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

WPA 16946 of 2024

Sanchita Mukherjee

-Vs-

The Union of India & Ors.

Mr. Sayan Raul

... for the petitioner

Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal

... for the Union of India

The petitioner's father was an employee of Kolkata Port Trust now known as 'Syama Prasad Mookerjee Port', Kolkata who died-in-harness on 20th November, 2022. It is the case of the petitioner that the deceased employee namely, Sanjay Kumar Mukherjee @ Sanjay Mukherjee was survived by his widow, Gita Mukherjee and his daughter, Sanchita Mukherjee. The petitioner being the daughter of the deceased employee had applied for compassionate appointment on 4th April, 2023. The petitioner says that despite passage of more than one year, no decision regarding the petitioner's application for compassionate appointment has been taken. Although, there is at present an uncertainty as to the date in respect of which the Scheme for compassionate appointment is to be considered as there exist as on date two different views

of the Hon'ble Supreme Court as to the applicable date of the Scheme. This issue is pending before the Larger Bench of the Hon'ble Supreme Court. A Bench of the Hon'ble Supreme Court considering the two views as to the date of applicability of the Scheme i.e., whether the scheme prevalent on the date of death or the date of making of the application to be considered for granting compassionate appointment in the judgment reported in ***AIR 2022 SC 402 (Secretary to Government Department of Education (Primary) & Ors. Vs. Bheemesh alias Bheemappa)*** held that the Scheme which is prevalent on the date of death of the employee will be the governing Scheme. However, in a very recent judgment report ***in (2024) 5 SCC 280 (State of Himachal Pradesh & Ors. Vs. Abhishek Kumar)***, the Hon'ble Supreme Court had again reiterated that the Scheme subsisting on the date of making the application for compassionate appointment shall be the governing Scheme.

In the instant case, we are not required to go into the issue as to the date of the applicable Scheme as the Scheme, which was prevalent on the date of death of the employee, i.e. 20th November, 2022, had remained unchanged on 4th April, 2023 when the application for compassionate appointment was made.

As per the said prevalent Scheme, at least one dependent family member of the deceased employee is

to be considered for compassionate appointment. The petitioner should, therefore, be given appointment on compassionate ground provided she fulfils other criteria.

The respondents on the other hand say that the petitioner being a married daughter is not a dependant family member and as such, is not entitled to be considered for compassionate appointment. The respondents rely upon the Aadhaar Card of the petitioner annexed to the writ petition as 'Annexure P-5', contend that the petitioner is married to one Gopal Halder and is residing at a different place from that of her father since deceased. This fact is, however, disputed by the petitioner, who claims that she is a deserted lady and as such, is not dependent on her husband but was dependent on her father at the time of his death.

After hearing the parties and considering the materials on record including the claim for compassionate appointment, I find that the Scheme provides for granting appointment on compassionate ground to a "Dependent Family Member" which may be (a) spouse; or (b) son (including adopted son); or (c) daughter (including adopted daughter); or (d) brother or sister in the case of unmarried employee or (e) member of the Armed Forces who was wholly dependent on the employee at the time of his/her death in harness. The

definition of “daughter” is not qualified with the words either ‘married’ or ‘unmarried’. Therefore, going by the plain definition, one cannot qualify “daughter” as either ‘married’ or ‘unmarried’. The test, therefore, is whether the daughter is a dependent family member.

In the instant case, admittedly the petitioner was married to one Gopal Halder. The Aadhaar Card of the petitioner also shows a different address from that of her father. These facts in itself as contended by the learned advocate for the respondents cannot eliminate the petitioner for being considered for compassionate appointment as it neither indicates that she was not dependent on her father at the time of his death being deceased employee nor does it establish the petitioner’s contention that she is a deserted lady. The factual issue, therefore, cannot be gone into by the Writ Court as it will not be possible for the Writ Court to enquire into the correctness when the petitioner says that she was dependent on her father while the respondents contend that the petitioner being married and as such was not dependent on her father at the time of death of the father.

In the aforesaid facts and circumstances, I direct the Chairman, Syama Prasad Mookerjee Port to designate an Officer of substantial seniority and experience in this sort of matters to decide on the petitioner’s application for compassionate appointment

after allowing the petitioner to place necessary papers and documents in respect of her claim to be dependent on her father, the deceased employee at the time of his death and giving her a personal hearing. It will be also open for such Officer to call personnel from the Kolkata Port Trust to place the documents that they intend to rely upon at the hearing. The Officer so designated shall, by passing a reasoned order, dispose of the petitioner's application for compassionate appointment within a period of 12 weeks from date of communication of this order.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

All parties including the Chairman of Syama Prasad Mookerjee Port and the Officer to be designated by the Chairman shall act on the basis of the server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

(Arindam Mukherjee, J.)