

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 14937 of 2016

Sukla Das

-Vs-

Kolkata Metropolitan Water & Sanitation Authority & Ors.

For the Petitioner	: Mr. Sudipta Dasgupta
For the Respondents/KMDA	: Mr. Satyajit Talukdar Mr. Arindom Chatterjee
Heard on	: 07.10.2024, 27.11.2024, 05.02.2025
Judgment on	: 02.09.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner sought for issuance of a writ of mandamus directing the respondent authorities to appoint her on compassionate ground under the *die-in-harness* category, consequent upon the death of her father, Late Kala Chand Das, and for quashing of the reasoned order No. 4L-03/2016 dated 12.07.2016 rejecting her claim. The writ petition further assails the vires of Rule 3(d) of the West Bengal Scheme for Compassionate Appointment notified vide Notification No. 251-Emp. dated 03.12.2013.
2. The petitioner's father, Late Kala Chand Das, was employed under the Kolkata Metropolitan Water and Sanitation Authority since 01.03.1985 and

died in harness on 03.05.2013 leaving behind his wife and three daughters including the petitioner. While the two elder sisters were married and settled, the petitioner, though married, had been residing with and maintaining her mother. Both sisters issued “No Objection” to the petitioner being considered for compassionate appointment. Accordingly, the petitioner applied on 28.05.2013 for appointment in any suitable post.

3. By communication dated 08.06.2015 (No. 1E-12/2006/535), respondent no.3 required the petitioner to submit an affidavit duly affirmed before a 1st Class Judicial Magistrate. The petitioner complied within the stipulated time, submitting the requisite affidavit and form.
4. As no further steps were taken, the petitioner approached this Hon’ble Court by filing W.P. No. 10014 (W) of 2016. By order dated 15.06.2016, the Court directed the authorities to communicate a reasoned decision. Pursuant thereto, the respondent authorities, by order No. 4L-03/2016 dated 12.07.2016, rejected the petitioner’s claim under the 2013 Scheme.
5. The Learned Advocate representing the petitioner submitted as follows:-
 - (i) The petitioner, being the daughter of Late Kala Chand Das (an employee of Kolkata Metropolitan Water and Sanitation Authority who died in harness on 03.05.2013), applied for appointment on compassionate ground under the “died-in-harness” category.
 - (ii) Upon due enquiry, the respondent authorities initially accepted her claim, called her for interview on 25.06.2015, and were satisfied regarding her financial hardship. However, by order dated

12.07.2016, her claim was rejected solely on the ground that she was a *married daughter*, in terms of Rule 3(d) of the West Bengal Scheme for Compassionate Appointment, 2013.

- (iii) The Rule discriminates between *married* and *unmarried* daughters of a deceased employee.
- (iv) Such classification is arbitrary, unreasonable, and violative of Article 14 of the Constitution of India as there is no intelligible differentia or rational nexus to the object of compassionate appointment.
- (v) The object of compassionate appointment is to alleviate *sudden financial distress* of the dependents of a deceased employee, which cannot be defeated merely on the ground of marital status.
- (vi) Reliance is placed on the judgment in *Purnima Das & Ors. v. State of West Bengal & Ors.*, reported in (2017) 4 CHN 362, wherein a Division Bench of the Calcutta High Court held that exclusion of married daughters from the purview of compassionate appointment is unconstitutional. The offending word “unmarried” in the relevant notification was struck down as violative of Article 14.
- (vii) The Hon’ble Supreme Court, in SLP (C) Nos. 17638-17639/2018, dismissed the State’s challenge to the above judgment on 23.07.2019, thereby affirming the principle that married daughters

cannot be excluded from the zone of consideration for compassionate appointment, provided they establish dependency on the deceased employee and willingness to maintain other dependents.

(viii) In the present case, rejection of the petitioner's claim only on the ground of being a "married daughter" is illegal, arbitrary, and unsustainable in law. The impugned order dated 12.07.2016 is liable to be quashed, and the respondents directed to consider the petitioner for compassionate appointment in terms of the law laid down in *Purnima Das* (supra).

6. The Learned Advocate representing the respondent submitted as follows:-

- (i) The terminal benefits payable on account of the death of the petitioner's father, Late Kala Chand Das (employee of KMW&SA), were duly disbursed to the family.
- (ii) The petitioner was married on 05.12.2006, whereas her father died in harness on 03.05.2013, i.e., more than six years after her marriage.
- (iii) The erstwhile KMW&SA did not have an independent scheme of compassionate appointment; it followed the West Bengal Scheme for Compassionate Appointment, 2013, notified vide Memo No. 251-Emp dated 03.12.2013.

- (iv) Clause 3(d) of the said Scheme, 2013, expressly excludes a *married daughter* who was already married on the date of death or incapacitation of the employee from being considered for appointment on compassionate ground.
- (v) In compliance with the order dated 15.06.2016 passed in W.P. No. 10014(W) of 2014, the petitioner's claim was duly considered by the respondent authority through a properly constituted Committee. In terms of Clause 3(d) of the said Scheme, the Committee found her ineligible, and accordingly, the reasoned order was communicated vide Order No. 4L-03/2016 dated 12.07.2016.
- (vi) In reply, the petitioner relied on the Larger Bench decision in *State of West Bengal & Ors. v. Purnima Das & Ors.*, FMA No. 1277 of 2015, contending that her case stands on similar footing and that Clause 3(d) of the Scheme, 2013, is rendered inapplicable after the said decision.
- (vii) The respondents, however, placed reliance on:

Gobinda Hazra v. State of West Bengal & Ors., 2018 SCC OnLine Cal 8864, where a Co-ordinate Bench, despite considering both Memo No. 251-Emp dated 03.12.2013 and the Larger Bench decision in *Purnima Das*, held that in the absence of a scheme for

compassionate appointment, no relief could be granted to married daughters.

Putul Rabidas & Ors. v. Eastern Coalfields Ltd., FMA No. 4401 of 2016, wherein a Larger Bench decision supported the stand of the respondents.

(viii) Thus, since KMW&SA only followed the West Bengal Scheme, 2013, which specifically barred married daughters under Clause 3(d), and the said clause had not been interfered with in *Gobinda Hazra* or *Putul Rabidas*, the petitioner's claim was not sustainable in law.

7. The Communication dated 12.07.2016 being No.4L-03/2016/1625 dated 12.07.2016 issued by the Personal Officer KMW & SA to the petitioner, *inter alia*, stated as follows:-

"In pursuance of the order dated 15.06.2016 by the Hon'ble High Court, Calcutta in WP No.10014(W) of 2016, I am directed to inform her that as per the recommendation of the respective 3 men committee, KMW & SA and the order of the Labour Department bearing no.251-Emp. dated 03.12.13 her application has not been recommended to get the job on compassionate grounds."

8. The respondent-authority rejected the petitioner's application for appointment on compassionate ground referring to the order of the Labour Department bearing No.251-Emp. dated 03.12.2013. The notification issued by the Government of West Bengal Labour Department being No.251-Emp. dated, Kolkata, the 03rd December, 2013, *inter alia*, stated as follows:-

“3) Definition –

“Dependent Family Member” means

- (a) spouse; or*
- (b) son (including legally adopted son before death or incapacitation); or*
- (c) unmarried daughter (including legally adopted unmarried daughter before death or incapacitation); or*
- (d) married daughter who on the date of death or incapacitation was unmarried; or*
- (e) brother or sister in case of death in harness of an unmarried employee provide his/her parent, all the brothers and sisters were fully dependent on him/her,*
 - who was wholly dependent on the Government employee at the time of his death in harness or incapacitation, as the case may be, and is in need of immediate financial assistance at the time of making application and also at the time of consideration.”*

.....

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).*

.....

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

.....

(10) Procedure –

(a) If the family of the deceased or the employee retired on being permanently incapacitated is in need of financial assistance and the same is absolutely necessary to support the family, application for employment is to be submitted within six months from the date of death or retirement on permanent incapacitation. If no application is submitted within the said period it will be presumed that the family does not require any financial assistance. In no case application submitted after expiry of the above period will be entertained.

(b) Application is to be submitted in the prescribed proforma as in Annexure 'A' and 'B' as applicable through the Head of Office. In case of death in harness such application must accompany copy of death certificate.

(c) Appointing authority will constitute three men Screening-cum-Enquiry Committee with his immediate subordinate officer and two other senior officials as members.

(d) While examining and enquiring the application for employment on compassionate ground, the Screening-cum-Enquiry Committee will take into consideration the financial condition of the family of the deceased or disabled on incapacitated employee following the provisions in this scheme to ascertain, if there is any immediate need of financial assistance for the family in the shape of employment. Such enquiry report is to be submitted as per Annexure 'A' and 'B' as applicable to the appointing authority within a period of three months from the date of making of application.

(e) The appointing authority will forward the case together with his views recorded in Annexure 'A' and 'B' as applicable to the

Administrative Department concerned for consideration. If it is decided by the Administrative Department to be a fit case for offering employment suitable vacancy is to be identified as per para 9 hereinbefore and send the case to the concerned appointing authority thereafter for offering appointment.

11) Undertaking –

A person appointed on compassionate ground under this scheme must give an undertaking initially and every year thereafter by 15th January, in writing that he will properly maintain the other family members who were dependent on the Government employee in question and in case it is proved subsequently at any time that the family members are being neglected or are not being maintained properly by him/her, service may be terminated for violation of such undertaking following the procedure in West Bengal Services (Classification, Control and Appeal) Rules, 1971.

Such yearly declaration should contain an undertaking signed by all the dependent family members that they are being maintained by the person so appointed on compassionate ground to the utmost satisfaction and there is no complaint in this regard.

(Annexure 'C')"

9. The respondent-authority accepted the application filed by the petitioner for grant of compassionate appointment following notification of the Labour Department dated 03.12.2013 as aforesaid. The application as aforesaid filed by the petitioner declared her promise and commitment to discharge her responsibilities towards her mother throughout her life in the form of an undertaking being one of the rudimentary conditions to be fulfilled by the applicant abiding the provisions of the aforesaid notification.
10. The respondent-authority vide a Communication dated 08.06.2015 sought for submission of an undertaking for appointment on compassionate ground

from the petitioner which was addressed by the Chairman of the Committee constituted for compassionate appointment. The aforesaid notification demanded certain documents from the petitioner to be submitted at the Administrative Section of Head of Office at 32 B.B.D. Bagh (S) on and before 15.06.2015.

11. The petitioner was further directed to appear physically before the aforesaid committee concerning one Shri Ashok Kumar Das, Head Assistance and Shri Hitabrata Karmakar, Senior Assistant. The petitioner subsequently submitted the documents along with an affidavit endorsed by the Learned Executive Magistrate (1st Class) at Barasat, North-24 Parganas which, *inter alia*, stated as follows:-

“.....5. That, if the applicant Smt. Sukla Das is given any employment on compassionate ground she undertakes to take up all financial responsibilities of the dependents and legal heirs of the aforesaid deceased employee.

6. That the applicant, Smt. Sukla Das is ready and willing to sit for any test to be conducted by KMW & SA to prove his suitability for offered post at any stage of employment.

7. That if any of the aforesaid dependent make any allegation against the applicant to KMW & SA authority after his appointment regarding his unwillingness to maintain any of the dependents, the KMW & SA authority may hold an Inquiry against him/her and if it is found any negligence his/her appointment shall remain liable to be terminated or portion of his pay deducted the protection of the dependents.

8. That all of us named above have no objection on the application made by the applicant, Smt. Sukla Das for claiming service in KMW

& SA on compassionate ground against death in harness of the deceased/Late Kala Chand Das, who is his daughter.

9. That this affidavit is sworn in by the deponents the undersigned with free consent and without any pressure, fear coercion or undue influence in any way.

10. That any particular in respect of any of us inclusive of the applicant given hereinabove or elsewhere in the application/format or before the inquiry committee prove to the incorrect/false/misleading on any subsequent occasion in any manner whatsoever the KMW & SA shall cancel appointment of the applicant, Smt. Sukla Das forthwith and past service, if any shall stand forfeited.

11. That the statements made above in this Affidavit are true to our knowledge and belief.”

12. The petitioner was called to attend the personal interview for the candidates seeking employment in the Group-C Cadre on compassionate ground at 02:30 P.M. on 25.06.2015 along with original copies of all testimonials to represent herself before the Committee vide a Memo No.1E-12/2006/596(28) dated 17th June, 2015. The said call letter for interview was issued by Ashoke Kumar Das, for Committee for Recruitment on Compassionate Ground.
13. The petitioner was not informed of the result of the interview held on 25.06.2015 for appointment on compassionate ground in the cadre of Group-C. Subsequently she filed a writ petition being WP No.10014(W) of 2016 whereby a Co-ordinate Bench of this Court had directed the respondent-authority to dispose of the petitioner's application for appointment on compassionate ground within 4 weeks from the date of

passing of the order dated 15th June, 2016. In compliance with the said order passed in the writ petition as aforesaid, the respondent authority stated the application of the petitioner had not been recommended to get the job on compassionate ground considering the order of the Labour Department bearing No.251 Emp. dated 03.12.2013, implying its rejection.

14. The Learned Advocate representing the respondent-authority submitted that the decision of this Court in the State of West Bengal & Ors. –Vs- Purnima Das & Ors. could not be applicable in the case of the instant petition since the respondent-authority did not have a scheme of its own and followed the scheme of the West Bengal Government in that regard, i.e., the West Bengal Scheme for Compassionate Appointment, 2013 vide Memo No.251 Emp. dated 03.12.2013.
15. The respondent-authority further relied on the decision of a Co-ordinate Bench of this Court in the case of Gobinda Hazra –Vs- State of West Bengal & Ors. reported in 2018 SCC OnLine CaL 8864 wherein it was observed as follows:-

“.....There being no scheme for grant of compassionate appointment, the petitioners are, therefore, not entitled to any relief as prayed for in the present writ petition. When there is no scheme for compassionate appointment, the question of a married daughter receiving an appointment on such ground does not arise. Purnima Das (Supra) allows a married daughter to be considered for grant of compassionate appointment after finding a scheme for such purpose governing the employees of Panchayats.....”

16. The contention of the respondent-authority in view of its reliance on the aforesaid observation of the Co-ordinate Bench in the case of *Gobinda Hazra –Vs- State of West Bengal & Ors.* (supra) cannot be accepted on the ground of its unequivocal admission to have followed the provisions of notification in absence of any scheme of its own.
17. Based on the principles of the aforesaid notification, the respondent-authority accepted the application of the petitioner, considered the undertaking on her part as aforesaid as well as the testimonials and credentials including the “No Objection” issued by the family members of the petitioner for granting compassionate appointment. The petitioner was subsequently called to attend the personal interview which was complied with. If the notification as aforesaid was followed by the respondent-authority to such an extent, the same could not defy the aforesaid notification and deny the petitioner of her claim to be appointed on the ground of compassionate appointment on the plea of a scheme not to have been framed by the respondent-authority to grant compassionate appointment whatsoever.
18. Moreover, the reason of the petitioner being married on the date of the application in view of Clause 3(d) of the said Scheme, 2013 disentitling a married daughter who on the date of death or incapacitation of the employee concerned was married prohibited or precluded her from being appointed on compassionate ground had been decided conclusively by a Larger Bench of this Court in FMA 1277 of 2017 (the State of West Bengal & Ors. –Vs- Purnima Das & Ors.) “*The State of West Bengal preferred a Special*

Leave Petition being No.SLP (C) No.17638-17639/2018 against the judgment and order dated 13.09.2017 before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 23.07.2019 was, inter alia, pleased to dismissed the Special Leave Petition."

19. Having followed the intent and purport of granting the appointment on the basis of the notification of the Labour Department and mentioning that the recommendation of the petitioner had been rejected on the following grounds as stated in the affidavit-in-opposition replicated as in below:-

".....(iv) That the notification issued by Chief Secretary to the Government of West Bengal by order of the Governor being memo No. 251-Emp. dated 03.12.2013, Labour Department Government of West Bengal and it appears from the said notification in 3(c) unmarried daughter including legally adopted unmarried daughter before death or incapacitation and in 3(d) married daughter who on date of death or incapacitation was unmarried, and also in 14 General (c) compassionate appointment in any case would not be a matter of right but it will be subject to fulfilment of all the conditions, enquiries, availability of vacancy at the appropriate level etc.

As the Writ Petitioner got married on 05.12.2006 and unfortunately her father died on May 3, 2013, her application has not been recommended to get the job on compassionate ground as per decision of the authority in consonance to the notification dated 03.12.2013. The Kolkata Metropolitan Water and Sanitation Authority is duty bound to obey and comply with the said notification issued by the Government of West Bengal."

20. The petitioner being married on the date of the death of her father, the deceased employee, cannot be a consideration for rejection of being

appointed on compassionate ground as already decided by the Larger Bench of this Court in the State of West Bengal & Ors. –Vs- Purnima Das & Ors. The respondent-authority is debarred to refuse the grant of compassionate appointment in favour of the petitioner claiming an absence of a scheme to grant the same to have been formulated by the respondent-authority having been admitted to have followed the aforesaid notification issued by the Labour Department in absence of a scheme in existence exclusively to be followed by the respondent-authority.

21. The respondent-authority cannot approbate and reprobate at the same time it cannot accept a part of the notification of the Labour Department as aforesaid abiding by its provisions and, thereafter, abstain from granting ultimate effect to the same on the disguise of lack of a scheme in effect to have been framed for respondent-authority on the ground of compassionate appointment.
22. The respondent-authority is, therefore, to consider the compassionate appointment in favour of the petitioner evaluating the documents and testimonials placed by her before the concerned Committee as aforesaid along with compliance of necessary formalities strictly in accordance with the notification issued by the Labour Department as aforesaid.
23. In view of the above discussions, the order being No.4L-03/2016/1625 dated 12.07.2016 is set aside.
24. Under the facts and circumstances, the instant writ petition is allowed.
25. Accordingly, the writ petition being WPA 14937 of 2016 is disposed of.
26. There is no order as to costs.

27. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)