

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 1545 of 2023

**Shashwati Singh
Versus
State of West Bengal & Ors.**

For the petitioner : Mr. Indranath Mitra
Mr. Nabankur Paul

For the State : Mr. Hirak Barman
Mr. Pretom Das

Heard on : 25.04.2024

Judgment on : **25.04.2024**

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, praying for a direction upon the respondents to consider the petitioner's application for grant of compassionate appointment as Non-Official Marriage Officer (in short NOMO), upon setting aside the order of rejection dated 23rd October, 2019, issued by the Registrar General of Marriages, West Bengal.
2. It is the petitioner's case that the petitioner's husband, namely, Arun Singh was enrolled as an advocate. During his lifetime upon participation in a selection process, he was appointed as NOMO in terms of an office order dated 16th August, 2000.

Subsequently pursuant to and in terms of a notification/order dated 24th January, 2002, appearing at page 25 of the writ petition the petitioner's husband was appointed as NOMO within the jurisdictional area of Cooch Behar Municipality. From the said document it appears that he was permitted to function as NOMO until he attains 60 years of age or until further orders whichever is earlier.

3. Unfortunately, the petitioner's husband died on 14th June, 2019. Immediately thereafter, the petitioner had applied before the Registrar General of Marriages, praying for appointment as NOMO on compassionate ground. Such application was filed on 27th August, 2019. Incidentally, the said application was rejected by the Registrar General of Marriages, West Bengal by an order dated 23rd October, 2019, which is appearing at page 29 of the writ petition, *inter alia*, on the ground that the petitioner's candidature cannot be considered since, the appointment of a NOMO in terms of Rule 4(1)(c) of the West Bengal Special Marriage Rules, 2010 (hereinafter referred to as the "said Rules), provides that age of appointment of a NOMO is between 25 years and 40 years. Since, the petitioner's age exceeds the permissible age under Rule 4(1)(c) of the said Rules, her case was regretted.
4. Mr. Mitra, learned advocate representing the petitioner by placing before this Court Rule 6 of the said Rules submits that

a proviso had been inserted in the said Rules with effect from 1st September, 2014, to afford employment opportunity to the dependent of NOMO who has been permanently incapacitated due to accident or serious illness or who died while performing duties. According to Mr. Mitra, the said proviso which had been inserted with effect from 1st September, 2014 does not lay down any condition that the dependent is required to be between 25 years and 40 years of age for her/him to maintain the application on compassionate ground. By referring to Rule 4(1)(c) of the said Rules it is submitted that the same is confined to selection process of NOMO through an advertisement. Such fact would morefully appear from a reading of the plain language used in Rule 4(1)(c) of the said Rules. By placing reliance on an unreported judgment delivered by a Coordinate Bench of this Court in WPA 13768 of 2023 (**Gopa Sinha v. The State of West Bengal & Ors.**) on 19th June, 2023, Mr. Mitra submits that in similar set of facts, the Coordinate Bench of this Court by interpreting provisions of Rule 3 and 4 of the said Rules had, *inter alia*, come to a finding that the conjoint reading of the aforesaid rules leaves sufficient scope for a compassionate appointment, on account of demise of an appointee under NOMO category, even if eligibility criteria of an applicant is not fulfilled strictly.

5. Having regard to the aforesaid, it is submitted that in the given facts the rejection of the petitioner's application is illegal to say the least, the same should be set aside and the respondents should be directed to reconsider the petitioner's application on the basis of the provisions contained in the said Rules.
6. *Per contra*, Mr. Barman, learned advocate representing the respondents submits that in order to be eligible for consideration even on the ground of compassionate appointment, the applicant must have the requisite qualifications as regards the conditions of appointment as NOMO. Admittedly, in this case, the petitioner is beyond 40 years of age. Having regard to the aforesaid, her candidature was rightly rejected. By referring to the unreported judgment delivered in the case of **Gopa Sinha** (supra), he submits that a challenge to the said judgment is pending consideration in an appeal before the Hon'ble Division Bench of this Court and at this stage, this Court should not place reliance on the said judgment, for the purpose of granting relief in favour of the petitioner.
7. Heard the learned advocates appearing for the respective parties. It is not in dispute that the petitioner was a dependent of Late Arun Singh, who was appointed as NOMO. It is also noticed that the said Rules, *inter alia*, confer a legal right on a dependant of a deceased or a permanently incapacitated

NOMO due to accident or serious illness, to be appointed as NOMO subject to the procedure as laid down in proviso to Rule 6(1) of the said Rules. To morefully appreciate the same the relevant provision of the said proviso to Rule 6(1) is extracted hereinbelow: -

“6(1). Appointment of Marriage Officers from panel prepared by District Committee. – (1) *The State Government shall, in accordance with the provisions of section 3, appoint non-official Marriage Officers from the panel prepared by the District Committee on verification of qualifications of the candidates and on receipt of an affidavit relating to fulfillment of other conditions for appointment as non-official Marriage Officer.*

[provided that if any non-official marriage Officer dies or becomes permanently incapacitate due to accident or serious illness, while performing the duties of non-official Marriage Registrar, the State Government may appoint any dependent of such non-official marriage Registrar to the post, subject to the following procedures:-

- (1) If any non-official Marriage Officer dies or becomes permanently incapacitate due to accident or serious illness, while performing the duties of non-official Marriage Officer, his son, daughter or spouse, who lives within the jurisdiction to which such non-official marriage Officer had been performing duties and who has requisite qualifications, may be eligible for being considered for appointment as non-official Marriage Officer within that area;*

- (2) The intended candidates shall within six months from the date of death or permanent incapacity, as the case may be, apply to the Registrar General of Marriages, West Bengal;*
- (3) The applicant shall specify in the application his name, his father's name, date of birth, address, educational qualifications, other qualifications (if any), relationship with the non-official Marriage Officer died or became permanently incapacitate due to accident or serious illness, present occupation, if any, along with the supporting documents;*
- (4) in case the non-official Marriage Officer becomes permanently incapacitate, the applicant shall submit original Medical Certificate to that effect to be issued by the Superintendent of a Government Hospital;*
- (5) on receipt of the application the Registrar General of Marriage, West Bengal, shall consider suitability or otherwise of the applicant to the post of non-official marriage Officer and shall forward the application with his recommendation to the State Government in the Judicial Department;*
- (6) on receipt of the recommendation of the Registrar General of Marriages, West Bengal, the State Government may appoint the applicant to the post of non-official Marriage Officer.]”*

8. It would, however, appear that Rule 3 of the said Rules provide for declaration of vacancy of the NOMO, while Rule 4 thereof, provides for qualifications and other conditions for appointment as a NOMO. A conjoint reading of Rules 3 and 4 would make it explicitly clear that the qualifications required for appointment of NOMO are in relation to a selection process

initiated on the basis of an advertisement published in terms of Rule 3. Having regard to the aforesaid, it is clear that Rule 4(1)(c) refers to the qualification of NOMO on the basis of a selection process initiated through an advertisement.

9. It may, however, be noted that in clause 3 of the proviso to Rule 6 although, certain qualifications for appointment of NOMO on compassionate ground, has been provided, no age bar/limit for appointment has been incorporated. A reading of Rule 4(1) and Rule 6(1) of the said Rules, clearly highlights that different yardsticks have been provided, one for dependent of ex-officio marriage officer and the other for NOMO. Since, the petitioner had applied for NOMO Rule 6(1) would apply. It is therefor, clear that Rule 6(1) offers relaxation to the eligibility criteria and the applicant's candidature must be considered notwithstanding the applicant may not strictly fulfilling all the eligibility criteria as provided for in Rule 4 of the said Rules. The aforesaid finds support from the judgment delivered by the Coordinate Bench in the case of **Gopa Sinsh** (supra).
10. Although the respondents claim that an appeal is pending from the judgment delivered in the case of **Gopa Sinha** (supra), such judgment has neither been set aside nor there is any stay.
11. Having regard to the aforesaid I am of the view that since, a legal right has been conferred on the petitioner to apply for

appointment on compassionate ground, with relaxation in eligibility criteria the respondent no.3, ought not to have rejected the application filed by the petitioner on the ground that the age for appointment of a NOMO is restricted between 25 years and 40 years.

12. In view thereof, while setting aside the aforesaid order 23rd October, 2019, I direct the respondent no.3 to reconsider the petitioner's application in the light of the observations made hereinabove, and if the petitioner is found otherwise eligible, to appoint the petitioner to the post of NOMO as per the said Rules.

13. All formalities in this regard must be completed by the respondents within a period of four weeks from the date of communication of this order.

14. With the above observations and directions, the writ petition is disposed of.

15. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)