

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

The Hon'ble Sayeed Ahmed Baba, Administrative Member

Case No. –OA 321 OF 2021

ANTARA BANERJEE - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

03
06.12.2021

For the Applicant

: Ms.A.Shaw
Advocate

For the State respondents

: Mr.G.P.Banerjee
Advocate

In this application, Antara Banerjee, the applicant, has prayed for certain reliefs, the relevant portion of which is as under:-

“ a) An order do issue by setting aside the impugned order dated 18.03.2021 being annexure “A-4” of the Original Application.

b) By directing the respondents to ignore the proposition as laid down in the Labour Department Notification no. 251EMP being annexure-“A-4” of Original Application and take a fresh view in terms of the order passed by the Special Bench in FMA 1277 of 2017 with WPST 447 of 2013 and WPST 78 of 2014 and pass a reasoned order in terms of the guidelines framed in the said judgment.

It appears that the father of the applicant – Amar Nath Chowdhury, was an employee in the office of the Medical Superintendent cum Vice Principal attached to the Bardhaman Medical College and Hospital who expired on 27th May, 2015 while in service. The applicant applied for compassionate appointment on 16th November, 2015 in place of her deceased father which was supported by No Objection Certificates of other family members that is mother and sister of the applicant. The said application was considered and was

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rejected as evident from the intimation contained in the memo. dated 18th March, 2021 appearing at page 26 of the application issued by the Additional Director of Health Services (Personnel) Directorate of Health Services, West Bengal to the respondent no.5, the relevant portion of which is as under:

“This is to inform you that the prayer of Antara Banerjee, married daughter of Late Amar Nath Chowdhury, Ex-GDA, is not eligible for employment on compassionate ground because as per Labour Department Notification No 251-Emp, a daughter who is married at the time of death of an ex-employee, cannot be considered as dependent family member of an ex-employee.

Hence the undersigned regrets to inform that the prayer of Antara Banerjee, seeking employment on compassionate ground is rejected by the competent authority on the above mentioned ground.

The applicant may be informed accordingly.

Sd/-

*Addl. Director of Health Services (Personnel)
Directorate of Health Services
West Bengal”*

It is submitted by Ms.A.Shaw, learned advocate for the applicant that the order under challenge is illegal in view of the judgement delivered on 13th September, 2017 in F.M.A. 1277 of 2015- The State of West Bengal & Ors. v. Purnima Das & Ors. where in paragraph 113 it has been held as under:

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“113. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective ‘unmarried’ before ‘daughter’ is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/ mother (Government employee) on the date of his/ her death and agree to look after the other family members of the deceased, if the claim is to be considered further.”

Our attention has also been drawn to paragraph 119 of the said judgement which is as under:

“119. The authority competent to appoint Purnima, Arpita and Kakali shall proceed to consider their claims for compassionate appointment in the light of the observations made above, more particularly paragraph 113, and dispose of such claims in accordance with law within 8 (eight) weeks from date of receipt of a copy of this judgment and order. In the event of any claim not succeeding, an appropriate reasoned order shall be passed and communicated to the

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concerned candidate. If, however, any claim succeeds, the concerned candidate shall be given appointment without any delay but after complying with all the formalities.”

Reliance has been placed on the enquiry report prepared by the Enquiry Committee for employment of the applicant on compassionate ground which has recommended the case of the applicant, as evident from Annexure- ‘A-2’ to the application.

Mr.G.P.Banerjee, learned advocate appearing on behalf of the State respondents submits that it may be noted that in the said judgement of the State of West Bengal & Ors. v. Purnima Das (supra), the notifications dated 2nd April 2008 and 3rd February, 2009 were under consideration. However, on a query, it is fairly submitted that a distinction cannot be made between married and unmarried daughter in view of the judgement of the State of West Bengal & Ors. v. Purnima Das (supra) which was upheld by the Supreme Court as SLP(C) was dismissed on 23rd July, 2019 as evident from Annexure- ‘A-6’ to the application.

Heard learned advocates for the parties.

It appears that an Enquiry committee was formed to enquire and to file a report regarding employment of the applicant on compassionate ground which had recommended the name of the applicant as a candidate ‘fit’ for receiving Government service due to sudden death of the father of the applicant. However the claim of the applicant was rejected by the Additional Director of Health Services (Personnel) as evident from page 26 of the application on the basis of the scheme contained in the notification 251 Emp that a married daughter

ORDER SHEET

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cannot be considered as dependent family member of an ex-employee which in our view is contrary to the judgement of the State of West Bengal & Ors. v. Purnima Das (supra). Therefore the order contained in the memo. dated 18th March, 2021 issued by the Additional Director of Health Services (Personnel) Directorate of Health Services, West Bengal appearing at page 26 of the application is set aside and quashed. The application is allowed. Accordingly, the Secretary, Department of Health and Family Welfare, Government of West Bengal, the respondent no.1 shall consider the case of the applicant for appointment on compassionate ground in the light of the enquiry report for employment on compassionate ground in relation to the applicant as evident from Annexure- 'A-2' of the application and shall pass a reasoned order to be communicated to the parties within fifteen weeks from the date of communication of this order after giving an opportunity of hearing, after verifying the records and after conducting an enquiry.

(SAYEED AHMED BABA)
MEMBER(A)

(SOUMITRA PAL)
CHAIRMAN

BLR