4th September, 2025
(D/L No.01)
Ct. No.4
(SKB)

W.P.S.T.196 of 2023

The State of West Bengal and others
Versus
Tuku Singha and another

Mr. Tapan Kumar Mukherjee, ld. AGP,
Mr. Pinaki Dhole,
Mr. Somnath Naskar
… for the petitioners.

Mr. Dilip Kumar Chatterjee,
Mr. Mrinmoy Bhattacharyya
… for the respondents.

1. The writ petitioners were the respondents before the West Bengal Administrative Tribunal (in short 'Tribunal') wherein the applicants challenged rejection of their claim for compassionate appointment. The Tribunal allowed the Original Application No.835 of 2018 by an order dated 12.09.2022, which is the subject matter of the present writ petition.
2. Heard the learned advocate for the writ petitioners/State as well as the learned advocate for the respondents/applicants before the Tribunal.
3. The claim of the applicants/respondents for grant of compassionate appointment has been rejected on a ground that monthly income of the family does not fall below 90% of the gross

family salary of the deceased employee. The authorities, while calculating the gross monthly income, have taken into consideration the family pension being paid. Relying upon the decision of the Apex Court in the Case ***Govind Prasad Verma Vs. Life Insurance Corporation of India and others*** reported in ***(2005)10 SCC 289***; the Tribunal was of the opinion that family pension was irrelevant for determining the income of the family, to ascertain whether the income falls below 90% of gross monthly salary, or not.

4. The learned AGP appearing on behalf of the petitioners submits that it is by now a settled law through a series of judgments rendered by the Apex Court that an appointment on compassionate ground, being in exception to the Rule of equality is to be availed strictly in compliance with the Rule providing for such appointment. The appointment is not a source of recruitment, but to tide over the sudden crisis arising out of loss of the bread earner. It is, therefore, trite that only a person who qualifies for the grant of benefit can claim the same.

5. The family of the deceased government employee including the applicant/ respondent no.2 had an income which was not below 90%

of the gross monthly salary being drawn by the deceased government employee and, therefore, in terms of the Scheme, the applicants/respondents were not eligible for grant of benefit of compassionate appointment.

6. The learned advocate for the applicants/respondents, on the other hand, submits that under the Scheme, the applicants/respondents are entitled to certain benefits in the calculation being made on the ground that a huge sum was spent upon treatment of the deceased for the disease (cancer), which ultimately led to demise of the deceased government servant.

7. The authorities have not taken this into consideration. He, however, submits that as to date, the family members including the applicants do not have any proof of the expenditure incurred over the treatment; however, the same has had a very bad financial effect on the family of the deceased government employee. The learned advocate submits that they will make attempts to gather the proof of expenditure incurred over the disease so as to impress upon the authorities.

8. On such submission, we need not make any comment as it is always open to the

applicants/respondents to pursue the matter in accordance with law in terms of the Scheme.

9. Insofar as the decision of the Tribunal impugned before us, the learned AGP has drawn our attention to a subsequent decision of the Apex Court in the case of ***State of Himachal Pradesh and another Vs. Shashi Kumar*** reported in ***(2019)3 SCC 653***, paragraph 33 of which has been emphasized, and which, we consider it apposite to quote, reads as follows:

> "33. For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in *Govind Prakas Verma* in issuing a direction to the State to act in a manner contrary to the express terms of the scheme which require that the family pension received by the dependants of the deceased employee be taken into account."

10. The legal position is clear from the decision in the case of ***Shashi Kumar***(supra).

11. In the present case, death of the employee in harness took place on 16.07.2012. It is submitted by the learned AGP that as per applicable Scheme, Notification No.30-Emp dated 02.04.2008, as clarified and amended thereafter; compassionate appointment is to be offered if family of the deceased is in need of immediate financial assistance i.e. if monthly family income falls below 90% of gross monthly salary of the employee before death. Monthly

family income has been defined as being comprised of family pension per month. The order of the Tribunal, therefore, is clearly unsustainable. In the present case, the Scheme, under which the application was made, requires consideration of the family pension being received by the family of the deceased, while assessing whether the income of the family is below the specified percentage of the gross monthly salary (indigence), so as to enable the family to get the benefit of compassionate appointment.

12. The order of the Tribunal is, accordingly, set aside. The liberty of the applicants/respondents is reserved as noted above.

13. The writ petition is, thus, disposed of.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)