionate appointment requires assessment of total monthly income of the family by taking into account an aggregate of the family

pension per month received by the family, monthly interest income @ 8% on the total amount received by the family as terminal benefits i.e. gratuity, leave encashment, any other payments except GPF minus medical expenses of the deceased as an indoor patient supported with documents, monthly incomes from movable and immovable assets and monthly income of the dependants of the deceased employee as per self declaration.

3. Nobody appears for the writ petitioner-respondent.
4. As per clause 20 of Appendix to chapter V of Rule 106 of West Bengal Cop-operative Societies Rules, 2011, compassionate appointment of employees of co-operative societies are to be dealt on par with the employees of the State Government.
5. The clause reads as follows :

*“20. **Appointment on compassionate grounds** – Rules as applicable to the employees of the State government shall apply to the employees of co-operative societies in respect of appointment on compassionate grounds”.*

6. By operation of the aforesaid clause, the *West Bengal Scheme of compassionate appointment, 2013* is applicable to cases of compassionate appointment of employees at the appellant bank.
7. Clause 6 of the Scheme lays down the eligibility criteria for compassionate appointment in case of death on premature retirement of an employee. Relevant portion is set out hereinbelow:

“6. Eligibility –

(a) The family is indigent and deserves immediate assistance for relief from financial destitution. For this any of the following two conditions is to be satisfied

(i) The monthly income of the family falls below 90 per cent of the gross monthly salary of the employee before death or premature retirement

(ii) The monthly income of the family falls below the minimum salary of a Group D employee (in case of Group D employees) or the minimum salary of a Lower Division Clerk (in case of employees other than those belonging to the Group D)”.

The gross monthly salary, for the purpose of this definition shall mean, basis pay (Band Pay + Grade Pay), dearness allowance, house rent allowance and medical allowance.

The monthly income of the family shall mean the aggregate of :

(I) Total family pension per month (Basic Pension and Dearness Relief, Medical Allowance)

(II) Monthly interest income @ 8% p.a on the total amount received by the family after death of the employee or retirement of the incapacitated employee (Gratuity, Leave Encashment, any other payments excepting GPF)

Provided that, where an ex-employee had to incur medial expenses as indoor patient prior to and leading to his death/incapacitation, such expenses is deducted from the

amount received. All such expenses must be supported by original receipt/Cash memo, hospital discharge certificates

(III) Monthly income from movable and immovable properties (the family members shall submit declaration on the matter)

(IV) Monthly income of the dependents of the ex-employee named in the application (the family members shall submit declaration on the matter).”

8. A perusal of the said clause would show monthly income of the family shall mean :

- (i) the aggregate of total family pension per month

- (ii) monthly interest income @ 8% on the total amount received by the family after death of the employee minus medical expenses of the deceased as indoor patient supported by medical documents

- (iii) monthly income from moveable and immovable property as declaration of family members & (iv) monthly income of dependants of the deceased employee as per their declaration.

9. Compassionate appointment is an exception to rule of public appointment through open competition under Articles 14 and 16 of the Constitution. It is not a right but a concession extended by the employer to the unfortunate family members of the deceased employee to tide over unforeseen circumstances. Any claim for compassionate appointment is therefore to be assessed strictly in terms of the Scheme and not otherwise.

10. A plain reading of the Scheme applicable to the present case shows financial viability of the family of the deceased is to be calculated by assessing its total monthly income after taking into consideration monthly interest income of 8% of the terminal benefits minus medical expenses spent on the deceased as an indoor patient.
11. In such view of the matter Hon'ble Single Judge was not right in directing the managing director to consider the case of the writ petitioner for compassionate appointment without taking into consideration the terminal benefits paid to the family. Accordingly, we modify the impugned order and direct the managing director shall consider the case of the writ petitioner strictly in terms of the eligibility criteria laid down in clause 6(a) and other clauses of the aforesaid Scheme and take a reasoned decision in the matter within two months from the date of communication of this order after giving an opportunity of hearing to the respondent/writ petitioner. The reasoned order shall be communicated to the respondent /writ petitioner within seven days thereafter.
12. With the aforesaid direction, appeal is disposed of.
13. There shall be no order as to costs.
14. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)