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W.P.A. 11734 of 2023

Santanu Chatterjee

-vs-

The State of West Bengal & Ors.

Mr. A. K. Lahiri

....for the petitioner.

Mr. Nilotpal Chatterjee,  
Mr. Debraj Sahu

....for the State.

This is the fourth round of litigation between the parties.

Briefly, the father of the petitioner who was an employee attached to the Court of the District Judge, Howrah died-in-harness on November 13, 2004.

On his demise, the petitioner had made an application for compassionate appointment. Thereafter, the petitioner was asked to appear for an interview on 29<sup>th</sup> January, 2005. Pursuant to the interview, by an order dated 2<sup>nd</sup> March, 2006 the petitioner's claim was considered by the Appropriate Authority in terms of the Finance Department Memo dated 1<sup>st</sup> March, 2006 and the prayer for compassionate appointment was rejected.

Being aggrieved by such order, the petitioner filed a writ petitioner being WPA 14464 of 2006. By an order dated 28<sup>th</sup> July, 2006, a Coordinate Bench directed the respondent authorities to act in terms of the Memo dated 2<sup>nd</sup> March, 2006. Subsequently, the petitioner's claim was rejected by an order dated 19<sup>th</sup>

March, 2007 by the respondent authorities. By such order, it was held that the petitioner's claim was barred in terms of the Memo dated 6<sup>th</sup> June, 2005 issued by the Labour Department.

Being aggrieved by the said order, the petitioner preferred an appeal. By an order dated 5<sup>th</sup> June, 2017 the Hon'ble Division Bench, *inter alia*, set aside the order dated 11<sup>th</sup> June, 2012 and directed the Government of West Bengal, Judicial Department to consider the petitioner's claim for compassionate appointment afresh in terms of the Memo dated 21<sup>st</sup> August, 2002 as referred to in the Memo dated 1<sup>st</sup> March, 2006 and pass a reasoned order after granting an opportunity of hearing to the petitioner. In terms of the above direction of the Hon'ble Division Bench, the petitioner was granted compassionate appointment in 2019. Now, the petitioner prays for notional benefits with effect from 19<sup>th</sup> March, 2007.

It is contended on behalf of the petitioner that the petitioner was entitled to compassionate appointment in 2007 and in view of misinterpretation of the then prevalent laws, the appointment of the petitioner had been unnecessary delayed.

Pursuant to directions of Court, the respondent authorities have filed a Report. The petitioner has also filed an exception to the Report.

There is no doubt as to the appointment of the

petitioner pursuant to the order dated 5<sup>th</sup> June, 2017 passed by the Hon'ble Division Bench. Admittedly, the petitioner was appointed by a reasoned order issued on 3 October, 2019 by the District Judge, Howrah and was asked to join service with effect from 1<sup>st</sup> November, 2019. The appointment letter was unconditionally signed and accepted by the petitioner. The petitioner did not contemporaneously raise any claim for retrospective seniority. The present claim of the petitioner has been agitated for the first time in 2023 after a period of more than three years post the appointment.

It is well settled that the appointment, joining and seniority of an employee is governed by the respective applicable rules which govern the concerned issues and no benefit is admissible *de-hors* the Rules. In this context, the West Bengal Service Rules (Part I & II), West Bengal District Court (Constitution of Service, Recruitment, Appointment, Probation and Discipline of Employees), Rules, 2015 and West Bengal Services (Determination of Seniority), Rules, 1981 insofar as they deal and relate to compassionate appointment do not contemplate any claim on the ground of notional benefits. To do otherwise and afford notional seniority from 2007 to the petitioner, would unsettle all appointment made during the interregnum.

The entire case of the petitioner is based on an appointment on compassionate grounds. There is no provision in law which permits appointment on compassionate grounds with retrospective effect. It is well settled that the purpose of giving appointment on compassionate grounds is only to provide financial succour so that the bereaved family can survive even after the death of the major bread earner of the family. Compassionate appointments must be in consonance with the constitutional scheme of equality enshrined in Articles 14 and 16 of the Constitution. The concept of notional seniority is inapposite and destroys the rationality behind compassionate appointment. It is also well settled that the right to compassionate appointment does not create any vested right in favour of the petitioner.

In case, the prayer of the petitioner is accepted it would result in the petitioner becoming Senior to a host of direct recruitment candidates who have earned their position in the gradation list by merit. To this extent, the prayer of the petitioner is misconceived inasmuch as any notional retrospective seniority is not only in contravention of the Rules but would be inequitable, discriminatory and prejudice the seniority of employees appointed by direct recruitment of promotion. The decision relied on by the petitioner in *Somesh Thapliyal v. Vice-Chancellor, H.N.B. Garhwal*

*University*, AIR 2021 SC 4158 is distinguishable and inapposite inasmuch as in that case there was no question of compassionate appointment.

In view of above, there is no merit in this writ petition. The writ petition is dismissed.

In conclusion, it is clarified (in view of the submissions on behalf of the State authorities) that inasmuch as the petitioner is still in service, the petitioner would be entitled to all pensionary benefits in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Ravi Krishan Kapur, J.)**