

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 513 of 2022.

SOUMITA GHOSH - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

07
08.02.2024

For the Applicant : None.

For the State Respondents : Mr. S. Ghosh,
Learned Advocate.

For the Private respondent No. 5 : Mr. A. Mitra,
Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. – II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsel for the contesting parties, the case is taken up for consideration sitting singly.

This application pray for setting aside the impugned order of the respondent dated 11.03.2022 rejecting his application for appointment under compassionate ground. The primary reason given by the respondent while rejecting her application is that at the time of her father's death, the deceased employee, she was already a married woman. Therefore, as per the extant rules, as married daughter at the time of death of her father, she is not entitled for any such appointment.

Mr. Ghosh, learned counsel for the State respondent opposes the admission of this application on the ground that her brother's application for the same cause was already rejected by the authorities. Therefore, she has no *locus standi* now to apply for such appointment under compassionate ground.

Appearing on behalf of the Private Respondent no. 5, Mr. Mitra, learned counsel opposes admission of this application on the ground that no NOC has been given by the private respondent to the applicant.

Mr. Roy, learned counsel for the applicant submits that the applicant as

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the daughter, even being married but dependent of her deceased father's income, is entitled to be offered such an appointment. The very eligibility of the applicant as a married daughter, but dependent on her parents, has been supported by the judgement of the Hon'ble Supreme Court.

One of the points of consideration for this Tribunal is whether the rejection of the applicant's brother's application for employment under compassionate ground is a valid ground for rejection of her application too or not? The Tribunal is of the view that this applicant's application cannot be rejected only on the ground that earlier her brother's application was also rejected. Though both being children of the same deceased employee, the merit of their case will certainly be different. Therefore, submission of Mr. Ghosh that this application is not admissible on the ground of her brother's application was earlier rejected holds no ground and therefore, is not a valid point.

On close examination of the impugned reference No. 169 dated 11.3.2022, it is clear that the respondent authority was not aware of judgement of the Hon'ble Supreme Court and amendments made in the Notification. The relevant part of the impugned order rejecting her application on being a married woman before the death of their father is quoted below :-

"...Soumita Ghosh, D/O. late Jimut Bahan Ghosh is married before the death of their father".

"So as per point No. 3 of G.O. No. 251-Emp dated 03.10.2013, Soumita Ghogh is not a dependant family member. Naturally, the prayer for the claim of service cannot be accepted in favour of Soumita Gosh..".

It is apparent that the respondent was not aware of another important judgement of Hon'ble High Court in WPST 122 of 2013 passed on 13.6.2023 which upheld the fundamental right of a married daughter to apply for such employment, if certain conditions are fulfilled. The relevant part of the judgement is as under :-

"...7. The impugned order of the learned Tribunal proceeds on the

*basis that a claim of a married daughter to compassionate appointment being negated by the relevant Rules governing compassionate appointment, no relief can be granted to the petitioners. Such relevant Rule of compassionate appointment for a married daughter was considered in **Purnima Das & Ors. (supra)** , Larger Bench formulated points for consideration in paragraph '6' thereof which is as follows :-*

“Whether the policy decision of the State Government to exclude from the zone of compassionate appointment a daughter of an employee, dying-in-harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is solely dependent on the earnings of such employee, is constitutionally valid?”

8. Such issue was answered by the Larger Bench by holding as follows :-

“112. Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of 'dependent' and ineligible to even apply, is not constitutionally valid.

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.”

10. The State Government, by a notification dated November

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4, 2022 modified the offending clause in terms of employment in light of **Purnima Das and others (supra)**.

11. In light of the decision of the **Purnima Das and others (supra)**, we are unable to sustain the impugned order of the learned Tribunal. The same is set aside.

12. The authorities concerned are directed to consider the application for compassionate appointment of the writ petitioners in light of the **Purnima Das and others (supra)** along with other relevant parameters. Such consideration be made within a period of four weeks from the date of communication of this order to the authorities. The authorities will afford one reasonable opportunity of hearing to the writ petitioners. The authorities are at liberty to hear such other parties and consider such documents as it deem appropriate. The authorities will communicate the reasoned order to the writ petitioners within six weeks from date.

It is also important here to enlighten the respondent authorities that by Notification Labour/419/Law dated 04.11.2022, the existing provisions in the Notification 251-Emp was amended. The very provision C 3 (C) relating to a married daughter on date of death was replaced by the wordings (daughter, legally adopted daughter before death) the relevant provision of the Notification is as under :-

Sl. No.	Existing/New Clause/Para No.	Existing Provision	Proposed Provision
1.	C1.3(b),3(c).3(d) of Notification No. 251-Emp dated 03.12.2013	(b)son(including legally adopted son before death or incapacitation); or (c)unmarried daughter(including legally adopted unmarried daughter before death or incapacitation); or	(b)son(including legally adopted son before death or incapacitation or missing); or (c)daughter(including legally adopted unmarried daughter before death or incapacitation or

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		(d)married daughter who on date of death or incapacitation was unmarried	missing); or (d)third gender child(including legally adopted third gender child before death or incapacitation or missing)
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In view of the judgements and the amended law, it is safe to say that the impugned decision of rejection was not in accordance to law.

In this matter, the applicant states in her application that since her husband's business was in doldrums and he was not able to look after the family, she was forced to take financial help from her parents and thus became dependant on them. Though by different judgements and amendment of the law, Soumita Ghosh became eligible to apply for compassionate employment, but it has to be properly enquired whether she has been financially dependant on her parents or not.

Now, it is to be seen and decided by the respondent authority whether the applicant, even though married, was dependent on her father's income.

In view of above observations, this Tribunal finds the impugned rejection order untenable and is thus quashed and set aside with a further direction to consider the application of the applicant for employment on compassionate ground afresh taking into account whether she, being a married daughter, was dependent on her parents or not.

Since the impugned rejection order has not cited any reference regarding enquiry by a Three Men Screening-cum-Enquiry Committee, it is imperative that such a committee is formed and only after their proper enquiry and submission of report, her application should be considered.

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Let this consideration be completed within three months from the date of communication of this order and a final decision taken by passing a speaking order. Let the applicant be given an opportunity of hearing to present her case before the respondent authorities. The application is thus considered and disposed of.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

Skg.

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