

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

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 44 of 2024

Sri Suprodip Das

Vs.

The State of West Bengal & Others

For the petitioner : Mr. Dilip Kumar Chatterjee,
Mr. Mrinmoy Bhattacharyya,
Mr. N. C. Dey,
Mr. Ritaban Sarkar

For the State : Mr. Biswabrata Basu Mallick,
Ld. AGP,
Mr. Debraj Sahu

Heard on : 08.07.2025

Judgment on : 08.07.2025

MADHURESH PRASAD, J.:

1. The father of the petitioner was appointed as a Group – D staff on a compassionate basis. He was taken in the work charged establishment working under the Office of the Executive Engineer, Murshidabad, Highway Division No. 1 of the Public

Works (Roads Department). The engagement of the father was on 12.12.1995. It is specific case of the petitioner that his father was confirmed in service by an office order dated 29.05.2001 issued by the Executive Engineer, Murshidabad, Highway Division No. 1. The confirmation was in terms of the West Bengal Service (Appointment, Probation and Confirmation) Rules, 1979 contained in notification dated 25.06.1979 bearing number 6060-F. The petitioner has made specific averments in his Original Application that the father was allotted an official accommodation, was engaged in election duty given the benefit of career advancement scheme and was placed in a pay band receiving salary as such including dearness allowance.

2. The sum and substance of the submissions of the learned counsel for the petitioner based on material on record before the Tribunal is that the petitioner was a confirmed government employee. It is not in dispute that the father of the petitioner was getting the pay band along with dearness allowance and career allowance scheme benefits. It is also not in dispute that the family of the petitioner is receiving the benefit of family pension. Under such circumstance the petitioner made an application for compassionate appointment. The Superintending Engineer, Central Highway Circle, P.W. (Roads) Directorate requested the Executive Engineer under whom the petitioner was working to

furnish ten documents including an authenticated copy of the petitioner's regularization of service order so as to facilitate consideration of his claim for compassionate appointment. The order is dated 14.02.2019. There is nothing on record to show that the Executive Engineer ever communicated the documents which he was required to furnish. The letter dated 14.02.2019 has also been sent to the petitioner, however, there is no averments in the Original Application that the petitioner took any steps to furnish these documents. The claim of the petitioner, however, was rejected by an order dated 28.01.2001 communicated by the Joint Secretary to the Government of West Bengal in the Public Works Department to the Superintending Engineer. A copy of this letter was sent to the petitioner also. He thereafter filed another representation and approached the West Bengal Administrative Tribunal (S.A.T) by filing O.A. No. 796 of 2021. He challenged the order dated 28.01.2021 before the S.A.T. The S.A.T by an order dated 27.04.2023 has rejected O.A. No. 796 of 2021 filed by the petitioner. The operative part of the order of the Tribunal reads as follows:

“In view of the above observations, the Tribunal is of the opinion that this application for compassionate employment has no merit, although the deceased employee had worked under work-charged establishment and later confirmed, but this does not alter the fact that his appointment was not on regular basis.

Therefore, the reasoned order passed by the respondent is upheld and no order is passed. This application is disposed of.”

3. The order of the Tribunal sustains rejection of petitioner’s claim for compassionate appointment as contained in letter dated 28.01.2021 issued by the Joint Secretary, Respondent No. 2. The letter of 28.01.2021 does not manifest any consideration whatsoever of any of the ten documents which was requisitioned under letter dated 14.02.2019. Though these documents were requisitioned, the rejection has been communicated without reference to any of these documents. The rejection order does not even record whether these documents were ever communicated to the Joint Secretary, by the Executive Engineer. The rejection is founded only on a plain reading of one notification bearing number 251-EMP dated 03.12.2013 issued by the Labour Department, containing the policy for grant of compassionate appointment, under which the petitioner’s claim was to be considered.
4. The rejection is based on an assumption that the petitioner’s father was not appointed on regular basis till the time of his demise. The finding of the Tribunal, extracted above, after due consideration of the material on record, however, takes note of the fact that the petitioner’s father was “later confirmed”. We find the confirmation order was issued in terms of the West Bengal

Service (Appointment, Probation and Confirmation) Rules, 1979 as contained in notification dated 25.06.1979 bearing number 6060-F. It is also the specific case of the petitioner in the Original Application in paragraph 6 (XIX and XX) that the father of the petitioner was confirmed in service and also that the legal heirs/dependent of another employee similarly situated as the petitioner's father has been given appointment on compassionate ground. These averments made in the Original Application have not been specifically controverted or denied by the respondents in their reply filed. Viewed thus, keeping in background the specific order of confirmation dated 25.06.1979, the reason assigned for rejecting the petitioner's claim that his father was "not appointed on regular basis" is clearly unsustainable.

5. In the report filed in the present proceedings on behalf of the State, a new stand has been taken that (*"being confirmed is not tantamount to being adjudged as a regular one"*). In view of such stand we called upon the learned State counsel to refer to the relevant provision in any rule or regulation wherein a distinction has been carved out between a confirmed and regular employee. He has tried to distinguish the petitioner's confirmation with the regularization referring to the provision contained in the 1979 Rules. Upon going through the provisions contained therein we find that in Rule 2 sub-Rule 2 of the 1979 Rules a work-charged

employee has been included as a whole time employee of the government for the purposes of the applicability of the 1979 Rules.

6. The exclusions on the other hand are specified in sub-Rule 3 thereof: persons appointed on contract basis, part time employee, casual labours, daily labours, master role workers and social labours. There are also other category of Central Government and State Government employees specified in sub-Rule 3. Rule 2 sub-Rule 2 reads:

“2. Application -

(2) Subject to the provisions of sub-rule (3), these rules shall apply to all persons who are whole-time employees of Government, including those who are paid out of contingencies or under work-charged head or who are paid on piece-rate basis but employed throughout the year.”

7. Insofar as the stand that a confirmation does not amount to regularization. We find that Rule 3 of the 1979 Rules defines what is an appointment on permanent basis in the following terms:

“3. Definitions. – In these rules, unless there is anything repugnant in the subject or context, -

- (a) “appointment on permanent basis” means substantive appointment with confirmation;
- (b) “appointment on probation” means appointment on trial before confirmation;
- (c) “Government” means the Government of West Bengal;
- (d) “probationer” means a Government employee appointed on probation;
- (e) “temporary service” means service beginning from the date of appointment under Government till the date of appointment on probation or on permanent basis;”

8. Rule 5(1)(b) reads as follows:

“5. Appointment on probation and appointment on permanent basis.-

(1) A Government employee-

.....

(b) shall be confirmed and made permanent on satisfactory completion of the period of probation. Where passing of any departmental examination is essential before confirmation, the provisions of Chapter I of the Services 9Training and Examination) Rules, West Bengal, shall have to be complied with.”

9. In view of such provision contained in the Rules the stand of the respondents in the report filed in the present proceedings that there is a distinction between a confirmation and a regularization is not supported by or founded on any provision in any rules, and appears to be fallacious and unsustainable. On the other hand we find that petitioner's father was initially engaged on work charge basis, and was confirmed in service by the competent authority. He was getting salary in a pay band with benefit of dearness allowance and career allowance scheme. His family is also getting family pension. The specific assertion of the petitioner before the Tribunal that family member of another deceased employee similarly situated as the petitioner has been given the benefit of compassionate appointment, is also not in dispute.

10. The Tribunal's conclusion appears to be self contradictory and without considering these facts on record in as much as, in the same breath the Tribunal has recorded that the petitioner's father was confirmed; and also held that since he was not appointed on regular basis his claim for compassionate appointment was rightly not considered.
11. For the reasons indicated above, we find the order of the Tribunal to be unsustainable. We set aside the order of the Tribunal dated 27.04.2023 passed in O.A. No. 796 of 2021 as well as the communication dated 28.01.2021 issued by the Joint Secretary, Public Works Department.
12. Since we do not find any consideration of the petitioner's claim with reference to the ten documents/parameters specified in the communication dated 14.02.2019 earlier requisitioned by the Superintending Engineer, we direct the authorities to consider the petitioner's claim with reference to the these documents. Since the communication dated 14.02.2019 has also been sent to the petitioner, the petitioner would be at liberty to provide these documents or any of these documents which may be in his possession.
13. Having said so we make it clear that the primary responsibility of furnishing these ten documents lies on the Executive Engineer since the petitioner is a legal heir of the Government employee

and may not be in position to trace these ten documents. The documents must be furnished by the Executive Engineer within 4 weeks from the date of receipt/production of a copy of this judgment.

14. Let a final decision be taken by the respondent authorities on the petitioner's claim without raising an issue regarding him not being regularized, by a reasoned and speaking order within a period of three months from the date of receipt/production of a copy of this order.
15. The writ petition is allowed in the above terms. The order of the SAT dated 27.04.2023 passed in O.A. No. 796 of 2021 is set aside and the Original Application stands allowed.
16. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(SUPRATIM BHATTACHARYA, J.)