

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Smita Das De

**WPA No. 23311 of 2023
CAN 2 of 2025**

**Kalpana Maji and Ors In Place of Swadesh Ranjan Maji
(Since Deceased)**

-Vs-

State of West Bengal & Ors.

For the Petitioner : **Mr. R.A. Agarwal**
: **Ms. Nibedita Pal**
: **Mr. Ananda Gopal Mukherjee**

Reserved on : **06/05/2026**
Judgment on : **20/05/2026**

Smita Das De, J.:-

1. The instant application CAN 2 of 2025 has been filed by the applicant, being the wife of the deceased original licensee of a Fair Price Shop (FPS) distributor, challenging inter alia, the order dated April 24, 2025 rejecting her application for grant of license on compassionate appointment. The rejection is premised on the ground that the writ petition filed by the deceased licensee challenging the termination of his FPS license is still pending.
2. Apropos the facts of the case is that the original licence holder (since deceased) had been running a Fair Price Shop Dealership at village and Post Office – Panna, Police Station-Ghatal, District-Paschim Medinipur, by virtue of a license under West Bengal Public Distribution System (Maintenance and Control) Order, 2013(in short

“2013 Order”) issued by the Sub-Divisional Controller, Food and Supplies, Ghatal, Paschim Medinipur(hereinafter referred to as “SCFS”).

3. On February 8, 2023 a show cause notice had been issued to the original licence holder by the SCFS, alleging certain irregularities detected during the enquiry and scrutiny of document regarding issuance of ration cards.
4. On March 24, 2023 an order of termination to the original licence holder had been issued by the SCFS with effect from March 25, 2023.
5. No steps for substitution have been taken by the legal heirs in the pending writ petition being WPA 23311 of 2023. Subsequently, the applicant, being the widow of the deceased, filed an application on April 21, 2025 before the concerned authority for grant of a Fair Price Shop dealership licence on compassionate ground under the applicable policy.
6. The said application has been rejected by an order dated April 24, 2025 solely on the ground that the writ petition filed by the deceased licensee is pending adjudication, which is the subject matter of challenge herein.

Contention of the Applicant –

7. Learned counsel appearing on behalf of the applicant submits that the Writ Petition No. WPA No 23311 of 2023 has been filed originally by the original license holder, challenging the order dated March 24,

2023 passed by the Sub-Divisional Controller, Food and Supplies, Ghatal, terminating his dealership licence, on the allegation of illegally lifting ration commodities against the spurious digital ration cards.

- 8.** The First Appellate Authority, being District Controller of Food and Supplies (DCFS), Paschim Medinipur, by an order dated June 13, 2023 upheld the order of termination of license. The Second Appellate Authority also dismissed the appeal against the order of termination of license.
- 9.** Learned counsel for the applicant further submits that during the pendency of the writ petition, the original license holder died intestate on January 21, 2025 leaving behind his widow and four children, who filed an application on February 11, 2025 for substitution of their names in place of the original licence holder (since deceased), which has been allowed by this Hon'ble Court by an order dated February 19, 2025.
- 10.** The applicant applied for grant of license on compassionate grounds on April 21, 2025 against the dealership of the original licence holder (since deceased), but the application has not been processed by the SCFS, Ghatal, allegedly due to the pendency of the writ petition, as informed to the applicant vide memo dated April 24, 2025.
- 11.** The applicant asserts that the claim for compassionate appointment is an independent statutory and policy right. It cannot

be defeated merely because the deceased had challenged the termination of his licence.

12. There is no provision in the FPS Policy or the relevant scheme that bars consideration of an application for grant of license on compassionate grounds merely due to the pendency of a writ petition filed by the deceased license holder.
13. It is submitted that since no substitution has been sought in the writ petition filed by the deceased, the same stands abated. Therefore, there is no subsisting lis which can operate as a bar to the applicant's claim, as held by the Hon'ble Apex Court in Civil Appeal NO. 7028 of 2022 with SLP (C) NO. 36386 of 2014 (**AKS Rathore (dead) through LRS Vs. Union of India & Anr.**) that no final order can be passed in the disciplinary proceeding against a dead person. The disciplinary proceedings have actually abated and as a consequence, the legal representatives of the original appellant will be entitled to all the benefits.
14. Learned counsel for the applicant also relies upon another judgment dated April 10, 2014, passed in W.P No 524 of 2009 (**Aisha Khatoon & Ors Vs State of West Bengal & Ors**) wherein a Coordinate Bench of this Hon'ble Court has been inter alia pleased to hold that -

“ .. The responsibility of the living representatives of a wrong doer for an alleged act must die with the wrong doer himself.. his heirs cannot be deprived of the right to be considered for grant of license on compassionate ground”.

The aforesaid judgment has been accepted by the State and the licence has been granted to the widow of the original licence holder.

15. Learned counsel further places reliance upon a judgment dated January 30, 2018 passed in W.P. No 19811(W) of 2017 (**Avijit Kar Modak vs Indian Oil Corporation Limited & Ors**) , wherein a Coordinate Bench of this Hon'ble Court has been inter alia pleased to hold that -

"..... of course the authority had the reasonable grievance against his father against whom, may be for the good or reasonable reasons, proceedings had to be initiated. But admittedly, may be for some order of the Court or for otherwise reasons, said proceedings could not be concluded during lifetime of the father of the writ petitioner. Under law and also as has been available from the case of the Co-ordinate Bench as held in the case of Aisha Khatoon (Supra) that even any crime is committed by the father of a son and where the son is not involved in any manner with or with the result of such crime and there has been no other accused, in that event , there would be legal death of that criminal case or even the proceedings, whatever it may be"

"But if for otherwise reasons, the impugned order cannot sustain under law, in that event, a son like the writ petitioner cannot be punished for any fault or default of his father. If it is so done, then it may remind us for a renowned story the wolf and the jackal"

The said judgment dated January 30, 2018 has been carried in an appeal, being FMA 1716 of 2018 (**Indian Oil Corporation Limited & Ors. Vs. Avijit Kar Modak & Anr.**) Where, the Hon'ble Division Bench has been inter alia pleased to hold that -

"Be that as it may, no enquiry having been held against the deceased father of the respondent/writ petitioner during his

lifetime, everything abated on his death when the oil company did not proceed to prove the charge/charges. When everything has abated and the allegation as made has not been proved, no fault can be found in the application filed by the respondent/writ petitioner for his appointment/engagement as LPG distributor. He (respondent/writ petitioner) according to law or moral is not supposed to inherit the sin of his deceased father”.

Accordingly, we set aside the conclusion reached by Hon’ble Single Bench and allow this appeal directing the appellants/oil company to reconsider the application of the petitioner in the light of clause 3.4 of the 2013 Guidelines...”.

- 16.** It has also been submitted that pursuant to the direction of the Hon’ble Appeal Court, as stated above, Indian Oil again rejected the application of the writ petitioner. The rejection order has been challenged by the writ petitioner by way of a writ petition, being WPA 25731 of 2024, which has been disposed of by a Co-ordinate Bench of this Hon’ble Court by Judgment dated July 23 ,2025, inter alia, observing that-

“In passing the reasoned order, the respondent authority also opined that as the previous conduct of the business of the deceased distributor had polluted the reputation of the IOCL, thus, the petitioner cannot be allowed to run the business. The action of the respondent authority remind me a story of HITOPODESH, where a lion tried to kill a deer with allegation that predecessor of such deer had polluted the steam. In this particular case, the respondent authority had illegally denied the petitioner in a notion which was already deprecated by this Court in the earlier litigations. Under the above observations, I am of a view that acts and actions of the respondent authority in passing impugned reasoned order is arbitrary. The respondent authority has not properly complied the direction of the Hon’ble Division Bench. In deciding the prayer of the petitioner for reconstitution, they also flouted the terms of the guideline for

reconstitution of LPG distributorship by confusing themselves in the earlier conduct of the deceased father of the petitioner. Under the above observation, the instant writ petition appear to be meritorious. The impugned reasoned order dated September 11, 2024 by the respondent authority is hereby set aside. The respondent authority is directed to pass an order reconstitution strictly in terms of the guidelines and to convey their consent regarding allowing the petitioner to run the distributorship licence within six weeks from the date of this order. The writ petition is disposed of”.

Contention of the State Respondent-

17. Per contra, learned counsel appearing for the State respondent submits that the order of termination is under challenge in WPA No. 23311 of 2023. Unless the said order of termination is set aside, the applicant cannot claim any right to be appointed in place of the deceased.
18. The state respondent strenuously argues and submits that where a license has been terminated or cancelled on account of proven irregularities, misconduct or violation of the provisions of the control order, the foundation for invoking compassionate engagement ceases to exist.
19. The termination under Clause 28 of the 2013 order is punitive in nature and is imposed as a consequence of established contraventions. Permitting the legal heirs of a licensee, whose license has been cancelled by way of penalty, to seek engagement under Clause 20(vi) defeats the very purpose of the disciplinary framework under the control order and amounts to indirectly condoning the misconduct for which the license has been cancelled.

- 20.** It is further submitted that Compassionate appointment is not a matter of right but is governed by policy. Permitting the wife to obtain a fresh licence on compassionate ground would amount to collateral attack on the order of termination which has been challenged by the deceased. Allowing a family member to step into the same licence after its termination effectively results in 'backdoor entry' rendering the penalty imposed by the licencing authority illusory and nugatory.
- 21.** Learned counsel for the state respondent submits that upon termination of the license, the continuity or "legacy" of the Fair Price Shop dealership stands completely extinguished in the eyes of law. The vacancy that arises is not a "vacancy by death" but a "vacancy by forfeiture" occasioned by punitive cancellation. Such a vacancy must be filled only in accordance with the regular procedure prescribed under the control order, namely through public notification and selection by an open, transparent, and competitive process. Any deviation from the procedure by granting compassionate engagement in such cases violates Articles 14 and 16 of the Constitution of India, which enshrine the principles of equality, non-arbitrariness and equal opportunity. Compassionate engagement, being an exception carved out in limited circumstances, cannot be permitted to override constitutional norms or dilute the sanctity of statutory penalties imposed for proven violations.

22. It has been stated by the respondent that the submissions of the applicant, to the effect that in view of the order dated April 10, 2014 passed by a Coordinate Bench of this Hon'ble Court in WP 524 of 2009, the applicant, allegedly standing on the same footing, is automatically entitled to consideration for issuance of license on compassionate grounds, is wholly misconceived and unsustainable in law. The contention ignored the settled legal position laid down by the Hon'ble Supreme Court that compassionate appointment is not governed by any straitjacket formula applicable uniformly to all cases. The Apex Court has categorically held that each case must be examined on its own peculiar facts, keeping in view the underlying object of compassionate engagement, namely, to alleviate the immediate financial distress of the family arising out of the death of the breadwinner.

23. Learned counsel on behalf of the respondent relies upon a judgment **Canara Bank vs Ajith Kumar G.K** reported in **2025 SCC Online SC 290**, where the Apex Court has held that-

“There cannot be a straitjacket formula applicable uniformity to all cases of employees dying-in-harness which would appointment on compassionate grounds. Each case has its own peculiar features and is required to be dealt with bearing in mind the financial condition of the family. It is only in “hand-to-mouth” cases that a claim for compassionate appointment ought to be considered and granted, if at all other conditions are satisfied.”

24. Learned counsel also relies upon another judgment of the Apex Court in **General Manager, State Bank of India and Others vs**

Anju Jain reported in **(2008) 8 SCC 475** in which the Court has observed that-

“At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.

In our opinion, therefore, if disciplinary proceedings have been initiated against an employee and the charges leveled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to a dependant of such employee on the ground that he was punished. To us, it cannot be said that it is a case of double jeopardy or a dual punishment.

Compassionate appointment is really a concession in favour of dependants of a deceased employee. If during his career, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependants cannot claim right to the employment. With respect, the learned single Judge was wholly wrong in observing that such an action would be violative of the principles of natural justice.

.....”

The Applicant Distinguishes Two Judgments Relied Upon By

The Respondent-

25. The judgment reported in **Canara Bank Vs. Ajith Kumar G.K.**

reported in **2025 SCC Online SC 290** cited by the State is not applicable to the instant case. In the above judgment, the issue pertained to refusal of compassionate appointment on the ground that the family has been in receipt of family pension, and, therefore,

its financial condition did not warrant compassionate appointment .In the instant case, the applicant merely seeks consideration of her application in terms of the statutory provisions of the Control Order, 2024, and appointment subject to fulfillment of the prescribed eligibility criteria.

- 26.** Secondly, the judgment **Somnath Bhattacharya Vs. The Kolkata Municipal Corporation** reported in **2023 SCC OnLine Cal 6734** cited by the State is distinguishable. In that case, the petitioner sought to make out a new case by way of supplementary affidavit that too, after commencement of hearing of the writ petition. However, in the instant case, the supplementary affidavit has been filed before commencement of hearing and has been taken on record without objection by the State. Further, no new case has been made out rather the applicant has prayed for a direction upon the authority only to consider her application on compassionate grounds, since the cause in the writ proceeding has abated.

Analysis-

- 27.** The moot question involved herein as to whether the respondent authority has been justified in rejecting the applicant's application for compassionate appointment solely on the ground of pendency of the writ petition filed by the deceased licensee challenging the termination of his Fair Price Shop Licence.
- 28.** It is a well settled principle that compassionate appointment is intended to provide immediate financial protection and continuity of livelihood to the family members of a deceased licence holder/dealer.

Once the writ proceedings challenging termination abated on account of death, there remains no conclusive judicial determination affirming misconduct. In the absence of adjudication, the stigma attached to the deceased cannot automatically travel to innocent legal heirs.

- 29.** The doctrine that penal consequences are personal and do not ordinarily survive against legal representatives is a settled principle of law. Abatement signifies cessation of proceedings against the deceased person because the lis concerning personal rights and liabilities no longer survives in the same form.
- 30.** It is trite that compassionate appointment is an exception to the general rule of recruitment. It is intended to provide immediate succour to the family of the deceased in order to tide over sudden financial distress. The right to be considered for such appointment is independent of any challenge to the termination of the deceased's licence.
- 31.** In the present case, the deceased licensee had challenged the termination of his licence. However, on his demise, no substitution has been sought and the writ petition stands abated. Consequently, there is no subsisting challenge to the order of termination. The respondent authority has, therefore, proceeded on a misconceived premise that a pending lis operates as a bar.
- 32.** Further, the Fair Price Shop policy does not contain any express provision, disentitling a legal heir from seeking compassionate appointment merely because the deceased had earlier challenged the

termination. In absence of such a bar the authority is duty bound to consider the application on its own merit, including the eligibility and suitability of the applicant.

33. The rejection order being passed on a non-existent legal impediment, suffers from non-application of mind and is violative of Articles 14 of the Constitution. The objective of the compassionate scheme would be defeated if the authority refuses to even examine the application.

34. In **Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr on 10 November, 2005** reported in **2006 (1) SCC 75** it has been held by the Hon'ble Supreme Court that Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. The same principle applies herein, where the respondents have attempted to rely upon procedural abatement while ignoring the applicant's substantive claim for compassionate consideration.

35. In **Canara Bank v. M. Mahesh Kumar** reported in **(2015) 7 SCC 412** and **Balbir Kaur v. SAIL** reported in **(2000) 6 SCC 493** the Hon'ble Supreme Court emphasized that compassionate and beneficial schemes intended for rehabilitation of dependents must receive a purposive and liberal interpretation and should not be defeated through hyper-technical approaches.

36. In the present case, this Court does not find any material demonstrating that the governing scheme specifically disqualifies a dependent merely because proceedings remained pending against

the deceased licence holder without culminating into a finding of guilt. In the absence of any concluded determination against the deceased, the respondents have not been justified in treating the applicant as disentitled solely on the basis of pendency of proceedings.

37. So far as the issue of abatement of the writ proceedings is concerned, this Court is unable to accept the contention that the present proceedings automatically came to an end upon the death of the original licence holder. Though the personal proceedings against the deceased may have abated, the grievance relating to consideration of compassionate appointment survives in favour of the dependent legal heirs who possess an independent and subsisting cause of action arising from the death of the breadwinner and the consequential denial of benefits claimed under the applicable policy.

38. The right asserted by the petitioner is not for continuation of disciplinary proceedings against the deceased but for lawful consideration under the compassionate appointment scheme. Such right, in the opinion of this Court, survives and is capable of adjudication notwithstanding the death of the original licence holder.

39. Having heard the parties at length and considering the materials available on records, this Court finds that disciplinary or punitive proceedings against a person ordinarily stand abated upon his death, since no punitive consequence can thereafter be imposed

upon a deceased individual. The legal effect of such abatement is that the allegations remain untested and inconclusive in the eye of law. Mere pendency of proceedings cannot ipso facto be equated with proof of wrongdoing unless the same culminates in a final finding upon due adjudication.

40. The respondents cannot proceed on a mere presumption of guilt to deprive the dependent legal heir of consideration under a beneficial scheme such as compassionate appointment. To permit the authorities to deny consideration solely on the basis of pending and unadjudicated allegations would amount to attaching stigma and adverse civil consequences to the family members of the deceased without any lawful determination of misconduct.

41. For the reasons stated above the CAN application is allowed holding inter alia, that mere pendency of proceedings against the deceased original licence holder, in the absence of any final adjudication establishing misconduct, cannot constitute an absolute bar to consideration of the applicant's claim for compassionate appointment.

42. The respondents are, therefore, directed to reconsider the applicant's application for compassionate appointment strictly in accordance with the applicable policy within eight weeks from the date of the communication of this order without being influenced solely by the pendency of the proceedings which stood abated upon the death of the original licence holder.

- 43.** In the event the applicant is found otherwise eligible and fulfilling all the criteria as prescribed under the applicable policy, the respondent authority shall grant licence on the ground of compassionate appointment of the dealership in favour of the applicant and complete all consequential formalities within a further period of four weeks from the date of such decision.
- 44.** Accordingly, the impugned order rejecting the application for compassionate appointment is hereby quashed and set aside.
- 45.** With the above observations and direction CAN 2 of 2025 is allowed and disposed of. Since the writ petition has not been pressed by the petitioners, accordingly the same is dismissed. CAN 1 is allowed and disposed of on 19.1.2025. No order as to costs.
- 46.** Urgent Photostat certified copy of this order if applied for be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Smita Das De, J.)