

s/L **26**
24.02.2026
Court No.04
B.K.N

W.P.S.T. 166 of 2023
Kartic Alias Kartick Biswas
Vs.
The State of West Bengal & Ors.

Mr. Uttiya Ray,
Mr. Ashutosh Pal,
Mr. Atish Santra

...for the Petitioner.

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

...for the State.

1. Heard learned advocate for the petitioner and the learned advocate for the State.
2. The present petitioner made a claim for appointment on compassionate ground in view of demise of his father in harness. His claim was rejected on 03.05.2018 by an order issued by the Joint Secretary to the Government of West Bengal in the Public Works Department. The reason assigned for rejection of the claim was that the petitioner's father was not brought in the regular establishment.
3. The order of the Joint Secretary dated 03.05.2018 was assailed by the writ petitioner before the West Bengal Administrative Tribunal (SAT) in O.A. No. 40 of 2019. The Tribunal set aside the order of the Joint Secretary dated 03.05.2018 and remitted the matter to authority to reconsider by a reasoned and speaking order after affording an opportunity of hearing to the writ petitioner and on going through the records,

considering the law laid down in the judgment of one ***Manoj Kumar Sharma***.

4. After consideration in terms of the order passed in O.A. No. 40 of 2019 an order with reason was passed by the Secretary to the Government of West Bengal in the Public Works Department. The same contains conclusion in the following terms:

“C. Conclusion

*As per direction of **The Hon’ble West Bengal Administrative Tribunal** opportunity of hearing to the applicant was given and the records verified again. After verification of the records it is concluded that*

1. *None can claim compassionate appointment, on the occurrence of death/ medical incapacitation of the concerned employee, as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible.*

2. *Compassionate appointment can only be made on Group C and Group D posts subject to satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough, a dependent must fulfill the eligibility criteria for appointment.*

3. ***The applicant did not fulfill the criteria of educational qualification and maximum age limit as per extant rules since he is Class VI pass and his present age is more than 45 years.***

4. *In spite of considering the deceased employee deemed to have been absorbed in the regular establishment the present applicant is ineligible on other criteria.*

D. Order with reason

1. *In view of the above it is finally concluded that the application dated 29.06.2011 of the applicant has been scrutinized in the light of relevant Government orders which are in force. After scrutinizing the application it is found that the applicant, Sri Kartic Biswas did not fulfill the criteria as laid down in Notification No. 251-Emp. Dated 03/12/2013, West Bengal Services (Group D) Recruitment Rules, 2009.*

2. *Thus the application of Sri Kartic Biswas, son of Late Sankar Biswas is considered, but rejected due to the reasons stated above.”*

5. This order of 01.12.2022 was put to challenge before the SAT again in O.A. No. 28 of 2023. The Tribunal disposed of the petitioner's Original Application without passing any orders and without interfering with the order dated 01.12.2022 rejecting his claim.
6. The learned advocate for the writ petitioner submits that from the conclusions recorded by the Secretary in the impugned order it is obvious that the petitioner's claim was rejected for not having the requisite educational qualification and since he was found to be overage.
7. He submits that insofar as the issue of petitioner's age, the conclusion is unsustainable as the age of the petitioner on the date of demise of his father is the age relevant for consideration under the scheme. The date of unfortunate demise of the petitioner's father is 11.02.2011. The age for eligibility for appointment on compassionate ground, therefore, on the date of demise of his father is the relevant date. Because the authorities have delayed consideration for over a decade, the petitioner cannot be made to suffer.
8. Insofar as the other criteria regarding not possessing the educational qualification (7th), he submits that there is a specific provision in the notification dated 03.12.2013 bearing no. 251-Emp enabling relaxation of the educational qualification. The authorities were, therefore, required to consider the petitioner's claim for

relaxation of this requisite qualification in terms of Note (b) of Clause 6 of the notification no. 251-Emp which has not been done.

9. The learned AGP on the other hand submits that there is no dispute that the petitioner did not possess the requisite educational qualification, the order of the Secretary dated 01.12.2022, therefore, requires no interference. The Tribunal has rightly rejected the Original Application.

10. We have considered the rival submissions. The conclusions and order of the Secretary in the impugned order dated 01.12.2022, extracted above leaves no room for doubt that the financial condition of the family of the deceased and the financial distress arising from sudden loss of their bread earner are issues germane to the claim for compassionate appointment. The conclusions in this regard require no interference.

11. We, however, consider it worth mentioning that these issues were not enquired into by the authority competent to consider the petitioner's claim. The scheme for appointment contemplates consideration of such issue by a Three Member Committee. There is nothing on record to show that these issues were ever considered by the Three Member Committee.

12. Insofar as the maximum age criteria is concerned, we are in agreement with the submission advanced on behalf of the petitioner that he cannot be non suited for

the delay attributable to the State authorities in considering his claim.

13. Insofar the issue regarding the petitioner's father being a work charge employee, the same is laid to rest by the conclusion no. 4, extracted above since authorities, having regard to the long period, nearly 37 years served by the petitioner's father in the work charge establishment, have considered the petitioner's claim deeming his father to be absorbed in the regular establishment.

14. Therefore, an only issue which arises and remains is whether on account of not possessing their requisite educational qualification for appointment under the General Rule (6th Pass), the petitioner could be deprived of a benefit of compassionate appointment. We are unable to agree with such conclusion of the Secretary. The scheme as contained in notification no. 251-Emp and the other notifications governing the field contemplates an enquiry by a Three Member Committee as regards the financial condition and financial distress for the purposes of eligibility for compassionate appointment. The authorities, therefore, were primarily required to consider this issue by referring the petitioner's claim to the Three Member Committee for a thorough examination of this issue and decision in this regard. We are of such opinion because the relevant provision allows a relaxation of the educational qualification in Note (b) which reads:

“Note: (b) Relaxation in educational qualification may be granted in eligible cases for appointment to Group ‘D’ post in consultation with the Finance Department.”

15. From plain reading of the provision it is more than obvious that the relaxation can be granted in consultation with the Finance Department but in “*eligible cases*”. Considering this provision we had earlier allowed the learned AGP an opportunity to take instructions as to whether there is any elaboration of this “*eligible cases*” by any guideline or executive instruction. Today he submits upon instruction that there is no such executive instruction or guideline. Such being the circumstance we are of the view that the only possible way of defining the expression “*eligible cases*” employed under Note (b) of Clause 6, is to rely upon the other eligibility specified in Rule 6 being the criteria of financial destitution, the monthly income of the family and other such requirements as stated in Clause 6 of the 251-Emp.

16. We are, therefore, of the opinion that the authority (Secretary) of the Public Works Department should ensure consideration of the petitioner’s claim and his entitlement with reference to the other eligibility criteria specified in Clause 6 of 251-Emp. If after such consideration the claim of the petitioner is found to be otherwise eligible then appropriate steps are required to

be taken for considering a relaxation of the educational qualification in terms of Note (b) (*supra*).

17. To facilitate such consideration we remit the matter to the Secretary, Government of West Bengal in the Public Works Department, respondent no. 1. We make it clear that while according such consideration the conclusions contained in the earlier order dated 01.12.2022 shall not come in the way. Let such consideration be accorded without raising an objection regarding the petitioner's age in view of our findings and observations recorded above.
18. Insofar as the other criteria are concerned the procedure applicable for a compassionate appointment is required to be adopted and followed. Let the entire exercise be completed within a period of three months from the date of receipt/production of a copy of this order before the respondent no. 1.
19. The writ petition is allowed in the above terms.
20. In view of the order passed today, the Original Application bearing O.A. No. 28 of 2023 stands allowed in these terms.
21. 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.)