

Form No. J (2)
Item No.86 ML
Court No.26

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**F.M.A. 869 of 2024
IA NO: CAN/2/2024**

**West Bengal State Electricity Distribution Company Limited, (A
Government of West Bengal Enterprise), represented by the
Chairman and Managing Director & ors.**

VS.

Mousumi Banerjee

For the Appellants : Mr. Partha Sarathi Bhattacharyya
Senior Advocate
Mr. Sujit Sankar Koley, Advocate

For the
Respondent : Mr. Ekramul Bari, Advocate
Sk. Imtiaj Uddin, Advocate

Heard on : 28.08.2024

Judgment on : 28.08.2024

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the employer and directed against the judgment and order dated April 30, 2024 passed by the learned Single Judge allowing the writ petition.

2. Learned Senior Advocate appearing for the appellants submits that, learned Single Judge erred in directing grant of compassionate appointment to the writ petitioner/private respondent. He points out that, the private respondent is the daughter of the deceased employee and married in the year 2003. The employee died-in-harness on August 22, 2012. Son of the deceased employee applied for compassionate appointment which was turned down on the ground of age bar. Thereafter, on January 20, 2014, the private respondent applied for compassionate appointment which was rejected on August 25, 2017.

3. Learned Senior Advocate appearing for the appellants draws the attention of the Court to the Recruitment Policy, 2010 and particularly to Clause 6(g) thereof which embodies the compassionate appointment policy governing an employee of the appellant. He refers to the modification thereof introduced by a writing dated November 4, 2015. He submits that, by such modification a married daughter of the deceased employee was excluded from the zone of consideration after the judgment and order of the Special Bench reported in **(2017) 4 Calcutta High Court Notes 362 (The State of West Bengal & ors. V. Purnima Das & ors.)**.

4. Referring to the letter of rejection dated August 25, 2017, learned Senior Advocate appearing for the appellants submits that, the private respondent cannot be considered to be a dependant upon the deceased employee due to her marriage. Moreover, family of the deceased employee

received all the death benefits and therefore, cannot be said to be in financial penury warranting grant of compassionate appointment.

5. Learned Senior Advocate appearing for the appellants relies upon **(2020) 7 Supreme Court Cases 617 (N. C. Santosh versus State of Karnataka & others)** on the issue as to which policy for compassionate appointment will apply. In other words, whether, the policy on the date of death or on the date of consideration of the application will apply is required to be considered.

6. Learned advocate appearing for the private respondent draws the attention of the Court to the impugned order and in particular to paragraph 21 thereof. He submits that, classifying a married daughter as not a dependant upon the family of the deceased employee was struck down in **Purnima Das & ors. (supra)**.

7. In the facts of the present case, the deceased employee died-in-harness on August 22, 2012. At the time of his death, there existed a policy for grant of compassionate appointment which is embodied in the Recruitment Policy, 2010 of the appellants.

8. Relevant provisions for compassionate appointment is paragraph 6(g) which is as follows:-

“6(g). *None other than the spouse, son(s) and unmarried daughter(s) who were fully dependant on the deceased/permanently incapacitated employee shall be considered as a dependant of such employee for this purpose. Any exception to this condition, if necessary in*

any deserving case, may be made by the CMD only on consideration of the fact and circumstances of such particular case(s).”

9. This policy was sought to be amended by a writing dated November 4, 2015 which is as follows:-

“None other than the spouse, son(s), unmarried daughter(s) and married daughter(s) who as on date of death/incapacitation were unmarried and were fully dependant on the deceased/permanently incapacitated/disabled employee shall be considered as a dependent of such employee for consideration of employment on compassionate grounds. Any exception to this condition, if necessary in any deserving case, may be made by the CMD only on consideration of this fact and circumstances of such particular case(s)”.

10. **Purnima Das & ors. (supra)** was rendered on September 13, 2017. Therefore, the amendment to the policy of 2010 introduced by the writing dated November 4, 2015 was prior to **Purnima Das & ors. (supra)**.

11. In terms of the unamended Rule 6(g), spouse, son, unmarried daughter who are fully dependant upon the deceased was entitled to grant of compassionate appointment. By reason of the amendment introduced to Rule 6(g) by the writing dated November 4, 2015, spouse, son, unmarried daughter and married daughter who as on the date of death were dependent on the deceased employee was considered as a dependant for grant of compassionate appointment.

12. Amendment sought to be introduced on November 4, 2015 recognises spouse, married daughter and unmarried daughter to be considered as dependent of the deceased employee for the purpose of compassionate appointment.

13. In the event, it is the contention of the appellants that, the married daughter is within the zone of consideration, then, the qualification imposed by the amendment dated November 4, 2015 that, she needs to be unmarried on the date of death, is a contradiction in terms. Consequently, in the event, it is the contention of the appellants that, married daughter do not come into zone consideration then the same is contradictory to the ratio of ***Purnima Das & ors. (supra)***.

14. ***Purnima Das & ors. (supra)*** considered the plight of the married daughter in the light of similar clause existing in respect of government employee for grant of compassionate appointment. ***Purnima Das & ors. (supra)*** is of the view that, married daughter cannot be excluded from the zone of consideration for grant of compassionate appointment subject to such married daughter fulfilling other terms and conditions required for grant of compassionate appointment in terms of the Rule governing the grant of compassionate appointment. Marital status of a daughter of a deceased employee cannot be a reasonable differentiation to deny grant of compassionate appointment.

15. In ***N. C. Santosh (supra)***, the applicants for grant of compassionate appointment were minor at the time of death of the employee

concerned and attained the age of 18 years beyond the stipulated one year. In such facts and circumstances, such applicants were found to be undeserving beneficiary of compassionate appointment and their appointments were held to be rightly cancelled. Such facts and circumstances are not obtaining in the present case.

16. Private respondent applied for grant of compassionate appointment by writing dated January 20, 2014 immediately after rejection of the claim for grant of compassionate appointment of the brother being rejected by the appellants.

17. According to us, there was no inordinate delay in the private respondent applying for grant of compassionate appointment. Her application dated January 20, 2014 was rejected on August 25, 2017 on the ground that she was married.

18. Marital status of the private respondent, is not a disqualification for the grant of compassionate appointment, in view of the ratio of ***Purnima Das & ors. (supra)***. Her application was not rejected on the ground that, she was not dependant upon the family of the deceased at the time of his death.

19. Learned Single Judge took note the aforesaid factual matrix and directed grant of compassionate appointment. We find no ground to interfere with the direction issued by the learned Single Judge.

20. In such circumstances, we find no merit in the present appeal.

21. FMA 869 of 2024 along with connected application being IA NO: CAN/2/2024 is dismissed without any order as to costs.

22. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

23. I agree.

(Md. Shabbar Rashidi, J.)

CHC