

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 516 of 2018

Islam Ahmed & Another Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicants : - Mr. Sourendra Narayan Ray,
Advocate**

**For the State Respondents:- Mr. Goutam Pathak Banerjee,
Advocate**

Judgment delivered on : 10th June, 2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following reliefs:-

“(a) An order do issue thereby set-aside/quash the rejection order dated vide Memo No. 8789/Estt. Dated 08.05.2018 and after cancelling the same direct the concerned respondent authorities to consider the case of your applicant no. 1 for employment on compassionate ground in accordance with law within a stipulated time period.

(b) A further order to issue directing the concerned respondent authorities to forthwith issue appointment letter to your applicant No. 1 for any Group D/C post under the respondent authorities commensurate to his educational qualification after proper assessment in accordance with law without any further delay.

(c) An order do issue directing the respondent authorities to dispose of the repeated representations dated 27.02.2012, 10.01.2013, 20.02.2014, 15.09.2014 made before the authorities in accordance with law by passing a reasoned order, after setting aside the rejection order dated 08.05.2018 within a stipulated time period.

(d) Leave be granted under Rule 4(5) (a) of the West Bengal Administrative Tribunal (Procedure) Rules, 1994 to file a single application by more than one applicant having regard to the cause of action and nature of relief prayed for, being the same.

(e) An order do issue directing the respondent authorities to transmit all the records pertaining to the instant case before this Hon'ble Tribunal so that conscionable justice can be done.

(f) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the Applicant and in the ends of justice. ”

2. As per the applicants, the Applicant No. 1 is the son of the deceased employee and the Applicant No. 2 is the wife of the deceased employee, who died-in-harness on 04.10.2005 (Annexure 'A'). Subsequently, the Applicant No. 2 made an application in a plain paper before the Deputy Commissioner of Police, Head Quarter, Kolkata Police on 13.01.2006 praying for appointment of compassionate appointment for herself (Annexure 'B'). Thereafter, vide Memo dated 30.07.2008, Assistant Secretary to the Government of West Bengal, Home Department had intimated the Applicant No. 2 that her case has been considered. However, her position in the panel of exempted category was 424 and whenever her turn would come; she would be considered for compassionate appointment (Annexure 'C'). However, subsequently, the Applicant No. 2 on 27.02.2012, 10.01.2013, 20.02.2014, 15.09.2014 made repeated representations praying for employment on compassionate ground

in favour of her son in place of herself (Annexure 'D' collectively). However, vide Memo dated 02.09.2016, the Commissioner of Police, Kolkata asked her to produce certain documents in support of her claim in exempted category, against which the Applicant No. 2 expressed her inability and has prayed for consideration of the case of her son in place of her. Thereafter, the office of the Commissioner of Police, Kolkata vide Memo dated 31.05.2017 (Annexure 'E') asked the Applicant No. 1 to appear for written examination and computer test on the scheduled date to which the Applicant No. 1 duly appeared. In the mean time, the office of the Commissioner of Police, Kolkata vide Memo dated 08.05.2018 rejected the prayer of the Applicant No. 1 on the ground that he was minor at the time of death of his father. On the other hand, they again made endeavor in favour of the Applicant No. 2 by offering employment on compassionate ground. Being aggrieved with, both the applicants have approached this Tribunal.

3. Though no reply has been filed by the respondent, however, the counsel for the respondent has submitted that the case of the Applicant No. 1 has been rightly rejected by the authority as the Applicant No. 1 was 9 years 8 months 13 days age at the time of the death of his father. Moreover, the case of the Applicant No. 2 was already considered and she was asked to submit relevant documents for the post of General Duty Assistant (Group – D) under Health and Family Welfare Department by Memo dated 02.09.2016. However. The Applicant No. 2 is pressing for consideration of the case of the Applicant No. 1 after a long time though he was minor at the time of death of the deceased employee. It has been further submitted that the Applicant No. 1 cannot claim as a matter of right to get compassionate appointment in place of his mother who had already been

considered and has been asked to submit necessary documents for processing of her appointment.

4. I have heard both the parties and perused the records. It is an admitted fact that father of the applicant died on 04.10.2005 and the Applicant No. 2 (mother of the Applicant No. 1) made an application for compassionate appointment in the year 2006 and she was found fit and put in the panel against serial No. 424 in the panel of exempted category for compassionate appointment, when the Applicant No. 1 was minor i.e. almost 10 years. Subsequently, vide Memo dated 02.09.2016, the Commissioner of Police asked her to produce certain documents. However, she expressed her unwillingness and has prayed for consideration the case of her son in place of her. In the mean time, the application of the Applicant No. 1 was considered and rejected vide Memo dated 08.05.2018 by the Commissioner of Police, Kolkata (Annexure 'F'), which is as follows:

“With reference to the subject noted above, this is to inform you that the proposal for your appointment on compassionate ground was returned by the Govt. with the observation that your age was only 9 years 08 months 13 days at the time of the death of the deceased employee i.e. Zaki Ahmed and hence you are too minor to attain the minimum age required for recruitment as per Note-c of 6(c) Labour Department Notification No. 251-EMP dated 02/12/2013 read with Notification No. 26-EMP dated 01/03/2016 to get compassionate appointment under exempted category.

Hence, you are requested to let this office know whether your mother is willing to be

considered herself for appointment on compassionate ground subject to the fulfillment of other conditions as laid down in Labour Deptt.'s Notification No. 251-EMP dated 03.12.2013 read with 26-Emp. Dated 01.03.2016.

If so, it is requested to submit necessary documents for consideration of employment in favour of your mother Mst. Sahanawaz Begum on compassionate ground at the earliest.”

In the aforesaid rejection order, again the Applicant No. 2 was directed to submit necessary documents, but, instead of submitting documents for processing of her employment, she filed the instant application praying for consideration of the compassionate appointment of the Applicant No. 2.

5. Hon'ble Apex court in the case of Umesh Kumar Nagpal –Vs- State of Hariyana, reported in (1994) 4 SCC 138, has observed that the whole object of granting compassionate appointment is to enable the family to overcome the sudden crisis caused due to the death of the sole bread earner of the family. However, mere death of employee in-harness does not entitled his family to such source of livelihood. The Hon'ble Apex court in the case of SBI –vs- Rajkumar, reported in (2010) 11 SCC 661 has held that the compassionate appointment not a matter of right to be claimed by anybody.
6. In the instant case, the respondents had already considered the case of the Applicant No. 2 and had asked the Applicant No. 2 to submit necessary documents for processing of her case. Even in 2008, she was found fit but due to lack of vacancies (as she was in serial No. 424 of the panel) she could not be appointed and

only in the year 2012 onwards the Applicant No. 1 had started making repeated representations for his compassionate appointment in place of his mother i.e. Applicant No. 2, though his father died in the year 2005, when he was only 9 years 8 months 13 days of age. Further it is a settled principle of law that the case of compassionate appointment has to be considered as per the Scheme / Rules of the Government and / or authority concerned. Therefore, as the case of the Applicant No. 2 was already considered and she was asked to submit necessary documents for processing of her case, applicants cannot claim the consideration of the case of the Applicant No. 1 as a hereditary claim nor the Applicant No. 2 can transfer her claim in favour of her son. Therefore, in my considered opinion, the respondent has rightly rejected the case of the Applicant No. 1. Accordingly, the O.A. is dismissed being devoid of merit with no order as to costs.

**URMITA DATTA (SEN)
MEMBER (J)**

A.K.P.