

15.12.2025.
Item No. 22.
Court No. 4
ap

WP.ST 93 of 2025

**Avijit Sarkar
Versus
The State of West Bengal & Ors.**

Mr. Prosenjit Mukherjee,
Ms. Babita Pramanik,
Mr. Raja Roy,
Mr. Prosenjit Chongder.

...For the petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Sangeeta Roy.

...For the State.

1. The writ petitioner was the applicant before the West Bengal Administrative Tribunal (Tribunal in short). His O.A. No. 735 of 2023 asserting a claim for compassionate appointment was rejected by order of the Tribunal dated 13.12.2024, which is put to challenge in the recent writ petition.
2. Affidavit-of-service filed in Court today be taken on record.
3. The writ petitioner claimed benefit of compassionate appointment.
4. The West Bengal Administrative Tribunal has considered the order of the Authorities dated 11th July, 2023 rejecting the petitioner's claim. The order is under the signature of the Joint Secretary to the Public Works Department.

5. The sum and substance of the reasons assigned by the Joint Secretary is that the petitioner's mother, Ex-Work Guard, discharged duty under the work charges establishment and her service was not brought under the regular establishment. She has, therefore, been found ineligible for the benefit of compassionate appointment.

6. Learned Advocate for the writ petitioner makes twofold submissions. The first submission is that the petitioner was appointed in the year 1991 as Work Guard. He was extended the benefit of a Pay Scale, granted the benefit of revision from time to time and her service book was also opened. He further submits that the petitioner, therefore, was required to be considered for grant of benefit of compassionate appointment since his mother's employment and existence in the Department based on the above facts was as good as a permanent employee. Another submission advanced is that the order of the Joint Secretary rejecting the petitioner's claim is by assessing his eligibility with reference to 251-Emp dated 3rd December, 2013. The petitioner's mother died prior to coming into force, or existence of 251-Emp; and therefore, the order on the face of it is unsustainable. He has placed reliance upon a decision of the Apex Court in the case of **Canara Bank – Vs. – Ajithkumar G.K.** decided on 11th February, 2025 in

Civil Appeal No. 255 of 2025. A copy of the judgment has been handed over to the Court.

7. Learned Additional Government Pleader, on the other hand, submits that by virtue of the fact that she may have been granted a scale or service book opened, the petitioner cannot claim that the status of his mother changed from that of a work charged employee to a regular employee.

8. It is the specific admission of the petitioner in the original application that the petitioner's mother was a work charged employee and that his mother was never regularized or absorbed in the regular establishment. He relies upon a decision of the Apex Court in the case of ***State of Madhya Pradesh & Ors. – Vs. – Amit Shrivastava*** reported in ***(2020) 10 Supreme Court Cases 496*** to submit that the grant of scale or any such benefit cannot change the reality that the petitioner's mother was in work charged establishment. He refers specifically to paragraphs 17, 21 and 22 of the said judgment.

9. We have considered the rival submissions of the parties. In so far as the issue regarding inapplicability of 2013 Policy, namely, 251-Emp, we find that even if the submission is accepted, and the petitioner's claim examined with reference to the earlier Policy dated 2nd April, 2008 (30-Emp), the consideration would not change. Even under the 2008 Policy, the

compassionate appointment was contemplated only for dependants of a “Government Employee”.

10. In so far as the second submission regarding grant of scale during service and other benefits, such as revision etc, the submission has to be viewed keeping in the background the petitioner’s own case as stated in the original application. Paragraph 6 (iv) of the original application reads as follows:

“The mother of the applicant late Sandhya Sarkar was originally appointed as a Work-Guard who joined in service on 29.08.1991 and continued as such till she died-in-harness on 11.04.2012. The original appointment of Late Sandhya Sarkar was under the work-charged establishment of Bolpur Highway Sub-Division. Despite continuing in service uninterruptedly for more than 21 years and having also completed more than 10 years continuous satisfactory service in the post of Work Guard since 29.08.1991, she was not been absorbed in the regular establishment in terms of the Finance Department’s Order Nos.5428F dtd. 19.12.1966 and 4026F dtd. 22.04.1974. Such right of absorption in the regular establishment had though accrued to him way back in the year 2001 pursuant to the aforesaid departmental orders, it was not conferred to her during her lifetime due to the apparent departmental laches. As such, under the rule of law, prior to her demise, late Sandhya Sarkar must be deemed to have been absorbed in the regular establishment in the given facts and circumstances of the case.”

11. The admitted position emerging from the pleadings is that the petitioner’s mother was in the work-charged establishment and that she had not been absorbed in the regular establishment.

12. We therefore find that the submission regarding grant of Pay Scale and other revision benefits etc. to be of no avail, in view of the law based on decision of the

Apex Court in the case of **Amit Shrivastava (supra)** particularly paragraphs 21 and 22 of the judgment reads as follows:

“21. The moot point, thus, is that having been granted increments, could a person be said to have reached the status of a regular employee? In order to answer this question, we may note that while considering this aspect in the aforesaid judgment, it was specifically opined that even ‘if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in the negative terms.’ We say so, not with the objective of giving a licence to the appellants to withdraw any of the benefits, which are already granted, and we make this unequivocally clear. However, we cannot at the same time make a conclusion that the status acquired is that of a regular employee upon having achieved the status of a permanent employee in service.

22. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a ‘permanent’ status and a ‘regular’ status appears to have been lost sight of in the impugned judgments.”

13. We, therefore, find that no benefit would enure to the petitioner on the alleged claim that his mother was granted a Pay Scale while in service or revisionary benefits. The petitioner’s mother’s status as a work-charged employee was never altered by absorption or regularization in the permanent establishment. The benefits of compassionate appointment under the 2008 Scheme as well as 2013 Scheme both are available only to the dependant of a “Government Employee”.

14. Since the petitioner's mother was not a Government employee, we find no infirmity in the rejection of the claim for compassionate appointment by the Joint Secretary, Public Works Department by his order dated 11th July, 2023. Its affirmation by the Tribunal by its order dated 13th December, 2024 passed in O.A. No. 735 of 2023 does not require any interference.

15. The writ petition is dismissed.

16. There will be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)