

27th March, 2025
(D/L No.09)
Ct. No.4
(SKB)

W.P.S.T.130 of 2024

Bomkesh Chakraborty
Versus
The State of West Bengal and others

Mr. Saurav Chaudhuri
....for the petitioner.

Mr. Tapan Kumar Mukherjee, Id. AGP,
Ms. Ashmita Chakraborty
...for the State.

1. The petitioner's father while working as a U.S.W. in the Krishnanagar Block Level Dairy Officer, died in harness on 25.10.2009. The petitioner made an application for grant of compassionate appointment, which was rejected by an order dated 02.09.2021 passed by the Additional Chief Secretary, Government of West Bengal. The reasoned order was passed in compliance of the order passed by the West Bengal Administrative Tribunal (in short 'Tribunal') in OA No.125 of 2020 earlier filed by the petitioner seeking direction upon the respondents to dispose of his application for compassionate appointment.
2. The order dated 20.09.2021 records a finding that the family income of the petitioner is below 90% of the last salary drawn by the deceased employee. Still the petitioner's claim for compassionate

appointment has been rejected on the following grounds:

“The three-man enquiry committee had found, on physical verification in the year 2015, that the applicant ran an electrical repair shop located adjacent to his house. During the hearing, the applicant admitted that there is a small shop adjacent to his house where he repairs water filters, radios, etc., although he claimed the shop was not his, but his uncle’s.

Upon being shown the photograph of his house with a dish antenna, he admitted that he has an Airtel dish antenna for TV. He also admitted to having a motor cycle although he explained that he had received it as a gift from his in laws at the time of his wedding.

The applicant also revealed that his two siblings, namely Sunanda Bhattacharya and Sanchayita Chakroborty had been given away in marriage and were happily settled. This goes to suggest that the applicant does not have any responsibility to discharge on behalf of his father.

In the context of the above findings, I do not find any reason to disagree with the second part of the report of the three-man enquiry cum screening committee. Having seen photographs of the house property on which the applicant (and his family) has been living with his mother on a land measuring 4.5 decimals with a concrete boundary wall and an iron gate; the applicant having admitted that there are two brick structures on the said plot of land (one for his mother and the other for himself); the applicant having admitted that he has on his roof an Airtel dish antenna for TV, the applicant having admitted that he owns a motor cycle and that he works at an electrical repair shop; and having seen the applicant in person and having got a clear impression that he is not financially indigent or financially destitute. I am constrained to hold that the applicant fails to qualify for appointment on compassionate grounds.”

3. The petitioner assailed these findings before the Tribunal by filing OA No.833 of 2021. The Tribunal, after considering the submissions of the parties and material on record, has relied upon the various details recorded in the impugned

order dated 18.07.2023 passed in OA No.833 of 2021, extracted above. The petitioner, thus, has been found to be ineligible for grant of compassionate appointment as the financial condition of the petitioner has not been found to be warranting such benefit.

4. The learned counsel for the petitioner submits that the order passed by the Additional Chief Secretary, Government of West Bengal, dated 20.09.2021 is unsustainable as the same places reliance on irrelevant considerations.
5. In spite of specific denial that the electrical repair shop was not belonging to the petitioner, the same has been held as a disqualification for the purposes of grant of compassionate appointment. The fact that there was an Airtel dish antenna on the house; or that a motorcycle belongs to the petitioner is also irrelevant for consideration under the 2013 Scheme.
6. Once the authorities found the family's income to be below 90% of the last salary drawn by his father, the petitioner was eligible for grant of benefit of compassionate appointment.
7. The respondents kept his application pending for nearly 11 years. Only after orders passed by the Tribunal in the earlier OA No.125 of 2020, the order has been passed by the Additional Chief

Secretary, Government of West Bengal on 20.09.2021 that also based on irrelevant considerations. The Tribunal has omitted to take into considerations these facts and has erred in accepting the rejection of the petitioner's claim to be valid, even though it relied on irrelevant considerations.

8. The learned counsel for the State, on the other hand, submits that the three-man committee has considered the petitioner's application. Referring to the order of the Additional Chief Secretary, Government of West Bengal, Mr. Mukherjee has submitted that the order records that in the course of verification, the authorities have found that the petitioner was running an electrical repair shop and that he had a house and a motorcycle and, therefore, they have rightly considered him to be ineligible for the grant of compassionate appointment. The order of the Tribunal upholding such decision does not require any interference.
9. Upon consideration of the rival submissions, we observe that it is not in dispute by the parties that the eligibility criteria for grant of compassionate appointment, applicable to the present case is specified in the notification dated 03.12.2013

issued by the Labour Department, Government of West Bengal.

10. Clause 6 thereof has been relied upon by the learned AGP, which reads as follows:

“(6) Eligibility –

(a) The family is indigent and deserves immediate assistance for relief from financial destitution. For this any of the following two conditions is to be satisfied.

(i) The monthly income of the family falls below 90 per cent of the gross monthly salary of the employee before death or premature retirement.

(ii) The monthly income of the family falls below the minimum salary of a Group-D employee (in case of Group-D employees) or the minimum salary of a Lower Division Clerk (in case of employees other than those belonging to the Group-D).

The gross monthly salary, for the purpose of this definition shall mean, basic pay (Band Pay + Grade Pay), dearness allowance, house rent allowance and medical allowance.

The monthly income of the family shall mean the aggregate of :

- (I) Total family pension per month (Basic Pension and Dearness Relief, Medical Allowance).
- (II) Monthly interest income @ 8% p.a. on the total amount received by the family after death of the employee or retirement of the incapacitated employee (Gratuity, Leave Encashment, any other payments excepting GPF).

Provided that, where an ex-employee had to incur medical expenses as indoor patient prior to a leading to his death/incapacitation, such expenses is deducted from the amount received. All such expenses must be supported by original receipt/Cash memo, hospital discharge Certificates.

- (III) Monthly income from movable and immovable properties (the family members shall submit declaration on the matter).
- (IV) Monthly income of the dependants of the ex-employee named in the application (the family members shall submit declaration on the matter).

(b) In case of premature retirement the concerned employee had at least two years of service left to reach the normal age of superannuation and should fulfill the following conditions.

- (i) 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.
- (ii) He/she has fully exhausted all kinds of leave with pay including commuted leave on medical ground;
- (iii) The financial conditions of the family is so acute as to make the appointment essential consequent upon the fall in income due to such retirement.

(c) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules.

Note: (a) Condonation of excess in age in case of eligible cases will be made by the respective head of the department or their subordinate Officer who are competent to make the compassionate appointment as per existing provision.

(b) Relaxation in educational qualification may be granted in eligible cases for appointment to Group 'D' post in consultation with the Finance Department.

(c) The dependent member shall invariably attain the minimum age for recruitment within six months from the date of death or incapacitation of the concerned employee."

11. Insofar as the issue whether the family is indigent and deserves immediate assistance as relief from financial destitution or not, the 2013 Scheme contemplates that in a case where the family income of the deceased is below 90% of the gross monthly salary last drawn by the deceased employee, then the applicant claiming the benefit of compassionate appointment would be eligible

for the same. But this is not the only eligibility criteria as is evident from bare perusal of Clause 6 of the 2013 Scheme extracted above.

12. Insofar as the criteria of the family income having less than 90% of the gross salary, we find there is a specific finding to this effect recorded in favour of the petitioner in the order passed by the Additional Chief Secretary, Government of West Bengal.

13. Having recorded such finding, which shows the petitioner to be eligible for the grant of compassionate appointment under the 2013 Scheme, the decision of the Additional Chief Secretary, Government of West Bengal finds the petitioner to be ineligible on the grounds which also have been extracted above. The petitioner has clearly disputed before the authorities that he is the owner of an electrical repair shop. However, the shop has been held to be his so as to be a ground of disqualifying the grant of compassionate appointment.

14. We find such finding to be perverse as the same is not founded on any material whatsoever to show that the petitioner is the owner of the shop in question. In fact, the three-man committee has not even examined the issue with

the perspective of establishing whether the shop belongs to the petitioner or not.

15. The other grounds regarding a photograph of his house with a Dish TV antenna and the fact that he had a motorcycle are also not relevant in view of the provisions contained in 2013 Scheme, extracted above. What is relevant under the Scheme is the family income and other parameters specified in Clause 6 of the notification dated 03.12.2013.

16. The three-man committee was required to consider the petitioner's claim with reference to material, which could establish whether based on the family income, the petitioner was eligible in terms of Clause 6 of the 2013 Scheme, which has not been done.

17. We, therefore, find the decision of the Additional Chief Secretary, Government of West Bengal dated 20.09.2021 to be unsustainable. The order dated 20.09.2021 bearing no.1370-A.R.D. issued by the Additional Chief Secretary, Government of West Bengal in the Animal Resources Development Department is hereby quashed. As a result of quashing of the said order, the order passed by the Tribunal in OA No. 833 of 2021 dated 18.07.2023 must also collapse. The same is also set aside.

18. The matter is remitted to the authorities for making an expeditious consideration since the matter now involves quite an old claim of the petitioner for grant of compassionate appointment.
19. The respondent no.2 is, therefore, directed to constitute a three-man committee to consider the claim of the petitioner with reference to his family's income. The three-man committee should be constituted by the respondent no.2 within four weeks from receipt/production of a copy of this order for proper consideration of the petitioner's claim after giving due opportunity to him. The three-man committee should proceed to conclude the consideration by a reasoned and speaking order to be passed within eight weeks thereafter.
20. With such direction, the writ petition stands allowed.
21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)