

S/L 05
27.01.2026
Court No.04
B.K.N

W.P.S.T. 39 of 2025
Brototi Bag
Vs.
The State of West Bengal & Ors.

Ms. Ipsita Ghosh

...for the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Ms. Sangeeta Roy

...for the State.

1. Heard the learned advocate for the writ petitioner as well as for the respondents.
2. The petitioner's mother was working as an Auxiliary Nursing Midwifery (ANM) and died while in harness on 16.07.2013. Her father applied for an appointment on compassionate ground in the month of December of the very same year within five months. The authorities, only indulged in intra departmental communication from one office to the other. Two of such communications dated 09.10.2014 and 22.03.2016 are referred to by the petitioner's father in his letter dated 06.09.2022, annexed to the Original Application. Claim for compassionate appointment, however, was not processed and remained undisposed till issuance of 26-Emp dated 01.03.2016.
3. 26-Emp brought about amendments to the erstwhile 251-Emp dated 03.12.2013, which laid down the terms and conditions, procedure, eligibility etc. for

appointment on compassionate ground. Clause 14(bb) of Notification No. 26-Emp reads:

Existing Clause/Para No.	Existing provision	Revised provision
14(bb) [new clause] added to Notification No. 251-Emp dated 03.12.2013		Any undisposed case whether the death/incapacitation has occurred prior to issue of this order, but after the issue of order No. 30-Emp dated 02.04.2008, could be looked into afresh, if it complies with the revised instructions.

- 4. The petitioner’s father’s undisposed application, after coming into force of the said amendment with effect from 01.03.2016 was thus required to be considered under 26-Emp.
- 5. The petitioner’s father by a communication dated 06.09.2022 wrote to the Additional Director (Personnel) regarding his undergoing medical procedure (surgery) for kidney and gall bladder conditions. In view of such developments during pendency of his application for compassionate appointment the petitioner intimate the authorities that in view of the intervening medical procedure coupled with the fact that he was almost 58 years old, he was incapacitated from availing the benefit of compassionate appointment. He, therefore, requested the authorities that in his place and stead, his eldest daughter (the present writ petitioner) be considered for grant of compassionate appointment.

6. The claim was rejected by the Additional Director (Personnel) by his communication dated 10.05.2023. The rejection order was put to challenge by the writ petitioner, who was the applicant before the West Bengal Administrative Tribunal (Tribunal for short) in O.A. No. 647 of 2023. The Tribunal found no merit in the Original Application and the same was accordingly disposed of on 19.11.2024. The order of the Tribunal dated 19.11.2024 is put to challenge in the present writ proceeding.
7. The learned advocate for the applicant/writ petitioner submits that after coming into force of the amendment, the claim of the applicant/writ petitioner was required to be considered and looked into afresh with the object of verifying whether the same complies with the revised instructions (26-Emp). The authorities, however, have considered the petitioner's application and rejected the same relying upon the provisions contained in the erstwhile scheme for compassionate appointment (251-Emp). The rejection, therefore, is unsustainable. The petitioner's case was required to be considered afresh since the death of petitioner's father has occurred much after the date (02.04.2008) specified in Clause 14(bb) of 26-Emp.
8. Note (c) to Clause 6(c) of the notification dated 03.12.2013 (251-Emp) has since been deleted under the amendments contained in the Notification No. 26-Emp dated 01.03.2016. The petitioner's claim was, therefore,

required to be considered by the authorities without relying upon Note (c) to Clause 6(c) of 251-Emp.

9. The learned advocate for the petitioner has also relied upon a decision of a Division Bench of this Court in W.P.S.T. 01 of 2025 to submit that the petitioner's claim is fortified by the said judgment. The learned advocate has submitted that the judgment was assailed by the State before the Hon'ble Apex Court in ***SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 51672/2025***. The Special Leave Petition was dismissed by the Hon'ble Apex Court on 14.10.2025.
10. The learned AGP on the other hand submits that the claim of the petitioner was considered under the circular applicable at the time of demise of her mother. The mother's death occurred in the year 2013 and, therefore, the authorities have rightly considered the petitioner's claim with reference to the provisions contained in 251-Emp.
11. Upon consideration of the rival submissions we find that the facts are not in dispute regarding death of the petitioner's mother on 16.07.2013, and application for compassionate appointment being submitted by her father on 11.12.2013. The fact that the authorities thereafter have carried on some intra departmental communications for processing the petitioner's father's claim for compassionate appointment with reference to communications dated 09.10.2014 and 03.11.2016 are also not in dispute. The fact that the petitioner's father's

claim remained undisposed at the time of coming into force of 26-Emp, is also not in dispute.

12. Upon going through the order of rejection dated 10.05.2023 we find that the same is not sustainable being founded on Note (c) to Clause 6(c) of 251-Emp dated 03.12.2013. We have already quoted above the provision contained in Clause 14(bb) of 26-Emp wherein an obligation is cast upon the authorities to consider undisposed cases by looking into the same afresh with a view to ascertaining whether the claim complies with 26-Emp. Instead of looking into the petitioner's father's application with reference to 26-Emp, the authorities have, therefore, wrongly considered the claim with reference to the erstwhile 251-Emp dated 03.12.2013. The consideration, therefore, is not sustainable.

13. The claim of the petitioner's father has been kept pending for nine years before the petitioner's father (husband of the deceased government employee) submitted an application for change of beneficiary of compassionate appointment. The petitioner's father submitted an application dated 06.09.2022 in view of the fact that his claim for compassionate appointment was kept undisposed for about 9 years. During such pendency the petitioner's father had undergone surgery; and also his age advanced by 9 years. Due to such intervening circumstance he communicated his physical inability to avail compassionate appointment for the benefit of the family. The procrastination on the part of

the authorities has resulted in the same remaining undisposed, and in the meantime, the authorities themselves issued 26-Emp dated 01.03.2016 wherein Note (c) of Clause 6(c) of Notification No. 251-Emp was deleted. The rejection, therefore, relying upon the deleted clause is unsustainable.

14. We also consider it apposite to refer to decision of this Court in W.P.S.T. 01 of 2025 in paragraph 22 of the judgment this Court took notice of the fact that

“22.in the event an application is kept pending for years together (12 years in the instant case), there may be various developments requiring a change in the applicant having regard to the need.”

15. In that case reasons requiring the change may have been different but the fact remains that pendency of the present petitioner's claim for compassionate appointment for about nine years has necessitated a change in the applicant for the reasons taken note of above, being incapacitation of the petitioner's father (husband of the deceased government employee) to avail the benefit of compassionate appointment. We, therefore, find the petitioner's claim to be covered by decision of this Court in W.P.S.T. 01 of 2025.

16. The rejection dated 10.05.2023, for the reasons noted above is, therefore, unsustainable and is hereby set aside. The authorities are under a legal obligation to consider the petitioner's claim under the terms and conditions contained in notification 26-Emp dated 01.03.2016. The authorities must ensure such consideration

expeditiously, without insisting on the requirements contained in Note (c) of Clause 6(c) of 251-Emp dated 03.012.2013.

17. Subject to fulfillment of other requisite conditions the petitioner's claim should be considered and disposed of by a reasoned and speaking order within a period of eight weeks from the date of receipt/production of a copy of this order before respondent no. 2.
18. The writ petition is allowed. As a consequence, Original Application No. 647 of 2023 stands allowed in the above terms.
19. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)