HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WP.ST. 5 of 2023

Fajle Haque
VS.
The State of West Bengal & Ors.

For the Petitioner : Mr. Shahrayan Alam
Mr. Debanjan Das

For the State : Mr. Subir Kumar Saha, A.P.P.
Ms. Bedashruti Bose

Heard on : September 26, 2024

Judgment on : September 26, 2024

DEBANGSU BASAK, J.:-

1. Writ is directed against the Order No. 11 dated September 21, 2022 passed by the West Bengal Administrative Tribunal in O.A. No. 1013/18.

2. By the impugned order, the Tribunal dismissed the original application of the writ petitioner on the ground that compassionate appointment to the

legal heirs of the deceased employee who worked as contractual or work charged basis was not available.

3. Learned advocate appearing for the writ petitioner submits that, the employee concerned expired on August 19, 2016. On the date of death, the employee was a permanent employee. In support of such contentions, he refers to the photocopy of the service book. He submits that the employee was made permanent with effect from May 13, 1992. Pension Payment Order was issued on the death of the deceased employee. Therefore, the decision of the authorities that the deceased employee was a work charged employee as recorded in the writing dated October 12, 2018 is perverse.

4. Learned advocate appearing for the State refers to the Labour Department Memo No. 251-Emp dated December 3, 2013 as well as Finance Department Memo No. 2255-F dated March 22, 1973 in support of the contention that there is a distinction between a work charged employee who is subsequently made permanent and an employee of the State Government who is appointed on regular basis. She submits that once an employee is appointed on regular basis, such employee is entitled to compassionate appointment in terms of Labour Department Memo No. 251-Emp dated December 3, 2013. However, a work charged employee although is entitled to retiral and pensionary benefits as that of regular employee of the State Government since such employee is not entitled to

compassionate appointment in view of Clause 3(f) of Memo No. 251-Emp dated December 3, 2013.

5. In the facts of the present case, petitioner before us is the son of the deceased employee. Employee concerned was initially engaged as work charged by the State Government. Thereafter, he was made permanent with effect from May 30, 1992. Service Book of the deceased employee is on record which demonstrates such fact.

6. Materials on record also demonstrate and establish that the deceased employee was treated as a permanent employee with effect from May 30, 1992. He was afforded all benefits including Pay Revision under ROPA.

7. We find from the service book that the deceased employee was declared permanent in terms of the Finance Department Memo No. 6059-F dated June 25, 1979 with effect from May 30, 1992.

8. Scheme for compassionate appointment governing the deceased employee is under Memo No. 251-Emp dated December 3, 2013. Clause 3(f) is pressed into service to contend that the deceased employee does not fall within the category of a Government employee as defined therein.

9. Clause 3(f) of Memo No. 251-Emp dated December 3, 2013 defines a Government employee. According to such definition, the Government employee is one who is appointed on regular basis and not one working

on daily wage or casual or apprenticeship or ad hoc or contract or re-employment basis.

10. Right to be considered for compassionate appointment accrues on the date of death of the employee. As on such date there must exist a scheme for compassionate appointment governing such employee.
11. Employee concerned on the date of death was not working on daily wage or casual or apprenticeship or ad hoc or contract or re-employment basis.
12. Finance Department granted sanction for making the employee concerned as permanent as noted above. On the date of his death, the employee concerned was a permanent employee of the State Government. Once the employee concerned was made permanent, the question of the nature of appointment transmuted itself to one of being an appointment on permanent basis.
13. The employee concerned does not fall within the negative conditions of clause 3(f) which disentitles the employee concerned to the scheme of compassionate appointment. Rather in the facts and circumstances of the present case, the employee concerned falls within the positive category of Clause 3(f) of the Memo concerned.
14. The other Memo canvassed before us relates to fixation of pensionary benefits and it does not deal with the right to receive compassionate appointment.

15. Petitioner before us applied for compassionate appointment and such application was ultimately rejected by the authorities concerned by the writing dated October 12, 2018 on the ground that the employee concerned was a work charged employee and not falling within the Clause 3(f) of the Notification dated December 3, 2013.

16. Learned Tribunal upheld such decision by the impugned order.

17. In view of the discussions above, both the decisions dated October 12, 2018 of the authorities and the impugned order of the Tribunal dated September 21, 2022 are set aside. The authorities will proceed to consider the claim for compassionate appointment of the petitioner in view of the observations made herein and by treating the employee concerned as one whose heirs are entitled to be considered for compassionate appointment. Authorities will decided the application for compassionate appointment of the petitioners within a fortnight from the date of communication of this judgment and order, after affording a reasonable opportunity of hearing to the petitioner before us. Authorities will communicate their decision to the petitioner forthwith thereafter.

18. **WP.ST. 5 of 2023** is **disposed of** without any order as to costs.

(Debangsu Basak, J.)

19. I agree

S.D.

(**Md. Shabbar Rashidi, J.**)