

Court No. 2

16.6.2025

(Item No. 10)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 7615 of 2025

Bishnu Rajak

VS

The State of West Bengal & Ors.

Mr. Arik Banerjee

.... For the petitioner

Mr. Ashim Kumar Ganguly, Id. AGP

Mr. Bellal Shaikh

.... For the State

Mr. Arik Banerjee, learned advocate appears for the petitioner.

Mr. Ashim Kumar Ganguly, learned Additional Government Pleader with Mr. Bellal Shaikh, learned advocate appears for the respondent nos. 1 to 4.

On the prayer of Mr. Ashim Kumar Ganguly, learned Additional Government Pleader, time to file report in the form of affidavit stands extended till today. The report filed in Court today is taken on record.

The father of the petitioner was an employee of P.W.D. The father died on **June 16, 2016** during his employment tenure. The death certificate is annexed at **page 36** to the writ petition. Immediately after the said demise, on **September 2, 2016** the widow of the deceased employee being the mother of the

writ petitioner applied for compassionate appointment in favour of the petitioner amongst other children of the deceased. The petitioner had the requisite academic qualification. The record shows till **August 24, 2023** at **page 15** to the report filed by the respondents there was no application submitted in prescribed format seeking compassionate appointment as per the prevailing Rules. The relevant Rules for providing compassionate appointment mandates that necessary application seeking such an appointment must be submitted within **“two years”** from the date of death of the concerned employee.

Mr. Ashim Kumar Ganguly, learned Additional Government Pleader appearing for the State referring to the said prescribed format dated **August 24, 2023** submits that, the application was submitted much after two years. In fact about seven years after the death of the employee, hence, the same was barred under the mandatory Rules and the application was rejected.

Mr. Arik Banerjee, learned counsel appearing for the petitioner submits that, immediately within three months from the date of the death of the deceased employee the

application was submitted by the mother of the petitioner on **September 2, 2016, annexure P-3** at **page 28** to the writ petition. Neither the applicant being the mother of the petitioner nor the petitioner contemporaneously was informed that this was not a valid application submitted by the mother and an application ought to have been submitted in the prescribed format. Hence, the petitioner submits that, there was no delay or laches on the part of the petitioner in pursuing the claim for compassionate appointment, as the claim was made and was persuaded since **September 2, 2016**. The petitioner, therefore, claims compassionate appointment.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the relevant rules granting compassionate appointment no doubt prescribes two years time limit for submission of necessary application from the date of death, as in the instant case. On the same breath the same rule published in the official Gazette dated **March 1, 2016, annexure P-18** at **page 82** to the writ petition provides as follows:

“The concerned authority in the department/office should meet the members of the family of the deceased Govt. servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first stage and should be advised in person about the requirement and formalities to be completed by him. A record of such meeting should be kept with the office of the controlling authority and appointing authority.”

The respondents in its affidavit report have taken the following stands:

“5. That on 02.09.2016, the Petitioner submitted his application for compassionate appointment in a plain paper to the Executive Engineer, Murshidabad Highway Division-I through proper channel.

6. That on 03.10.2016, the office of the deponent has received a prayer of the Writ Petitioner for service on compassionate ground on a plain paper from the Assistant Engineer, Raghunathganj Highway Sub-Division. At that time, this office of the Deponent has provided him all prescribed format as per the relevant Government Order and verbally advised the Petitioner to submit his application in the prescribed format.

Copies of the application dated 02.09.2016 and the letter dated

03.10.2016 of Assistant Engineer, Raghunathganj Highway Sub-Division are annexed herewith and marked as Annexure R-2 collectively.

7. That despite several oral reminders to the Petitioner for submitting his application in prescribed format, the Petitioner did not submit his prayer for compassionate appointment in prescribed format. Thereafter, on 19.10.2016 i.e. after lapse of more than 15 days from the date of receiving of the application dated 02.09.2016 in plain paper by the office of the Deponent, having no other alternative, the application dated 02.09.2016 was forwarded to the Superintending Engineer, Central Highway Circle, Public Works (Roads) Department for further consideration and necessary action by the officer of the Deponent.

A copy of the letter dated 19.10.2016 is annexed herewith and marked as Annexure R-3.”

On a plain reading of the said averments made by the respondents in its report on affidavit, would show that there was no written communication sent to the widow of the employee concerned or the petitioner advising them to submit application in the prescribed format which is also a mandatory obligation on

the part of the employer concerned in terms of the Rules as quoted above.

The law is well settled. Compassionate appointment is the result of a benevolent and welfare policy of the State/employer. Such an appointment cannot be claimed as of right. Compassionate appointments are provided to the family of the deceased employee to provide an immediate support for survival in view of the untimely and premature death suffered by the sole earning member of the family concerned. The family members eligible to get such an appointment are the beneficiaries of such benevolent scheme. A welfare scheme of the State/employer has to be read and applied in a manner as liberal as possible in favour of its beneficiaries, of course, subject to the restrictions imposed therein and the discretion should be used by the employer judiciously.

The relevant rule in the instant case, as would be evident from the said notification dated **March 1, 2016, annexure P-18** at **page 82**, shows that immediately upon the death of the employee it is a mandatory obligation upon the employer to guide the dependents for compassionate appointment. The record in the instant case admittedly shows during the period

September 2, 2016 till **August 2023** there was no single correspondence or communication made by the employer addressing the widow of the petitioner to guide them to file necessary application through the prescribed format of the relevant guidelines. The statements quoted above from the affidavit report filed on behalf of the respondents also do not show such an endeavour was taken by the employer, save and except a vague plea of verbal communication. The plea taken by the State in defence is not tenable in law. The scheme for compassionate appointment must be construed liberally and in its true spirit and effect.

In view of the foregoing reasons and discussions, the impugned decision of the employer dated **September 3, 2024** and **December 12, 2024, annexure P-11** at **pages 58 and 59** to the writ petitions stands **set aside** and **quashed**.

The ***appropriate authority*** of the employer respondents is directed to consider the application submitted for the compassionate appointment in the prescribed format, as would be evident from **annexure R-5** to the affidavit report, after granting an opportunity of hearing to the petitioner and

then by passing a reasoned order in accordance with law.

The hearing should be given to the petitioner upon a prior hearing notice of at least seven days. It is also noted that the petitioner shall be at liberty to be accompanied with an authorized representative during the hearing before the appropriate authority.

It is made clear that, this Court has not gone into the merits of the claim for compassionate appointment of the petitioner.

The petitioner shall be at liberty to urge whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before the appropriate authority but the same shall not travel beyond the prescribed format already submitted.

The entire exercise shall be carried out and completed by the appropriate authority of the employer within the period of **six weeks** from the date of communication of this order and the reasoned order shall be communicated to the petitioner after **one week** from the date of the said reasoned order to be passed.

In the event, the reasoned decision goes in favour of the petitioner, the appropriate authority of the respondents shall give an

immediate effect thereto but positively within a period of **four weeks** from the date of the said reasoned order to be passed.

It is also made clear that, this order shall not create any right or equity in favour of the petitioner, in the event, the petitioner does not succeed to his claim before the appropriate authority strictly in accordance with law.

With the above observations and directions this writ petition **W.P.A. 7615 of 2025** stands **allowed**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)