

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 24276 of 2018

Md. Jakirul Islam

-Vs-

The West Bengal State Electricity Distribution Company Ltd. Service & Ors.

For the Petitioner : Mr. Prasenjit Mukherjee
Ms. Tiyaasha Ghosh
Mr. Jahangir Hossain
Ms. Babita Pramanik
Mr. Prasenjit Changder

For the WBSEDCL : Mr. Sumit Ray

Heard on : 13.08.2025

Judgment on : 24.10.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, Md. Jakirul Islam, has approached this Court seeking issuance of a writ in the nature of mandamus commanding the respondent authorities, particularly the West Bengal State Electricity Distribution Company Limited (WBSEDCL), not to give any effect or further effect to the impugned order bearing Memo No. ES & ER-II/Court Case/92 dated 31.10.2018, to set aside the said order, and to consider and grant his appointment under the "die-in-harness" category, condoning the delay, if any, and to forward all requisite papers concerning his service to the

competent authority for immediate appointment in accordance with his qualification.

2. The petitioner's claim emanated from the death of his father, Nurul Islam, who was employed as a Junior Manager under the Pakua Sub-Division of the Chanchal Division, WBSEDCL. The deceased employee, having rendered long, unblemished, and efficient service since his appointment in 1973, expired on 23rd March, 2012, prior to the age of superannuation, being survived by his dependents in severe financial distress. The deceased left behind his widow and eight children, of whom the petitioner was one. The deceased being the sole breadwinner of the family, his untimely death plunged the household into penury.
3. Initially, upon the demise of the said employee, the family collectively resolved the youngest son, Nasirul Islam, would apply for appointment on compassionate ground. Nasirul Islam duly applied, but his candidature was rejected due to discrepancies in his Madhyamik (Rabindra Mukta Vidyalaya) certificate. Upon rejection of the said application, the family members again convened and unanimously decided that the present petitioner, Md. Jakirul Islam, being educationally qualified and having passed the High Madrasah Examination (1999), would apply for employment under the "die-in-harness" scheme. All other legal heirs, including the widow of the deceased, executed no-objection certificates in his favour.
4. The petitioner, thereafter, applied in due form, enclosing requisite documents and certificates, seeking appointment in Group 'C' or Group 'D' category, as per his eligibility. However, despite submission of his application

with all formalities completed, the respondent authorities remained indifferent and silent, failing to take any decisive steps in the matter. Aggrieved by such administrative inaction, the petitioner was constrained to file W.P. No. 17575 (W) of 2016, praying for direction upon WBSEDCL to record his name in the register for compassionate appointments and to provide him employment under the “die-in-harness” category.

5. The said writ petition was heard and disposed of by the Co-Ordinate Bench of this Hon’ble Court vide an order dated 24th August, 2018, directing the respondent authority to consider the petitioner’s prayer within eight weeks and to pass a reasoned order after affording him an opportunity of hearing.
6. Pursuant thereto, the General Manager (HR&A), WBSEDCL, summoned the petitioner for a hearing. However, during the said proceeding, the petitioner’s Learned Advocate was not permitted to make any submissions, and the purported “hearing” was conducted in a perfunctory manner, limited to asking the petitioner’s name, his father’s name, and details of his siblings. No reasoned deliberation took place. Thereafter, by Memo No. ES & ER-II/Court Case/92 dated 31st October, 2018, the petitioner’s representation was rejected on the ground that his claim could not be considered as per the prevailing policy of 2010.
7. The petitioner contended the impugned order was passed mechanically and without due application of mind, contrary to the spirit of the Government Circulars and Scheme governing compassionate appointments. It was urged that the object of the “die-in-harness” policy was to provide immediate succour to the bereaved family of a deceased employee, who died in harness,

to alleviate the sudden financial hardship and prevent destitution of the dependents. The impugned rejection, according to the petitioner, was arbitrary, *mala fide*, capricious, unjust, and an exercise of power in colourable manner, contrary to the settled principles of law and equity. The petitioner was appropriately qualified to be appointed to the post of Group 'C' or Group 'D'.

8. The petitioner further contended the family pension received by the widow of the deceased employee could not operate as a bar to compassionate appointment, as held in a catena of judicial precedents, and delay in submission of application, if any, ought to have been condoned in the light of the benevolent and humanitarian object of the scheme. It was urged that the respondents, being public authorities discharging statutory duties, were bound to act fairly, reasonably, and in consonance with Article 14 of the Constitution, which they failed to do.

9. The Learned Advocate representing the petitioner submitted the respondents, being "State" within the meaning of Article 12, were constitutionally obligated to act in a transparent and equitable manner. The impugned order, however, revealed a mechanical disposition devoid of judicial reasoning, which militated against the doctrine of fairness in administrative action. The respondents neither examined the petitioner's case from all material perspectives nor assigned any justification consistent with the purpose of the scheme for compassionate appointment.

10. It was further submitted the petitioner's father, an employee of WBSEDCL, died in harness leaving behind the petitioner and his family members in

severe financial distress. Although the elder brother of the petitioner was initially offered employment on compassionate ground under Memo No. ES&ER-II/D.D.Emp/class IV/Tstt (t)/13 dated 01.07.2014, he could not join the post due to unavoidable family disputes. The petitioner, therefore, applied afresh in 2016 seeking employment under the same scheme to alleviate the family's distress. The application was not considered, leading the petitioner to approach this Hon'ble Court in W.P. No. 17575 (W) of 2016, wherein by order dated 24.08.2018, the Co-Ordinate Bench directed the respondent authorities to afford a final opportunity to the petitioner to apply in the prescribed form and to dispose of the same by a reasoned order within eight weeks. Pursuant thereto, the petitioner duly submitted his application, which was heard on 31.10.2018. However, the General Manager (HR&A) rejected the prayer without proper adjudication or reasoning. The said order was *ex facie* arbitrary and contrary to the binding directions of this Hon'ble Court, as well as violative of the principles of natural justice.

11. It was further contended that neither the WBSEDCL Recruitment Policy, 2010, nor any clause therein, prohibited a second dependent from being considered for compassionate appointment if the first applicant failed to join the offered post. The rejection on such ground was, therefore, *de hors* the scheme, irrational, and indicative of colorable exercise of power. It was a settled principle that the object of compassionate appointment was not to provide employment as a matter of inheritance, but to extend immediate relief to the family in distress caused by the untimely death of the breadwinner.

12. The Learned Advocate representing the respondents submitted upon the unfortunate demise of the employee, one of his sons, Nasirul Islam — being the elder brother of the present writ petitioner — submitted an application before the respondent authority seeking employment under compassionate ground, claiming to be a dependent of the deceased employee. Along with his application, Nasirul Islam furnished no-objection certificates from other dependants of the deceased, including the present petitioner.
13. It was further submitted the said application was duly considered by the competent authority in accordance with the extant Recruitment Policy, 2010 of the respondent No.1. The authority thereafter issued Memo No. ES&ER-II/D.D. Emp/Class-IV/TSH(T)/13 dated 01.07.2014, offering Nasirul Islam the post of Technical Support Hand (Trainee) under compassionate grounds and directing him to report at the Corporate Office of the respondent No.1 on 08.07.2014 for joining. However, Nasirul Islam failed to join the said post and did not communicate any reason or representation explaining such non-joining.
14. The respondents emphatically denied the allegation that the claim of Nasirul Islam was not considered or that he was denied the opportunity for compassionate appointment. It was categorically submitted that an offer of employment was indeed extended to him, but due to his voluntary failure to join, the opportunity stood exhausted.
15. The present petitioner, after a lapse of more than four years from the date of death of his father, submitted an application dated 07.06.2016 in plain paper before the Divisional Manager, Chanchal Division (mistakenly

addressed to North Malda Division), seeking appointment under the dying-in-harness category. It was urged by the respondents that the said application was procedurally defective — being neither made in the prescribed format nor accompanied by no-objection certificates from other dependants or any supporting documents/testimonials as mandated under the relevant recruitment scheme.

16. It was further contended that the petitioner, being one of the declared dependants who had earlier furnished a no-objection in favour of his brother Nasirul Islam's application, was well aware of the procedural prerequisites governing compassionate appointment. His failure to comply with those requirements, therefore, cannot be condoned.
17. It was also placed on record that the petitioner had earlier instituted W.P. No. 17575 (W) of 2016, seeking similar relief. The said writ petition was disposed of by this Hon'ble Court on 24.08.2018, with a direction upon the petitioner to apply afresh in the prescribed format, and upon such application being filed, the respondent authority was directed to consider and dispose of the same by passing a reasoned order. In compliance thereof, the General Manager (HR & A) of the respondent No.1, as authorized by the Chairman-cum-Managing Director, undertook a comprehensive assessment of the petitioner's claim. Upon due consideration, a detailed reasoned order dated 31.10.2018 was passed, rejecting the petitioner's claim for compassionate appointment on multiple grounds, duly supported by policy, logic, and precedent. The said order, *inter alia*, recorded as follows:-

- a) Since the petitioner's brother, Nasirul Islam, was already offered employment under compassionate grounds and had consciously refused to join, the opportunity available to the family stood exhausted.
- b) Compassionate appointment is not a matter of right but a benevolent concession, intended solely to alleviate immediate financial distress arising from the sudden demise of the breadwinner.
- c) The existing Recruitment Policy, 2010 of the respondent No.1 does not envisage a second application by another dependant where the first applicant has declined the appointment offered.
- d) Permitting successive applications by multiple dependants would defeat the finality and object of the compassionate appointment scheme.
- e) The long delay — over six years after the demise of the employee — itself negates the presumption of ongoing financial distress, thereby rendering the very foundation of compassionate appointment untenable.

18. The respondents emphasized that the death of the employee occurred in March, 2012, the first offer of employment under compassionate grounds was sought as early as July, 2014. The petitioner, however, approached the

authority only in 2016, and again in 2018, after the expiry of six years. Such prolonged inaction, according to the respondents, clearly demonstrated that the family had overcome the financial crisis arising from the death of the employee.

19. The Learned Advocate representing the respondents relied on the decisions observed by the Hon'ble Apex Court as follows:-

i. In ***State Bank of India and Another vs. Raj Kumar***¹, the Hon'ble Apex Court observed as follows:-

“.....

8. *It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also*

¹ (2010) 11 SCC 661

cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

9. *Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply.*

10. *On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the Scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.*

11. *Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the*

most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.”

- ii. In ***Bhawani Prasad Sonkar Vs. Union of India And Others***², the Hon’ble Supreme Court observed as follows:-

“.....

15. *Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.*

² (2011) 4 SCC 209

.....

17. *In Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] , while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2)*

“2. ... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the

services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

18. Similarly, in *SAIL v. Madhusudan Das* [(2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] this Court has observed that: (SCC p. 566, para 15)

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.”

(See also SBI v. Anju Jain [(2008) 8 SCC 475]

19. In *V. Sivamurthy v. State of A.P.* [(2008) 13 SCC 730 : (2009) 1 SCC (L&S) 335] this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well-recognised exception to the general rule, carved out in the interest of justice to meet certain contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule: (SCC p. 741, para 18)

“(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.”

20. *Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:*

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

20. In **Canara Bank vs. Ajithkumar G.K.**³, the Hon'ble Apex Court observed as follows:-

“...10. The policy to appoint a dependant family member of an employee who has died-in-harness or has been medically rendered unfit to perform further job, thereby leaving the family in utter penury, is not of too distant an origin. Going by law reports, the policy seems to have originated during the seventies of the last century and gained momentum in the following decades with this Court laying down guidelines from time to time for grant of compassionate appointment. The rationale for such appointment has been explained in Haryana State Electricity Board v. Hakim Singh¹³ in the following words:

“8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.”

...

44. *As pertinently held in B. Kishore (supra), indigence of the dependants of the deceased employee is the fundamental condition to be satisfied under any scheme for appointment on compassionate ground and that if such indigence is not proved, grant of relief in furtherance of protective discrimination would result in a sort of*

³2025 SCC OnLine SC 290

reservation for the dependents of the employee dying-in-harness, thereby directly conflicting with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution. Also, judicial decisions abound that in deciding a claim for appointment on compassionate grounds, the financial situation of the deceased employee's family must be assessed. In a situation otherwise, the purpose of the scheme may be undermined; without this evaluation, any dependent of an employee who dies while in service might claim a right to employment as if it is heritable.

45. The ratio decidendi of all these decisions have to be read in harmony to achieve the noble goal of giving succour to the dependants of the employee dying-in-harness, who are genuinely in need, and not with the aim of giving them a post for another post. One has to remember in this connection the caution sounded in *Umesh Kumar Nagpal (supra)* that as against the destitute family of the deceased there are millions of other families which are equally, if not more, destitute.”

21. In ***State of Madhyapradesh and Ors. vs. Amit Shrivastava***⁴, the Hon’ble Apex Court observed as follows:-

“... **16.** It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succour to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. [*State of Gujarat v. Arvindkumar T. Tiwari*, (2012) 9 SCC 545 : (2012) 2 SCC (L&S) 795] Insofar as providing succour is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succour to the family immediately does not survive.

⁴(2020) 10 SCC 496

...

24. *We had the occasion of examining the issue of compassionate appointment in a recent judgment in Indian Bank v. Promila [Indian Bank v. Promila, (2020) 2 SCC 729 : (2020) 1 SCC (L&S) 312] . We may usefully refer to paras 3, 4, and 5 as under : (SCC p. 731)*

“3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank v. M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] , qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits

cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.”

25. *We are, thus, unable to give any relief to the respondent, much as we would have liked under the circumstances, but are constrained by the legal position. The family of the late employee has already been paid the entitlement as per applicable policy.”*

22. In **Union of India and Anr., vs. B. Kishore**⁵, the Hon’ble Apex Court observed as follows:-

“... 8. In SBI v. Raj Kumar [(2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] , elucidating the nature of the scheme of compassionate appointments this Court observed: (SCC p. 664, para 8)

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the

⁵(2011) 13 SCC 131

scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.”

9. *The Central Government issued revised and consolidated instructions in connection with the scheme of compassionate appointments under the Central Government vide Office Memorandum dated 9-10-1998. Clause 1 of the office memorandum describes the object of the scheme as under:*

“The object of the scheme is to grant appointment on compassionate grounds to a dependant family member of a government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood to relieve the family of the government servant concerned from financial destitution and to help it get over the emergency.”

10. *Clause 5 lays down the eligibility criteria and provides as follows:*

“(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) The applicant for compassionate appointment shall be eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules.”

23. In **Central Coalfields Limited and Ors., vs. Parden Oraon**⁶, the Hon’ble Supreme Court observed as follows:-

“... 8. In SBI v. Raj Kumar [(2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] , elucidating the nature of the scheme of compassionate appointments this Court observed: (SCC p. 664, para 8)

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing

⁶(2021) 16 SCC 384

equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.”

24. In **Umesh Kumar Nagpal vs. State of Haryana and Ors.**⁷, the Hon’ble Supreme Court observed as follows:-

“... 2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his

⁷(1994) 4 SCC 138

family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. *Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.*

4. *It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* [(1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:*

“We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so

warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments.”

5. *It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.*

6. *For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”*

25. The Recruitment Policy – 2010 of the West Bengal State Electricity Distribution Company Limited is replicated as follows:-

“.....

6. Employment on compassionate ground: *Considering the plight of the family after an earning member dies or becomes physically incapacitated, one of the dependants of the employee who died in harness or had been declared physically incapacitated by the Medical Board constituted by the Company, irrespective of the pecuniary condition of the family, may be offered employment in Class-III or Class-IV posts subject to the following conditions:*

- a) The dependent of an employee shall be eligible to apply for employment under this category provided such death-in-harness / incapacitated retirement occurred on or after 06.06.2005 and also the dependants did not receive any financial compensation in lieu of employment.*
- b) Upper age limit shall not be more than 40 years for the spouse and 30 years for other dependants as on the date of the death/premature retirement on permanent disablement of the employee.*
- c) Candidates must meet the minimum requirement of the qualifications and standard for the post applied for and the dependants did not receive any financial compensation in lieu of employment.*
- d) They must be found physically fit as per norms prescribed by the Company and ascertained by the Medical Board constituted by the Company.*
- e) Suitably of such candidates will have to be judged through a selection process, separately to be conducted, comprising of written test, interview and/or computer proficiency test as may be required for the post. Those who will obtain the qualifying marks in the written test as may be prescribed will be called for*

interview and/or other tests like computer proficiency etc. as prescribed above. There will, however, be no gradation in order of merit amongst those qualified candidates.

While qualifying in such test will be mandatorily the basis of eligibility, their absorption will be in order of the date of death/incapacitation of the employee concerned in whose respect he or she is the dependant applicant, not in order of merit/performance tests in such selection process, provided that no such candidate should be allowed to appear for the tests for more than one occasion for each category of Class-III or Class-IV posts. Unsuccessful applicants for Class-III posts may also opt for Class-IV posts and such candidates will be given only one more chance of appearing for Class-IV posts.

Such unsuccessful applicant(s) also can opt for financial compensation in lieu of employment within one year of their being unsuccessful. Financial compensation, in lieu of employment, will be given in the manner and at the rate as would be prescribed by the Board.”

26. The communication of the Assistant Manager (HR&A) ES&ER-II Cell, WBSEDCL, Vidyut Bhavan, Kolkata, being Memo No.ES&ER-II/Court Case/92 dated 31.10.2018 with the enclosed order dated 31.10.2018 passed by the General Manager (HR&A), WBSEDCL addressing to the petitioner is replicated as follows:-

“Sub: Reasoned order in the matter of application for employment on compassionate ground under died-in-harness category i.r.o. Md. Jakirul Islam S/o Lt. Nurul Islam, Ex-JM (HR&A) lastly attached to Bamangola CCC under Malda (D) Division (now North Malda Division)

Ref: Order dated: 24.08.2018 of Hon'ble Justice Arindam Mukherjee of High Court, Calcutta in the matter of W.P. No.17575(W) of 2016,

Md. Jakirul Islam Vs. The W.B.S.E.D.C.L. & Others

In terms of the order passed by the Hon'ble Justice Arindam Mukherjee of High Court, Calcutta dated: 24.08.2018, in the matter of W.P. No. 17575 (W) of 2016, iro. the employment on Compassionate Ground of a) The petitioner, Md. Jakirul Islam has been advised to submit a proper application for compassionate appointment to the Respondent No.-1 (herein CMD, WBSEDCL) within seven days from the date of order and the Competent Official of the Respondent No.- 1 should consider the same and pass a Reasoned Order to that effect as expeditiously as possible, but not later than eight weeks from date of receipt of the application from the Writ Petitioner in proper form.

b) In obedience to the aforesaid order of the Hon'ble High Court, Calcutta, Md. Jakirul Islam submitted his prayer for employment on compassionate ground (in the Prescribed Format) on 01.09.2018 before the CMD, WBSEDCL. Further, in obedience to the aforesaid Order of the Hon'ble High Court, Calcutta, the Respondent No.-1 (the CMD, WBSEDCL) has kindly entrusted the matter to me to hear the Writ Petitioner and the Writ Petitioner (viz dispose his prayer for employment, on compassionate ground. Accordingly. Md. Jakirul Islam, S/o Late Nurul Islam) was called for an hearing on 12.10.2018 vide memo no. ES&ER-11/Court Case/87 Dated: 04.10.2018 to provided him an opportunity to represent his case before me. Pursuant to the same, the Writ Petitioner had attended the hearing on 12.10.2018 and presented his case. He was heard at length by me and he, Le. Md. Jakirul Islam, submitted a written representation. The salient points of his statement are as follows:

He stated that they are two brothers and six sisters. After the death of his father, all the family members collectively decided that his

brother Md. Nasirul Islam would apply for the job on compassionate ground and as a responsible elder brother he agreed to the same and signed the No Objection in favour of his brother's employment. All his sisters were married as on date of death of his father. His brother Md. Nasirul Islam was offered appointment by WBSEDCL. But he did not join in the service of WBSEDCL. Hence the petitioner applied for employment on compassionate ground at the Chanchal Office of WBSEDCL on 01.06.2016 in plain paper. After that he could not make any communication with the Chanchal Office or the Head Quarter of WBSEDCL and thereafter filed Writ Petition No. 17575 (W) of 2016 on 29.08.2016, for early disposal of his prayer for compassionate appointment. They have 8-10 Bigha of cultivation land and presently he is engaged in the job of farming on the said land and his brother Md. Nasirul Islam is a Panchayat Member. Presently they live in a joint family and his mother who resides with them draws family pension. Md. Jakirul Islam pleaded that since he is the eldest son and his brother did not join the service of WBSEDCL, he should get the employment on compassionate ground under WBSEDCL.

SHORT BACKGROUND OF THE CASE:

It appears from the record that:-

1. *Lt. Nurul Islam, Ex-JM(HR&A) expired on 23.03.2012 lastly attached to Bamongola CCC under Maldah (D)Division (now North Malda Division) prior to his retirement and his date of birth and date of joining are 01.02.1954 and 05.04.1973 respectively.*
2. *Normal retirement of Lt. Nurul Islam was scheduled to be 31.01.2014.*
3. *After death of the deceased employee, the brother of the petitioner, Nasirul Islam had applied for employment on compassionate ground with proper No Objection Certificate of all other dependents of the deceased employee, both on the body of his aforesaid application as well as in the form of Affidavit. Upon completion of all requisite pre-*

employment formalities as well as being the incumbent found suitable in the selection process, an offer of appointment as TSH(Trainee) on compassionate ground was issued in his favour, vide office order No. ES&ER-II/D.D.Emp./Class-IV/TSH(T)/13 dated 01.07.2014 but he did not turn up on the scheduled date of joining or subsequently thereafter, without any intimation, whatsoever.

4. It is observed from the enclosure of the Writ Petition that the petitioner Jakirul Islam had submitted an application in a plain paper not in the prescribed format (Le. too after four years from the date of death of the deceased employee) to the Divisional Manager North Malda Division on 07.06.2016 for employment on compassionate grounds. The object of employment on compassionate ground is to offer an appointment to one dependent family member of the deceased employee, mandatorily with the No Objection of other dependent family members of the deceased, to tide over the immediate financial hardship of the family in absence of the Bread Earner.
5. As per direction of the aforesaid Order dt. 24.08.2018 of the Hon'ble Justice Arindam Mukherjee, Md. Jakirul Islam, the Petitioner, has submitted an application for employment on compassionate ground, which has to be considered by the Competent Official of WBSEDCL who is duly entrusted upon by the Respondent No-1 (the CMD, WBSEDCL) in accordance with prevailing terms of the Recruitment Policy 2010 of the Company. The applicant Md Jakirul Islam is Class XII pass and his age is 29 years 2 months (taking into account his date of birth 02.01.1983) as on the date of death of his father.

Applicable Eligibility Criteria:

As per the terms of Recruitment Policy, 2010 (issued vide Circular No. 10/2010 Dated: 22.04.2010). came into force w.e.f. 01.04.2010, only one of the dependants of the employee, who died in harness. with proper No Objection Certificate of all other

dependents of the deceased employee, both on the body of his aforesaid application as well as in the form of Affidavit, may be offered employment in Class-III or Class -IV posts, subject to fulfillment of the stipulated conditions to tide over the immediate financial crisis in the family, in absence of the Bread Earner.

Accordingly, Nasirul Islam, Brother of the petitioner, was offered appointment vide Office Order No. ES&ER-II/D.D. Emp/Class-IV/TSH(T)/13 Dated: 01.07.2014 but he did not avail such opportunity & join in the services of WBSEDCL, without any intimation, whatsoever.

REASONED ORDER:

In obedience to the Order dt. 24.08.2018, passed by the Hon'ble Justice Arindam Mukherjee High Court, Calcutta and having been entrusted by the Chairman & Managing Director, WBSEDCL, I have considered the statement of the petitioner, records of the case, rules of the Company in this regard and upon reconciliation of the facts, circumstances, documents, in the light of the aforesaid provisions of Recruitment Policy 2010, afresh, in open mind, I am of the clear views. beyond any iota of doubt that the Petitioner, is not entitled for compassionate appointment, in any manner whatsoever, for the following grounds.

- 1) As per the Recruitment Policy, 2010 only one of the dependants of the deceased employee is entitled to file his/her claim for such employment in Class-III or Class-IV posts, with the requisite No Objection of the other dependent family members of the deceased employee, subject to fulfillment other terms & conditions. Accordingly, the employment was offered to Nasirul Islam, the brother of the petitioner. It further appears from records that amongst the other dependent family members of the deceased the Writ Petitioner was one of the signatories in the "No Objection based on which and also on being found the aforesaid incumbent suitable*

in the selection process he was offered employment to the post of TSH (Trainee) but he did not join which tantamount to refusal to avail opportunity made available to the family, therefore the scope for employment, on compassionate ground, stands exhausted.

- 2) So far as the essence & spirit of the scheme for providing employment on compassionate ground is concerned it is neither a regular course of employment nor right to the family to avail such opportunity at it's sweet-will rather it is a benevolent scheme to rescue the family from the financial hardship, passed due to sudden demise & absence of the Bread Earner.*
- 3) Keeping in view of the aspects discussed above, the Prayer dt. 01.09.2018 of Md. Jakirul Islam, the Writ Petitioner and also the second claimant for such employment, is not permissible to be considered as per the prevailing terms & essence of Recruitment Policy 2010, hence it is rejected.*

Considering the above stated points the prayer of Md. Md. Jakirul Islam, dt. 01.09.2018, addressed to the CMD, WBSEDCL in this regard doesn't deserve any consideration, as it is not permissible as per the prevailing scheme/rules/Recruitment Policy 2016 and the prayer of the petitioner is thus disposed of."

27. The father of the writ petitioner Md. Nurul Islam (since deceased) being an employee of the respondent no. 1/WBSEDCL, functioning as Junior Manager (HR&A) posted at Bamangola Customer Care Center, untimely expired on 23.03.2012 prior to the date of his superannuation on 31.01.2014. Subsequent to his death, the elder son namely Nasirul Islam sought employment under the compassionate scheme being the dependant of the deceased employee as aforesaid.

28. Through an application addressed the respondent authorities annexing requisite “No Objection Certificate” from other dependants. The respondent authority offered employment to Nasirul Islam in the post of Technical Support Hand (Trainee) under Memo No. ES&ER/II/D.Emp/Class-IV/TSH/(T)/1 dated 01.07.2014, directing him to join on 08.07.2014 at the corporate office of the respondent no. 1. The aforesaid Nasirul Islam refrained from joining on personal grounds though his application for appointment on compassionate ground was considered and employment was offered contrary to the petition of the petitioner i.e. his application was rejected on the ground of educational certificate. The petitioner, Md. Jakirul Islam addressed an application on 07.06.2016 seeking appointment under the “die-in-harness” category in place of his deceased father. The application, however, was submitted in a plain paper without prescribed format, relevant “No Objection Certificate” from other dependants, required documents and testimonials as mandated under the prevailing recruitment policy.
29. The petitioner had been aware of the procedural requirements for seeking appointment under the compassionate scheme having previously provided “No Objection Certificate” to his brother in 2014. The lack of compliance with formal requirements rendered the 2016 application incomplete, inadequate for consideration under the recruitment rules of the respondent no. 1. After a lapse of 4 years from the date of death of the deceased employee.
30. The object of granting compassionate appointment is to facilitate the family of the deceased employee to thrive and sustain sudden crisis and relief the

family of the deceased employee from emergent financial constraints, hardships and destitution.

31. Compassionate appointment is not a vested right or an alternate mode of employment nor is it inherent right. Compassionate appointment cannot be offered indiscriminately regardless of the family's financial condition. The scheme and policy of 2010 did not mention multiple occasions for availing the benefit of compassionate appointment. Such beneficial appointment is construed to be an exemption to the general rule of appointment intending to provide immediate relief to the hapless and helpless family as one-time benefit, if refused on being offered or granted, cannot be taken advantage of subsequently. The refusal on the part of the elder son of the deceased employee, Nasirul Islam in the year 2014, evince the fact of any kind of financial crisis being suffered by the family which imminently necessitated the employment of Nasirul Islam to grapple and surmount financial hardship encountered by the family.
32. The employment on the ground of compassionate appointment cannot be claimed as right of inheritance and such benefit cannot be transferred to another person on refusal by one of the dependant. The respondent authority having exhausted its liability and offering compassionate employment to one of the dependant cannot be compelled to offer the further appointment to another family member on the basis of the same deceased employee's service. After the considerable lapse of time which negated the primary objective of providing immediate financial assistance to the dependant family members of the deceased employee.

33. In view of the above discussions, the instant writ petition being WPA 24276 of 2018 is dismissed.

34. There is no order as to costs.

35. 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.)