

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)
(APPELLATE SIDE)

PRESENT:

THE HON'BLE JUSTICE RAI CHATTOPADHYAY

WPA 29126 of 2017

Mousumi Banerjee (Mukherjee)
Vs
WBSEDCL & Ors.

For the petitioner : **Mr. Ekramul Bari,**
Ms. Tanuja Basak,
Sk. Imtiaj Uddin

For the WBSEDCL : **Mr. Sumit Roy**

Heard on : **30.04.2024**

Judgement on : **30.04.2024**

Rai Chattopadhyay, J.

- 1) Affidavit-in-reply filed by the petitioner is taken on record.
- 2) This writ petition has been preferred to seek redress as regards the grievance of the writ petitioner which arose pursuant to the letter of the respondent authorities i.e. the Assistant Manager (HR & A) I.R.(E.S. & E.R.) II Cell dated 25th August, 2017.
- 3) The matter here relates to refusal to grant compassionate appointment to the writ petitioner by the authorities by dint of the said impugned order dated August 25, 2017.
- 4) Necessary facts which will be relevant in this case may be summarized as follows:-

- 5) The father of the petitioner had died on August 22, 2012. At the time of his death, he was serving as a group 'D' employee, with the respondent no. 1. The writ petitioner made an application on January 20, 2014 praying for appointment on compassionate ground under death in harness category, in place of her deceased father. The application has remained pending for consideration by the authorities, for a sufficient period of time in 2014. The writ petitioner filed a case before this Court. The Court directed for consideration of her application, vide order dated January 25, 2016. Her matter thereafter was taken up pursuant to the direction of Court as above. The petitioner submitted before the authorities requisite documents as were called for. Finally, the impugned order was issued by the said authority rejecting petitioner's request for employment on compassionate ground in died-in-harness category.
- 6) The crux of the letter of the Assistant Manager (HR & A) ES & ER-II Cell addressed to Smt. Mousumi Banerjee (Mukherjee), is quoted herein below:-

“In compliance with the reference cited above this is to intimate you that your application for consideration of employment on compassionate ground has been received on 29.08.2016 and duly processed you have been found ineligible as per existing deceased dependent employment rules of the Company vide O/O.No. ES & ER-II/D.D. Emp/46 dtd. 04.11.2015 of the Director (HR), WBSEDCL since, only who were unmarried as on date of death

of the deceased employee concerned, can only be considered for employment in died-in-harness category”.

- 7) On perusal of the impugned order of the said authority as above, it appears that the ground for rejection of the petitioner’s prayer has been mentioned therein to be the applicant being a married person at the time of application whereas, according to the respondent authority, a dependent daughter, who might have not been married on the date of death of the deceased employee, would only be considered for employment in died-in-harness category.
- 8) No other ground has been cited, as a reason for rejection of petitioner’s prayer, before the authority.
- 9) Mr. Bari, learned advocate is representing the writ petitioner. Mr. Bari has categorically stated that the writ petitioner is otherwise eligible and also dependent family member of the deceased employee of the respondent company/respondent no. 1. Also that she should not have been rejected compassionate appointment, in place of her deceased father.
- 10) Mr. Bari suggests that the law is very well settled in this regard that marriage cannot be a determinable ground for consideration by the authorities as to the eligibility of a person, to be appointed on compassionate ground in died-in-harness category. He has relied on the Full Bench decision of this Court, reported in **2017(4) CHN, 362 (State of West Bengal & Ors.-vs-Purnima Das)**. He submits that the Court has categorically dealt with the similar situation in that case and had come to the finding and held that marriage of the daughter of a

deceased employee, cannot be sustained as a valid ground to discriminate her in case of compassionate appointment, so far as the daughter is found to be dependent on the deceased employee.

11) Mr. Bari has further stated that in view of the law having been settled in the way as mentioned above in this regard, necessary order for redress of the writ petitioner may be granted in this case.

12) Mr. Roy is appearing for the respondent no. 1. He has taken up two fold objections as to the submissions and prayers of the writ petitioner. Firstly, he states that the delay by the writ petitioner in applying for compassionate appointment would suggest adequate means of livelihood to be available to herself and the family. Accordingly, he says that in terms of the law settled in this regard, the preferential appointment beyond the scope of the constitutional mandate cannot be extended to the writ petitioner. Secondly, he has suggested on the basis of the prevalent rules that, the case of a married daughter for compassionate appointment can only be considered when there would not have been any other family member of the deceased persons and not otherwise. On this, he has referred to Clause (g) of Rule 6 of the West Bengal State Electricity Distribution Company Limited.

13) In support of his propositions as above, he had relied on the following judgments:-

i) ***SBI –vs-Raj Kumar*** reported in ***(2010) 11 SCC 661***.

ii) ***Union of Indian-vs-Amrita Sinha***, reported in ***(2021) 20 SCC 695 and***

iii)) **Bhawani Prasad Sonkar-vs-Union of India** reported in **(2011) 4 SCC 209.**

- 14) Mr. Roy has argued on the point that the appointment on compassionate ground would not be a vested right for a person and the rule of the concerned authority would provide for consideration of a married daughter only in a case where no other legal heirs of the deceased would be available. The case of the writ petitioner would not be proper case to be entertained by this court, he would suggest.
- 15) No doubt, the court is not in two opinions regarding the well-settled principles of law governing the field of compassionate appointment, on dying in harness category. The appointment on compassionate ground would not be a matter of any vested right for a person. It is a special provision dehors the general applicability of the constitutional provisions and an exception to the general rule that recruitment to public services should be on the basis of the merit, on an open invitation, by providing equal opportunity to all eligible persons, to participate in the selection process. The law settled in the judgments, as referred to by the respondent and noted above, are undeniably governing the field.
- 16) The writ petitioner has applied for compassionate appointment after death of her father in the year 2014 i.e. January 2014. Her application was considered and the necessary fact finding enquiry was done by the respective authority.
- 17) After the same, the authority has come up with the impugned order i.e. dated August 25, 2017 to reject her prayer only on the ground that she was a married person on the date of death of the deceased

employee i.e. her father. Let the relevant provision in the rule be quoted as herein below:-

6) “Employment on compassionate ground: Considering the plight of the family after an earning member dies or becomes physically incapacitated, one of the dependants of the employee who died in harness or had been declared physically incapacitated by the Medical Board constituted by the Company, irrespective of the pecuniary condition of the family, may be offered employment in Class-III or Class-IV posts subject to the following conditions:

**xxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxx
xxxxxxxx**

(g) None other than the spouse, son(s) and unmarried daughter(s) who were fully dependent 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)”.

18) It is noteworthy that vide an office order dated November, 2015 the said Recruitment Policy Rules, 2010 was amended in the manner 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 dependent 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 the fact and circumstances of such particular case(s).

This has reference to the resolution no. 13 adopted by the Board of Directors, WBSEDCL in its 59th meeting held on 14.09.2015”.

- 19) Therefore, eligibility of the married daughter is now recognized, not only under the “Rules” applicable in case of the petitioner but it has been settled as a law to be followed by the Larger Bench judgment, as mentioned above.
- 20) The plea of the respondent is with regard to the non-applicability of the existing rule (as mentioned above), in case of the petitioner, in view of her having other siblings living and present. Mr. Roy has strenuously argued that an “exception” as enumerated in Rule 6(g), and subject to consideration of the authority as a deserving case would be that the deceased employee would not have any other kin, excepting the applicant before the authorities. He says that since petitioner’s case does not fall within this category, she would not be eligible for consideration at all.
- 21) Firstly, that this point has not been a point of rejection of the petitioner’s application for compassionate appointment in the authority’s order dated August 25, 2017. Thereafter, it can be said that the court finds no viability of a submission like this, particularly in absence of any objection raised by any of the siblings of the petitioner/other legal heirs of the deceased employee. It is great that the Rules of the respondent authority, even after providing as to who would

not be considered eligible for compassionate employment, has reserved discretion in favour of the authorities, to give special care and treatment, to a deserving case. The scope has, however been laid wide and there is no provision as to what would be a deserving case. From amongst the legal heirs of the deceased employee, the authority cannot provide as to whom the appointment on compensation, if any, should go, so far as such a legal heir is found to be dependent on the deceased person during his lifetime. This, in essence, is what has been decided by the Hon'ble Larger Bench, in the judgment as mentioned above. It has held that no discrimination can be made amongst the kin of the deceased, irrespective of their marital status, sex etc., in so far as the prospective applicant has been dependent on the deceased and also the family income after date of the person comes within the prescribed limit, necessitating, supporting income flow.

- 22) Mr. Roy has faintly raised a point that after receipt of pension, the family of the said deceased would not have faced the financial indigence, as grave as to seek support by an employment. This point has however, not been stressed.
- 23) Instead, the respondent has put forth that delay in filing application by the petitioner, has defeated her cause.
- 24) According to him the petitioner, who has survived for two years after death of her father, could not show the imminent urgency for a support in her surviving or that of the family. As a matter of fact, however, one can notice that the same has also not been a ground for rejection of the petitioner's prayer by the authorities. Also, that the material relevant fact connected with this issue should not be obliterated that the

petitioner's earlier application, which was made in time, was not in form and thus was not considered. She had to make a fresh application in the prescribed format which ultimately has resulted into the impugned order of rejection. Thus, the period, which has been termed as a period of delay, by the said authorities, cannot be accredited like that.

24) So far as the other aspects regarding the family income etc. are concerned, there appears to be no dispute, as to the same. A fact finding authority, upon an enquiry, has already brought on record eligibility of the writ petitioner and/or the family of the said deceased employee, so far as these other aspects are concerned.

25) The Court finds that such amendment to incorporate the married daughter within the purview of Clause (g) of Rule 6 has been done before determination of the writ petitioner's prayer. Otherwise also, the law is well settled in this regard vide of Hon'ble Larger Benches' judgment reported in State of West Bengal & Ors. .vs. Purnima Das 2017(4) CHN 362. The Court has found that for compassionate appointment considering married daughter not to be dependent and ineligible, would not be constitutionally valid.

26) The Court had struck down the word "unmarried" as violative of the Constitution, by dint of the said judgment.

27) Accordingly, on the premise, as above, the impugned order passed by the respondent authority dated August 25, 2017 is found to be de hors the law and not maintainable.

28) The same is set aside.

29) This writ petition is allowed and being disposed of with the following directions:-

(i) Let the respondent authority/respondent no. 3, immediately grant appointment to the writ petitioner on compassionate ground, her eligibility having been made out and established, in the fact finding enquiry, as held by the authority, by issuing appointment letter.

(ii) The exercise as above shall be concluded by the concerned respondent no. 3, within a period of eight weeks from the date of service of copy of this order.

30) The writ petition along with the connected pending applications, if any, are disposed of.

31) Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)