

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 161 of 2024

Manab Mandal & Anr.

Vs

The State of West Bengal & Ors

For the Petitioners : Mr. Kamalesh Bhattacharjee,
Mr. Md. Yusuf Ali.

For the State : Ms. Sonal Sinha,
Ms. Ashmita Chakraborty.

Judgment on : December 2, 2025.

Madhuresh Prasad, J.:

1. The present writ petition arises out of an order dated 04.07.2024, passed in OA No. 570 of 2022 by the West Bengal Administrative Tribunal (hereinafter referred to as the Tribunal for short) rejecting the petitioner's claim for compassionate appointment.
2. Heard the submissions advanced by learned counsels appearing for the petitioners as well as the learned counsel representing the State.
3. The core issue as per the OA No. 570 of 2022, that falls for consideration is centered around the death of the writ petitioner's father, who was serving as a constable and passed away on 22.06.2013 while in service. Following his demise, the petitioner's mother applied for compassionate appointment. Subsequently, by a communication dated 13.09.2017, she expressly withdrew her request and

stated that, owing to certain ailments and being medically declared unfit to undertake regular work, she wished to relinquish her claim in favour of her son- the present petitioner. Acting on this intimation, the authorities examined the petitioner's candidature, noting that he had, in the meantime, attained majority on 16.02.2018. He was thereafter called for verification of documents and for an interview. Upon assessing his claim, however, the competent authority, by a letter dated 20.05.2022, rejected his request for compassionate appointment on the ground that clause 10(aa) of 26-Emp dated 01.03.2016 is not applicable since an eligible family member other than the petitioner was available on the date of death of his father. The authority was thus of the view that the petitioner was not eligible for compassionate appointment. Since he was not eligible, physical and other tests conducted by the authorities cannot confer any advantage.

4. Learned counsel for the petitioner submits that after the petitioner's mother had formally withdrawn her application, supported by a medical certificate demonstrating her inability to undertake employment, the authorities had acted upon her relinquishment and proceeded to consider and process the petitioner's case. He was called for verification and interview. Thus, it is submitted that the reason cited in the rejection order, that another eligible family member existed, cannot be sustained in law. The learned Counsel further argued that the petitioner attained majority within five years of the employee's death. The petitioner's claim was still pending when the 26-Emp Scheme came into operation on 01.03.2016 and was required to be considered under 26-Emp since he attained majority within 5 years from the date of death of the employee. His candidature was required to be considered under Clause 10(aa), and

compassionate appointment granted, subject to satisfying other prescribed conditions.

5. The respondents have stated before the Tribunal, and this Court that the petitioner at the time of unfortunate demise of his father was aged about 13 years only. The wife (petitioner No. 2) of the deceased made an application on plain paper seeking compassionate appointment of her son (petitioner No.1).
6. The department however sought willingness from petitioner No. 2 to be appointed against the post of General Duty Assistant. The petitioner No. 2 by a communication dated 13.09.2017 renounced her claim for compassionate appointment. It is significant to note that at the time petitioner No. 2 renounced her claim, the petitioner No. 1 had not attained majority. As per his date of birth 15.03.2000, he attained majority on 15.03.2018. Such facts stated in the affidavit-in-opposition have not been disputed or denied by filing reply to the opposition.
7. The learned State counsel submits that the petitioner's mother did participate in the process despite intimation in this regard. Attention is specifically invited to a communication dated 04.10.2016 requiring her to appear before the Establishment Section of the Kolkata Police Directorate on 24.10.2016. Though she was an eligible family member, she did not comply with this direction. It is submitted that the prolonged inaction on her part, spanning nearly four years, indicates that she was not in immediate financial hardship warranting compassionate appointment. The petitioner, therefore, cannot be permitted to invoke the benefit of Clause 10(aa) of 26-Emp.
8. At the time of the death of the deceased employee, Petitioner No. 2 was eligible

to be considered for appointment on compassionate grounds. In fact, the authorities had extended such consideration in her favour, and she was issued a formal notice offering appointment and calling upon her to communicate her willingness to join government service. However, Petitioner No. 2, of her own volition, chose not to accept the appointment. She continued to support herself and her minor son without availing the benefit of compassionate appointment when it was offered to her.

9. From the material on record we find that after demise of the petitioner's father the mother applied for the petitioner's appointment on compassionate ground though he was aged about only 13 years. The Department sought willingness from the wife of the deceased for appointment on compassionate ground to the post of General Duty Assistant. The records revealed total inaction on the part of the petitioner No. 2 to avail such consideration for compassionate appointment. About 4 years after demise of the Government Employee the petitioner No.2 on 13.09.2017 renounced her claim to compassionate appointment in favour of her son, who was still a minor, and ineligible.
10. The undisputed facts revealed a state of affairs where despite eligibility the petitioner No. 2 took no step to avail compassionate appointment and in fact renounced her claim for compassionate appointment more than 4 years after demise of her husband. Such relinquishment of claim dated 13.09.2017, in our opinion brings to an end, the issue regarding compassionate appointment. Therefore, there is no scope for the writ petitioner to contend that the claim was still pending since 26 Emp. dated 01.03,2016 applies to pending and undisposed of claims, and since the petitioner No. 2 renounced her claim, 26-Emp would have no application to the petitioner's claim. Her claim could be said to be

pending only if there was inaction on the part of the respondents. In the instant case we find that the authorities called upon petitioner No. 2 for processing her claim for compassionate appointment, but she chose not to avail the opportunity and renounced her claim. Therefore, there is no scope for the petitioners to claim benefit of clause 10(aa), which reads:

“10(aa) (new clause) added to Notification No.251-Emp. dated 03.12.13

BELATED REQUESTS:-

In exceptional cases such as (i) death during action (ii) where none in family is eligible etc. departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took place upto five years ago. While considering such belated request the 3 member screening-cum-enquiry committee should, however, keep in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. Servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases could call for a great deal of circumspection at all levels. (emphasis ours). The dependent member must invariably attain the minimum age of appointment at the time of consideration.”

11. This clause provides a relaxation of the five-year limitation period for seeking compassionate appointment only in exceptional circumstances, such as, where no member of the deceased employee's family is eligible for appointment on compassionate grounds at the time of his or her death. The underlying intention of this provision is to ensure that, in cases where the deceased leaves behind no qualifying dependent who could immediately be offered compassionate appointment, the benefit of the scheme may still be extended even after lapse of the usual time limit, and upto 5 years from death of employee, provided a dependent becomes eligible, within this period.

12. However, the factual matrix in the present matter does not satisfy the pre-

conditions for application of Clause 10(aa). At the time of the death of the employee, Petitioner No. 2, the widow of the deceased, was very much eligible for such appointment. Despite her eligibility, she applied for appointment of her ineligible son, who was only about 13 years of age. The authorities duly processed her case and formally offered her compassionate appointment, calling upon her to convey her willingness to join service. She thus received the benefit of consideration in accordance with the policy, and her eligibility was acknowledged by the employer.

13. Despite such offer, the Petitioner No. 2, of her own free will, declined to accept the appointment offered. She expressly communicated her unwillingness to join government service and further submitted a representation renouncing her personal claim under the scheme. In the same representation, she sought transfer of the benefit in favour of her son. Thus, the non-appointment of Petitioner No. 2 was not due to absence of an eligible family member; or failure of the administration to consider her case, but was the result of her voluntary decision not to avail the compassionate appointment at the relevant point of time.

14. In such circumstances, an essential requirement for invoking Clause 10(aa), that no family member was eligible for compassionate appointment at the time of death is clearly not fulfilled. The clause does not contemplate a scenario where a duly eligible family member refuses the opportunity offered and then seeks to pass the claim to another dependent at a later stage.

15. Allowing such a course would, in effect, transform compassionate appointment into a transferable or heritable privilege, capable of being passed on at the convenience of one family member to another. Compassionate appointment is

not a source of recruitment, but an exception carved out to address an immediate crisis faced by the family due to the sudden demise of the earning member. It is not a vested right that can be exercised at any time. Such claim, if allowed, would defeat the underlying rationale of immediacy and urgency that forms the foundation of all compassionate appointment schemes.

16. Our observations are fortified by a recent decision of the apex Court in the Case of ***State of West Bengal v. Debabrata Tiwari*** reported in ***(2025) 5 SCC 712*** wherein the apex Court laid down as follows:

“33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the breadwinner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a breadwinner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate appointment would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”

17. Furthermore, the contention that Petitioner No. 1 underwent physical or other tests conducted by the police authority does not strengthen his case. Any such test or verification exercise cannot by itself confer eligibility or create a right to appointment. The validity of these tests would assume significance only if the candidate (petitioner No. 1), first satisfied the basic eligibility criteria under the applicable scheme, being the making of an application within time, which was

not done.

18. Thus, in the facts of the present case, where an eligible family member (petitioner No. 2) had initially been offered compassionate appointment but chose not to accept it; and later on the alternative claimant (petitioner No. 1) approached the authorities beyond the time specified for making application, from the date of death of the employee, no actionable or legally sustainable claim for compassionate appointment arises under the applicable rules or the underlying purpose of the scheme.

19. In view of the above, the present writ petition lacks merit and is accordingly dismissed.

20. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)