

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 91 of 2026

Ms. Tapati Guha

Vs.

The State of West Bengal &Ors.

For the Petitioner	: Mr. Chittapriya Ghosh, Ms. Priyanka Saha
For the State Respondents	: Mr. Tapan Kr. Mukherjee, Id. AGP, Mr. Somnath Naskar
Heard on	: 30 th April, 2026
Judgment on	: 30 th April, 2026

Madhuresh Prasad, J.:

1. Affidavit-of-service filed on behalf of the appellant is taken on record.
2. Heard the learned advocate for the petitioner and the learned A.G.P. representing the State.
3. The writ petitioner was the applicant before the West Bengal Administrative Tribunal ('Tribunal' for short) in O.A. No. 243 of 2024. The O.A. was filed, since the petitioner's claim for compassionate appointment on account of demise of her father in harness on 23.04.2013, was rejected. The rejection order dated 08.02.2022, issued by the Deputy Secretary to the Government of West Bengal in the Food

& Supplies Department was put to challenge by the writ petitioner before the Tribunal. She claimed the consequential relief also.

4. The present writ petition is filed assailing the Tribunal's order dated 19.11.2024, passed in O.A. No. 243 of 2024 rejecting the petitioner's claim.
5. The facts not in dispute are that the petitioner, a married daughter of the employee, who died in harness, claimed benefit of compassionate appointment as a daughter who had already made an application for divorce before the death of the Government employee in harness. The petitioner's claim was required to be considered under the provisions contained in the Notification No. 251-Emp. dated 03.12.2013, as amended by Notification dated 26-Emp. dated 01.03.2016. By the Notification dated 01.03.2016, the Government introduced para 3(dd), a new Clause to the Notification No. 251-Emp. The definition of dependant family member was amended to include :

“Revised provision

(a) A divorcee daughter, who has become dependent on the family, and the divorce petition was filed before the death/permanent incapacitation of the Govt. employee.

(b) She must have obtained decree of divorce issued by the competent authority of an Hon'ble court, either before or after the death of the Government Employee.

(c) In case she has been receiving any maintenance cost from her husband, the same will be taken into account to decide her eligibility.”

6. The clear and unambiguous requirement under the provision was that the divorce petition must have been filed before the death/permanent incapacitation of the Government employee.
7. In the present case, there is no dispute that the divorce application was filed on the same date (23.04.2013) as the date of death of the Government employee. The petitioner, however, would submit that the same was filed on the same date, but before the time of death of the Government employee. The authorities were of the view that prior to the date of demise of the Government employee in harness, since no application was filed for divorce, the present petitioner cannot be considered as fulfilling the requisite condition under paragraph 3(dd)(a) of the Notification dated 26-Emp. The claim of such nature, therefore, involves disputed issues of fact as regards the actual time of filing of an application on the same date as the date of demise of the employee in harness.
8. The learned advocate for the writ petitioner submitted that even if it is accepted, without admitting to such a fact that the divorce application was not prior in time to the demise of the employee in harness, the petitioner would still be entitled to consideration for compassionate appointment as a married daughter. This Court held a married daughter to be an eligible person for grant of benefit of compassionate appointment. He has referred to decisions of coordinate Benches of this Court in this regard, which according to him was mentioned in the representation filed by the writ petitioner on 24.06.2022.

9. The learned A.G.P. on the other hand referred to a decision of the Apex Court in the case of **Director of Treasuries in Karnataka & Anr. Vs. V. Somyashree** reported in **(2021) 12 SCC 20**. He places specific reliance on the consideration and conclusions of the Hon'ble Supreme Court of India from paragraph 16 to 18 of the decision.
10. We have considered the rival submissions, the relevant provisions contained in 251-Emp. and 26-Emp. We have also considered the Judgements referred to by the writ petitioner's learned advocate from the representation filed by the writ petitioner; as well as the Judgement of the Apex Court in the case of **V. Somyashree** (*supra*).
11. Insofar as the writ petitioner's claim, as a divorcee daughter, there is no dispute regarding the claim being governed by paragraph 3(dd)(a) of Notification dated 01.03.2016.
12. The law, as regards the claim for compassionate appointment, is by now also well settled. A recent decision of the Apex Court in the case of **State of West Bengal Vs. Debabrata Tiwari & Ors.** reported in **(2025) 5 SCC 712**, would be fruitful to consider. In the Judgement, the Apex Court has emphasised the concept of immediacy in claiming the benefit of compassionate appointment, since the very concept of compassionate appointment is to enable the dependants of a Government employee who dies in harness, to tide over the sudden crisis arising on account of loss of the bread earner. Another aspect was considered by the Apex Court in **Debabrata Tiwari** (*supra*) that the concept of compassionate appointment is for a beneficial objective and in exception to the general provisions of employment and therefore

must be resorted to only in order to achieve the objectives stated. It was stated that the appointment must follow the stipulations made in the policy. The benefit, therefore, according to the Judgement of the Apex Court can be claimed, considered and granted strictly in terms of the scheme and observing the requirements of the scheme, under which the benefit is claimed.

13. Paragraph 3 (dd)(a) of Notification 26-Emp. lays down a criteria, which keeping in background the decision of the Apex Court in the case of ***Debabrata Tiwari*** (*supra*) is required to be considered with a view to its strict implementation, while extending benefit of compassionate appointment to a divorcee daughter of the Government employee. The clear and unambiguous requirement under the provision is that the petition for divorce must have been filed before the death/permanent incapacitation of the Government employee.
14. In the present case, the application being of the same date, there was no scope for the authorities to consider that the application was filed before the death of the writ petitioner's father. In exercise of judicial review, the Tribunal as well as this Court also would not embark upon such an enquiry, arising essentially out of a disputed issue of fact as regards the actual time of filing of the application for divorce *vis-a-vis* the actual time of death of the writ petitioner's father, on the same date. Such a disputed issue of fact could not be examined by the Tribunal; or the Writ Court in exercise of judicial review under Article 226 of the Constitution of India. Unless it is discernible from the documents, or there is no dispute regarding the time of submission of

application preceding the death of the Government employee, the Tribunal or the Writ Court would not embark on an enquiry into such a disputed issue of fact. In the present case the learned advocate for the writ petitioner was not able to show from any document, that the time of filing of the application for divorce was prior to the time of death of her father. Therefore, we are of the view that normally, unless the date of filing of the divorce application precedes the date of death of the Government employee in harness, such a claim would not come within the purview of 3(dd)(a) of Notification No. 26-Emp.

15. Insofar as the alternate claim of the writ petitioner that she was entitled to consideration as a married daughter, we find that in the representation, the petitioner relied upon the decisions of this Court in ***F.M.A. 1277 of 2016 (The State of West Bengal & Ors. Vs. Purnima Das & Ors., WPST 447 of 2013, (Arpita Sarkar Vs. State of West Bengal & Ors.) and WPST 78 of 2014 (Kakali Chakraborty (Dutta) Vs. The State of West Bengal & Ors.)***.
16. The Court's consideration in these judgements has also been reproduced in the representation filed by the writ petitioner, wherein the unambiguous position that emerges is that every member of family of the Government employee, who is "*dependant*" on the earnings of the employee for his/her survival must be considered to belong to "*a class*" for the purpose of entitlement to the benefit of compassionate appointment.
17. In the present case, the writ petitioner never made an application claiming that being a married daughter she was dependant upon the

Government employee. Therefore, there is no occasion for the learned advocate for the writ petitioner now to contend that being a married daughter, the writ petitioner was entitled to be considered.

18. Insofar as the stand of the learned A.G.P. relying upon decision of the Apex Court in the case of **V. Somyashree** (*supra*), we find that the conclusions of the Apex Court have been stated in paragraph 18 of the Judgement in the following terms:

“18. Even otherwise, it is required to be noted that at the time when the deceased employee died on 25-3-2012 the marriage between the respondent and her husband was subsisting. Therefore, at the time when the deceased employee died she was a married daughter and therefore, also cannot be said to be “dependant” as defined under Rule 2 of the 1996 Rules. Therefore, even if it is assumed that the “divorced daughter” may fall in the same class of “unmarried daughter” and “widowed daughter” in that case also the date on which the deceased employee died she - respondent herein was not the “divorced daughter” as she obtained the divorce by mutual consent subsequent to the death of the deceased employee. Therefore, also the respondent shall not be eligible for the appointment on compassionate ground on the death of her mother and deceased employee.”

19. The Apex Court in that case also considered that the daughter, while she was married, was not “*dependant*” as defined under the Rule therein. The Apex Court further took notice of the fact that the applicant therein was also not a “*divorced daughter*”, the date of divorce being subsequent to the date of demise of the Government employee in harness.

20. As noticed above in the present case also there was no claim by the writ petitioner as a dependant. The date of submission of application for divorce was also not before the date of demise of the Government servant in harness. Therefore, the writ petitioner was not eligible for compassionate appointment under the provisions of the scheme/s.
21. We, therefore, find that the rejection of petitioner's claim did not require any interference. The Tribunal in our opinion rightly rejected the petitioner's claim by the order impugned.
22. We find no reason to interfere with the Tribunal's order dated 19.11.2024 passed in O.A. No. 243 of 2024 in exercise of jurisdiction under Article 226 of the Constitution of India.
23. At this juncture, the learned advocate for the writ petitioner submits that the Tribunal has exceeded its jurisdiction by casting aspersions on the genuineness of the decree of divorce obtained by the writ petitioner. The observations of the Tribunal by which the petitioner is offended reads :

“From the above evidences, the Tribunal cannot help but come to the conclusion that this application for compassionate employment is not only invalid but also ill-intended. For the sole purpose of getting an employment, the applicant had gone so far as to file a divorce petition on the same day her father died! The Tribunal fails to find any merit in this application and thus disposes this without passing any orders.”

24. It is not the case of the respondent State authorities that the decree of divorce was not issued by a Court of competent jurisdiction.

25. Under the circumstances, neither the State nor the Tribunal would have any jurisdiction to comment upon the genuineness of the decree, or to hold/declare the decree to be based on *mala fide*/malintention or collusive.
26. The observations of the Tribunal in the above noted paragraph, therefore, in our view, is wholly without jurisdiction and to this limited extent insofar as the observations regarding the decree of divorce being ill-intended, we set aside the observations of the Tribunal.
27. The Writ Petition is accordingly disposed of.
28. There will be no order as to costs.
29. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Prasenjit Biswas, J.)

(Madhuresh Prasad, J.)