

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

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

**MAT 2187 of 2014
with
CAN 1 (12248) of 2014**

Kamala Prasad Ganguly

Vs.

The State of West Bengal & Ors.

For the Appellant : **Mr. Rajendra Banerjee, Advocate**
Mr. Dipjyoti Chakraborty, Advocate

For the State : **Mr. Supriyo Chattopadhyay, Advocate**
Ms. Tapati Samanta, Advocate

Heard on : August 12, 2024

Judgment on : August 12, 2024

The Court:

1. It is to be remembered, before the Court embarks its journey in determining a claim on the ground of compassionate appointment, that it is neither a bonanza nor a premium given to the members of the bereaved family but to provide sustenance to the family for survival because of untimely death of the sole bread-earner. The object and the purpose underlying the incorporation of the schemes or the statutory provisions for appointment on the compassionate ground is that the family which has gone in penury, should survive. Some of the schemes have also used the expression "two-square meals" which conveys the intention of the lawmakers that what is a bare minimum for

an existence should be provided to the family. It would not be misnomer to say that the appointment on compassionate ground apparently offends Article 16 of the Constitution of India which guarantees every citizen of the country to be given an opportunity to participate in the process of recruitment in public employment. However, by way of an exception the concept of compassionate appointment was devised which cannot be said to be in violation of the Article 16 of the Constitution of India because of the nature of consideration and the avowed object which it seeks to achieve.

2. There appears to a misconception in the mind of the applicants seeking appointment on compassionate ground that it is a regular way of appointment as they need not have to undergo the rigor of the normal recruitment process. Obviously, the reason being that if the criterion set forth for appointment on compassionate ground is meted out and/or fulfilled, the member of the family need not have to undergo the other written-examinations or the several tiers of filtration in order to find out eligible candidates but to be appointed on the sole consideration that the family has suffered a financial hardship for untimely death of the sole earner.
3. The schemes have been framed by the Government within the framework of the constitutional provision relating to compassionate appointment and such schemes have been held to be intra-vires because of its unique object and to give succor to the family who has suddenly undergone a financial crisis on the death of the Government employee. It is not in dispute that mostly all the departments in the Government have framed a separate scheme for appointment on compassionate ground and, therefore, the employee who died in harness, working in a particular department, the scheme prevalent in the said

department would apply and the borrowing an external aid should be eschewed.

4. There is a specific Rules framed by the School Education Department (Secondary Branch), namely West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 which contains an exhaustive provision relating to the appointment, recruitment including the appointment on compassionate ground. The said Rules came into force on 09.07.2009 and its applicability can be seen from the preamble that it is in relation to teaching and/or non-teaching staff in the Education Department. Rule 20 of the said Rules runs thus:-

20. Manner of selection on compassionate ground. –

(1) Notwithstanding anything contained in these rules, the concerned District Inspector of Schools (Secondary Education) shall maintain a roster of the candidates seeking appointment on compassionate ground as per the procedure laid down in Schedule V and forward the names to the respective Regional Commission in the manner as mentioned in that Schedule from time to time for recommendation of his name against suitable post of Clerk or Group D staff, as the case may' be.

(2) The Regional Commission shall thereafter prepare a panel for the candidates to be appointed on compassionate ground -- (a) in the post of Clerk on the basis of aggregate of marks obtained in the Madhyamik Examination or its equivalent; (b) in the post of Group D on the basis of date of receipt of the application by the respective District Inspector of Schools (Secondary Education).

(3) The panel shall be prepared on medium-wise, category-wise and gender-wise as per the procedure laid down in Schedule V and recommend the name of a suitable candidate for appointment on compassionate ground to the concerned school through district-wise counseling, on the basis of availability of district-wise vacancy, medium-wise, category-wise and gender-wise and a copy of the letter recommending the name shall be sent to the candidate as well as the school, where the vacancy/ exists, through registered post or speed post with acknowledgement due:

Provided that such vacancies for the appointment on compassionate ground shall not include the vacancies of a particular Regional Level Selection Test and such recommendation of the candidates in on compassionate ground by the Regional Commission shall take place after publication of a panel of a particular Regional Level Selection Test and before advertisement of next Regional Level Selection Test for the post of non-teaching staff.

(3) On receipt of the recommendation under sub-rule (2), the concerned School authority shall issue the letter of appointment to the candidate by registered post with acknowledgement due and upon receipt of appointment letter from the concerned School authority the candidate shall join the post within stipulated period as mentioned in the appointment letter.

(4) The conditions laid down in sub-rules (1), (2), (4), (5), (6) and (7) of rule 18 shall be applicable mutatis mutandis in the case of recommendation of candidates for appointment on compassionate ground for the post of Clerk or Group D staff, as the case may be"

(5) For removal of any doubt it is hereby, declared that the employment on compassionate ground is not confined to the school in which deceased or incapacitated Teacher or non-teaching staff had been working and it shall be given anywhere within a district or region, as the case may be, depending upon availability of a suitable vacancy meant for the purpose of appointment on compassionate ground.

5. It is manifestly clear from the provisions contained in Rule 20 of the said Rules that the manner in which the authorities are mandated to deal with the application for compassionate appointment, shall be on the basis of Schedule-V appended to the said Rules. Since the said Section starts with a non-obstante clause, its applicability has to be strictly made in terms of the said Section. The moment the reference to Schedule-V has been imbibed thereto, the appointment on compassionate ground should meet the requirements postulated in Schedule-V thereto. The Schedule-V contains an exhaustive mechanism of dealing with an application for compassionate appointment, not only restricting the rights amongst the spouse, son and daughter but

also defining the expression “financial hardship” which is *sine qua non* for considering an application for compassionate appointment.

6. Clause-I of Schedule-V contemplates a situation when a teacher or a non-teaching staff dies before his superannuation and in the opinion of the District Inspector of Schools (Secondary Education), the family is suffering a financial hardship which is further qualified with the expression “fails to provide two-square meals and other essentials” for survival thereof with the rider that only one member of the family of the deceased teacher may be appointed under the said provision. The explanation appended to the said clause defines financial hardship to be construed in relation to an income of a deceased teacher or a non-teaching staff consisting of upto five members in the family would mean an amount of income less than the initial gross salary of a Group-D staff of the State Government at the material point of time. It further provides that in the process of computation as above, an income of an amount earned by each family members from any other sources than the provident fund, the gratuity and 40% of the family pension of the first seven years or upon the attainment of 67 years of age of the deceased at the time, had he been alive at a material point of time, shall be taken into account.
7. What emerged from the meaningful reading of the aforesaid provision is that though the right to claim for appointment on compassionate ground is recognized as a statutory right under the said Rules but the parameters set forth in this regard is to be strictly adhered to and it would be misnomer to understand that on the death of an employee while in service, the appointment on compassionate ground to any of the members of the family is inevitable. The family has to meet the criterion set forth in the

statutory provisions and in the event, the authorities found that the family does not suffer any financial hardship, the appointment on compassionate ground cannot be accorded to the family. The moment the method of calculating the income to satisfy the definition or the expression “financial hardship” is provided in the Rules itself, there is no illegality and/or infirmity on the part of the authorities in rejecting the claim for compassionate appointment, if the income exceeds the bare minimum.

8. We have not been placed with any other Rules except the Rules of 2009 framed by the School Education Department nor any other Notification amending any of such provisions as mentioned above or bringing any clarifications in this regard. However, the Counsel for the appellant places before us the Notification no. 251-EMP dated 03.12.2013 issued by the Labour Department, Government of West Bengal, which according to the Counsel for the appellant have expanded the horizon of consideration for appointment on compassionate ground. The said Notification applies to a Government employee died while in service. The aforesaid expression can further get impetus from the Rule 2 of the said Notification that it would apply to a dependent family member of the Government employee.
9. As indicated above, a teacher or non-teaching staff in the Education Department are governed by the respective Rules and a statutes framed in this regard and the moment this Court finds that a specific Rule is framed by Education Department in relation to an appointment of a teacher or non-teaching staff of the School including the right to seek appointment on compassionate ground, we do not think that the Notification dated 03.12.2013 has any manner of application nor overrides the statutory Rules of 2009 framed in exercise of powers

conferred in West Bengal School Service Commission Act. The statutory Rules framed in exercise of the rule making power conferred under the relevant statute cannot be superseded and/or repealed on the basis of a Notification issued by a different Department who has not been vested with the power under the relevant Act to frame any Rules. The Rules can be repealed and/or modified only in exercise of the rule-making power emanating from the provisions contained in the parent Act and, therefore, any other Notification issued by the other Departments shall not have any overriding effect nor can exercise a legislative power unless conferred under the specific Act.

10. The shelter is sought to be taken by the Counsel for the appellant that the said Notification dated 03.12.2013 was, in fact, accepted by the Division Bench in MAT 974 of 2014 and, therefore, the coordinate Bench should not have taken a contrary view. Our attention is drawn to the judgment dated 25.09.2023 passed in ***MAT 974 of 2014 (Maitreyee Mukhopadhyay Vs. The District Inspector of Schools (SE), Barrackpore & Ors.)*** where, in paragraph 9 thereof, the Division Bench took note of the said Notification dated 03.12.2013. Though there appears to be a reference of the Notification but in the next paragraph the Division Bench took into consideration of the Memorandum No. 136-Edn dated 15.05.1985 defining the enhanced family pension and arrived at the conclusion that in view of the aforesaid provisions the family pension should be computed and/or calculated at enhanced rate and the amount of family pension will include the basic pension at enhanced rate, dearness relief and medical allowance/ miscellaneous allowance at the relevant date of death of the deceased employee.

11. Our endeavour has failed to find out any definition of a gross salary in the said Rules. The coordinate Bench decision rendered in the above-noted decision does not explicitly indicate that the said Notification dated 03.12.2013 would apply but may be indicative of the factors to be included in the gross salary from the observations made in paragraph 11 thereof. Schedule-V to the Rules of 2009 does not define the gross salary of the Group-D staff of the State Government but the Court cannot overlook the normal factors which make the salary as gross viz. apart from the basic salary all other components attached to the said post are included within the gross salary. There may be variable components depending upon the nature of the post and, therefore, to squeeze the definition of a gross salary should not be proper. The gross salary of a Group-D staff is to be considered in such perspective and, therefore, the observations made in paragraph 11 of the above-quoted judgment is to be read in such perspective and not to be construed as having recognized the Notification dated 03.12.2013.
12. We thus do not find that the said Notification has any manner of applicability in the present case in view of the statutory Rules framed by the Government in exercise of the rule-making power emanating from the parent Act. It leads to an interesting point raised by the Counsel for the appellant that if a high-ranking Officer died while in service, the pension would always be above the gross salary of a Group-D staff and in such event, the family of the said officer shall not be entitled to avail the benefit of the compassionate appointment scheme. There appears to be a fallacy in this regard as it goes to the very deep-rooted object and intention behind the incorporation of a scheme for compassionate appointment. It is not a regular way of appointment in a public employment as the member may not

have to undergo the recruitment process in terms of the Rules framed by the Government. Furthermore, there is no competition that the member of the bereaved family faced with the other eligible candidates and for such reason it is sometimes construed as an act in violation of Articles 14 & 16 of the Constitution of India. Article 16 provides an equal opportunity to all eligible persons to offer their candidature in the public employment.

13. As discussed above, the scheme relating to compassionate appointment has been found to be intra-vires and, therefore, the authorities must travel within the contours of the statutory provision relatable to appointment on compassionate ground. The very object behind the promulgation of the scheme for compassionate appointment is to tide over the crisis suffered by the family because of untimely death of the sole bread-earner so that they may sustain in life. The expression “two-square meals” appearing in schedule-V has to be construed in its proper spirit and the person who can survive or can be provided “two-square meals” with the pension given to the family on the death of such high-ranking officer cannot be said to be coming in penury nor any financial distress. The survival of the family is the primary object not to provide luxury or the other comforts and amenities which they used to enjoy during the lifetime of the said high-ranking officer. It would totally frustrate the very object of the scheme which provides that the family pension should not exceed the gross salary of a Group-D staff and, therefore, the misconception which is playing in the mind of the Counsel for the appellant that the appointment on compassionate ground is another mode of recruitment, is not acceptable. The object and purpose behind incorporation of the said scheme are to be borne in mind and it is not proper at the Bar to argue something which

runs counter to the very object and purpose behind the framing of a scheme for compassionate appointment.

14. On the last occasion, the Pension Payment Order was handed over to this Court wherefrom the last drawn salary was shown at Rs.27,000/- and odd and a query was raised whether that includes the other components viz. the dearness allowance or other allowances. Today, the Counsel for the State hands over the instruction received from the competent authority that the said amount does not include any other component but the basic salary and, therefore, we do not find that there is any difficulty in arriving at the family pension in order to ascertain whether the family is in financial hardship as defined in an explanation appended to Schedule-V of the said Rules 2009.
15. We find from the said document that there has been a radical change having brought in computation of the family pension for which we think that the authority should take into account while considering the application.
16. The Commissioner of the School Education Department is directed to reconsider an application filed by the appellant in the light of the relevant Rules applicable in this regard and shall also take into account the observations made hereinabove.
17. We expect that the authorities shall keep in mind the object and purpose for the appointment on compassionate ground and shall take such decision within three weeks from the date of the communication of this order.
18. With these observations, the appeal being **MAT 2187 of 2014** and the connected application being **CAN 1 (12248) of 2014** are **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J)

