

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

WPA 26328 of 2017

**Soma Banerjee
Versus
WBSEDCL & Ors.**

For the petitioner : Mr. Anjan Bhattacharya

For the Respondents : Mr. Sumit Ray.

Heard & Judgment on : 4th March, 2025.

Ananya Bandyopadhyay, J:

1. The father of the petitioner expired on 2nd July, 2009 while he was functioning as Junior Manager (F & A) in the office of the Bankura 'D' Circle. On the demise of the aforesaid employee, namely, Ranjit Kumar Banerjee, the respondent/Company sought for the academic qualification and an affidavit for consideration of employment of the petitioner under "died in harness" capacity on 13.03.2013. Subsequently, on 11.08.2016 the respondent/Company sought for further set of documents from the petitioner. The petitioner complied with the submission of

documents corresponding to letters dated 11.03.2013 and 11.08.2016 as well as filled up the option form. The mother of the petitioner being the wife of the deceased employee did not object to such application for grant of compassionate appointment vide an affidavit dated 22.08.2016. However, on 26.03.2013 the respondent/Company intimated the petitioner, owing to the marital status of the petitioner the Memo No. ES & ER2/DD EMP/113 dated 13.03.2013 was cancelled and withdrawn.

2. The learned Advocate representing the petitioner submitted that the respondent/Company arbitrarily exceeding its jurisdiction and in violation of the decision in FMA/1227/2015 pronounced by this Special Bench of this Court should not have denied or even disregarded the aforesaid Memo exclusively on the basis of the marital status of the petitioner. The act of the respondent/Company contradicted the constitutional mandate as well as the legislative intent to grant benefit to the family members of the deceased employee contrary to Article 14 and Article 16 of the Constitution of India.
3. The learned Advocate representing the respondent/Company submitted that the compassionate appointment granted to the family members of the deceased employee was at the relevant time governed by the scheme promulgated for granting

compassionate appointment effective at the time of considering the application for compassionate appointment. The status of the petitioner at the time of granting compassionate appointment to have been a married individual was not provided by the scheme of 2009 and accordingly the respondent/Company refused to consider the compassionate appointment to have been granted in favour of the petitioner. Moreover, the respondent/Company is bound to grant compassionate appointment adhering to the policies and principles laid down in the scheme at any relevant point of time which is governed by the same.

4. The learned Advocate representing the respondent/Company has relied on the decision pronounced by the Hon'ble Supreme Court in (2010) 11 SCC 661 at paragraphs 8, 9 to 12 which are 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 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) fulfillment 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.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable”.

5. The Special Bench of this Hon’ble High Court in the judgment pronounced on 13th September, 2017 in FMA/1277/2015 with WPST/447/2013 along with WPST/78/2014 inter alia observed as follows:-

“In the decision in Smt. Vimal Srivastva (supra), the rule under consideration was similar to the clause in the notifications under consideration before us. The Hon’ble the Chief Justice of the Allahabad High Court speaking for the Division Bench, upon consideration of the decision in C. B. Muthamma (supra) and a previous coordinate Bench decision of the same Court in Isha Tyagi -Vs.- State of U.P. (Writ – C No. 41279 of 2014), proceeded to uphold the challenge for the reasons assigned and held that “excluding daughters purely on the ground of marriage would constitute an impermissible discrimination and be violative of Articles 14 and 15 of the Constitution”. Their Lordships’

accordingly struck down the word 'unmarried' in rule 2(c)(iii) of the relevant Rules. A perusal of paragraph 24 of the decision would reveal the agreement of the Division Bench with the view expressed in Purnima Das (supra).

We are in complete agreement with the aforesaid line of decisions and are, therefore, of the clear opinion that the relevant notifications issued under the 1999 Act or for that matter the SCHEME, in the manner it has been framed, do not appear to be reasonable. The restriction on married daughters being eligible to apply and to be considered for compassionate appointment is likely and has, in fact, given rise to a legitimate grievance in the minds of married daughters, who unfortunately are not looked after by their husbands, perforce have to take shelter in their parental/maternal home, survive on the benevolence showered by their fathers/mothers (Government employees) and owing to untimely demise of the Government employees, are left high and dry along with other members of the deceased's family who have to depend on such married daughter to feed and provide the basics to cover their body.

Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of

'dependent' and ineligible to even apply, is not constitutionally valid.

Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective 'unmarried' before 'daughter', is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/mother (Government employee) on the date of his/her death and agree to look after the other family members of the deceased, if the claim is to be considered further".

6. The aforesaid judgment in its entirety has eradicated the status of a daughter whether she is married or unmarried treating her at par with the son of a deceased employee irrespective of his or her marital status. The respondent/Company cannot in view of the aforesaid observations of the Hon'ble Special Bench of this Court discriminate the petitioner from applying for compassionate appointment exclusively on the ground of her marital status. The petitioner will apply for grant of compassionate appointment

which will be considered by the respondent/Company in view of the observation in paragraph 113 of the aforesaid Judgment and dispose of the same by a reasoned order, if necessary, the respondent/Company can grant hearing to the present petitioner to assess her eligibility and her intention to assist the other family members of the deceased. The application by the petitioner is to be filed within three weeks from the date of passing of this order. The respondent/Company will pass a reasoned order after thorough assessment including the hearing of the petitioner, if required, within a period of two months thereafter.

7. The writ petition is disposed of accordingly.
8. The pending applications if any stands disposed of.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.