

ORDER SHEET
WPO/608/2024

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MAYA RANI MONDAL & ANR.

VS

KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE KAUSIK CHANDA

Date: 27th November, 2024.

Appearance:

Mr. Kedareshwar Chakraborty, Adv.

Mr. Saptarshi Chakraborty, Adv.

Mr. Tirupati Mukherjee, Adv.

.... for the petitioners

Mr. Alak Kr. Ghosh, Adv.

Mr. Swapan Kr. Debnath, Adv.

...for K.M.C.

The Court: The issue of whether a married daughter is entitled to compassionate appointment is no longer res integra. However, the impugned order of the Kolkata Municipal Corporation dated May 31, 2024, has once again raised this question.

The factual backdrop preceding the impugned order is as follows.

Arabinda Mondal, a Roller Assistant Cum Junior Mechanic (Roads) at the Kolkata Municipal Corporation, passed away in harness on August 6, 2018. Following his demise, his son, Sudipta Mondal, submitted an application for compassionate appointment on August 31, 2018. Unfortunately, while his

prayer was under consideration, Sudipta Mondal passed away on September 6, 2022. Subsequently Sudipta's wife Soma Mondal filed an application for compassionate appointment on February 15, 2023. Maya Rani Mondal, the wife of deceased employee, (petitioner no. 1), also sought compassionate appointment for herself. On January 19, 2024, Maya Rani Mondal requested that her daughter, Suparna Roy, (petitioner no. 2), be appointed instead.

The claim of compassionate appointment made by these individuals were pending before the Corporation. Subsequently, Maya Rani Mondal and Suparna Roy filed Writ Petition WPO/124/2024 before this Court, which was disposed of by an order dated February 28, 2024 with the following directions:

“In view of the above, the instant writ petition is disposed of by directing the Chief Manager (Personnel), Kolkata Municipal Corporation to consider the issue of compassionate appointment to the heir of the deceased employee in accordance with the prevailing scheme after giving a reasonable opportunity of hearing to all the necessary parties.

A decision shall be taken in the matter at the earliest, but positively within a period of eight weeks from the date of communication of this order.

A reasoned order shall be passed and communicated to all the parties.

Writ petition stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.”

In compliance with this order, the case of the petitioners was considered by the Chief Manager (Personnel) of Kolkata Municipal Corporation, who issued an order on May 31, 2024. The relevant part of order reads:

“A. The claim for job in favour of Soma Mondal (Kahar) W/O Sudipta Mondal (2nd claimant herein) is rejected since the prevailing scheme does not consider her as dependent of a Corporation employee.

B. The claim for job in favour of Suprana Roy W/O Sanjib Kumar Roy, (4th claimant & the Petitioner NO. 2) is also rejected since (i) for the purpose of appointment, the prevailing scheme does not consider her as dependent of a Corporation employee and (ii) nothing is produced regarding her dependency on her deceased father at the time of his death.

C. The claim for job in favour of Mayarani Mondal, W/O Arabinda Mondal (3rd claimant & Petitioner No. 1) may be considered subject to fulfillment of the provisions of the prevailing Scheme communicated through D.M.C. (P)’ s Circular No. 47/VIII/2008-09 dated 17.01.2009 as a dependent of the deceased employee of the Corporation.”

Both petitioners before this Court argue that granting compassionate appointment to petitioner no. 1, who is now approximately 59 years old, would serve no useful purpose. They pray that compassionate appointment be made in favour of petitioner no. 2.

The impugned order suggests that petitioner no. 2’s claim was rejected because the Corporation’s scheme excludes married daughters from consideration for compassionate appointments. Additionally, petitioner no. 2 was unable to provide evidence of her dependency on her deceased father at the time of his death.

Learned advocate for the petitioners contends that a married daughter should not be excluded from the scheme for compassionate appointments. In support of his submission, counsel relies on the judgments reported at **(ILR (2016) 1 ALL 115 Smt. Vimla Srivastava v. State of U.P.)**, **(2023) SCC OnLine Cal 362 (Payel Bhattacharya vs. K.M.C)** and **(2018) 2 Cal LJ 1 (Putul Rabidas v. Eastern Coalfields Ltd)**.

On the other hand, Mr. Alak Ghosh, learned counsel for the Corporation, argues that since petitioner no. 2 failed to provide any document to substantiate her dependency on her deceased father at the time of his death, her claim for compassionate appointment was rightly rejected.

After considering the arguments, I am of the view that the impugned order of May 31, 2024 cannot be sustained.

The issue of whether a married daughter should be eligible for compassionate appointment has already been addressed by the Supreme Court in the judgment reported at **(ILR (2016) 1 ALL 115 Smt. Vimla Srivastava v. State of U.P.)**. In this judgment, the supreme Court held:

“27. In conclusion, we hold that the exclusion of married daughters from the ambit of the expression “family” in Rule 2(c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

28. We, accordingly, strike down the word ‘unmarried’ in Rule 2(c)(iii) of Dying-in-Harness Rules.

29. In consequence, we direct that the claim of the petitioners for compassionate appointment shall be reconsidered. We clarify that the competent authority would

be at liberty to consider the claim for compassionate appointment on the basis of all the relevant facts and circumstances and the petitioners shall not be excluded from consideration only on the ground of their marital status.

30. The writ petitions shall, accordingly, stand allowed. There shall be no order as to costs.”

The relevant part of the Kolkata Municipal Corporation’s scheme for compassionate appointment reads as follows :

“2(A). One of the dependants of a Corporation employee who dies in harness or who retires prematurely on being declared permanently incapacitated may be offered appointment on compassionate ground if-

- (i) The family of the deceased or the retired employee as the case may be is in need of immediate assistance: and
- (ii) The employee had at the time of premature retirement at least two years of service left to reach the normal age of superannuation.

Provided that in the case of appointment of a dependant of a Corporation employee who retires prematurely on being declared permanently incapacitated all the following conditions shall have to be fulfilled :-

- (a) On premature retirement he/she would not be entitled to the full pensionary benefits to which he/she would have been entitled if he/she had retired at his/her normal age of superannuation:
- (b) He/She has fully exhausted all kinds of leave with pay including commuted leave on medical ground:
- (c) He/she had two years of service or more left to reach the age of superannuation: and

(d) The financial condition of the family is so acute as to make the appointment essential consequent upon the fall in income due to such retirement.

(B) For the purpose of appointment on compassionate ground, a dependant of a Corporation employee shall mean wife/husband/son/unmarried daughter of the employee, who is/was solely dependant on the Corporation employee.”

In light of the Supreme Court’s judgment, it is clear that the exclusion of married daughter from the purview of the scheme is unconstitutional. Therefore, the rejection of petitioner no. 2’s claim on the grounds that she was a married daughter at the time of her father’s death cannot be sustained. However, I find that while the relevant officer of the Kolkata Municipal Corporation declined to consider petitioner no. 2’s application for compassionate appointment due to her failure to provide documentation regarding her dependency on her father at the time of his death, no attempt was made to investigate whether she was, in fact, dependent on him.

Before this Court, it has been submitted that petitioner no. 2’s husband is unemployed and that she lives with her mother and is dependent on the pension and retiral dues received by petitioner no. 1 after her husband’s death.

As this Court is not in a position to assess the factual aspects, the writ petition is disposed of with the following directions:

The order dated May 31, 2024, at page 33 of the writ petition is set aside. The relevant authority of the Kolkata Municipal Corporation shall

conduct an inquiry to ascertain whether petitioner no. 2 was dependent of her deceased father at the time of his death.

If the enquiry report is favourable, petitioner no. 2 shall be granted compassionate appointment.

If the report indicates otherwise, petitioner no. 2 shall not be entitled to compassionate appointment.

The entire process shall be completed by the Corporation within three months from the date of this order. A reasoned decision shall be communicated to petitioner no. 2 immediately.

(KAUSIK CHANDA, J.)