

**The Judgement of the Tribunal was delivered by:-  
Mrs. Urmita Datta (Sen), Member (J).**

## J U D G E M E N T

1. The instant application has been filed praying for following relief:
  - (a) An order do issue directing upon respondent Nos.2 to 6 to provide service/job in place of his father Late Lakshmi Narayan Manna who had been rendering services since 03.02.1995 till 22.06.2014 and should be deemed to be treated permanent;
  - (b) An order do issue commanding the respondents Nos. 2 to 6 by directing to send all connected case records.
  - (c) An order do issue to set aside the impugned Order Memo No.137/PW/O/Works (ECG)/5P-21/16 dated 9<sup>th</sup> March, 2017 issued by Joint Secretary to the Government of West Bengal, Public Works Department
  - (d) To pass such order or further order or orders as your Lordships may deem fit and proper.
2. As per the applicant, his father was engaged by the Superintending Engineer, State Highway, Circle No.VI at the post of Work Guard vide Memo dated 03.02.1995 and since then he rendered service continuously till his death on 22.06.2014. Therefore, his father should be deemed to be treated permanent in service. Immediately thereafter, the mother of the petitioner made an application for compassionate appointment in favour of the applicant on 25.05.2014 (Annexure C). However, the Joint Secretary to the Government of West Bengal, PWD, vide his Memo dated 09.03.2017 (Annexure E) had rejected the claim of the applicant on the ground that since the father of the applicant was Work Charged employee, therefore as per Labour Department's Notification, the applicant is not entitled to be considered for compassionate appointment. Being aggrieved with he has filed the instant application.
3. During the course of hearing, the counsel for the applicant has referred judgement filed in WPST NO.170 of 2014 order dated 09.07.14 passed in Manoj Kr. Misra -vs- State of West Bengal & Others.
4. Though the Respondents have not filed reply, however, the counsel for the respondents have submitted that the compassionate appointment is guided by different circulars issued by the Labour Department in this regard wherein it has been specifically stated that the dependent of the work charged employee are not entitled to be considered for

compassionate appointment. However, he has also drawn our attention that the Hon'ble Apex Court has already considered the said issue in the case of **State of Manipur –vs- Thingujam Brojen Meetei** reported in (1996) 9 SCC 29, wherein the Apex Court has held that a work charged employee is not entitled for compassionate appointment if the departmental scheme for compassionate appointment does not permit so.

5. We have heard both the parties and perused the records. It is admitted fact that the father of the applicant was engaged as work charged employee and as per the applicant till his death he was not regularized. Further the father of the applicant died on 22.06.2014. Therefore, Labour Department's Notification No.251 Emp dated 03.12.2013 is applicable for the case of the applicant and the respondents have already considered the case of the applicant under Clause 3(f) the said scheme. Moreover, the Hon'ble Apex Court in the case of Manipur supra while dealing with the case of compassionate appointment of dependent of work charged employee has held inter alia:

“As noticed earlier, in the Scheme, as initially framed by OM dated 2-5-1984, there was a provision in paragraph (3) for appointment of dependants of work-charged employees who died in harness. But by corrigendum dated 8-5-1984, the office memorandum dated 2-5-1984 was amended and paragraph (3) was substituted and in the amended provision it was provided that the Scheme shall be applicable to regular government employees in the vacancy available in the department in which the deceased employee worked. The matter was further clarified beyond doubt in the revised scheme issued by OM dated 31-08-1992 wherein it is expressly stated that the Scheme will not be applicable to adhoc/officiating/work-charged/casual/muster roll appointees. We are unable to agree with the view of the High Court in N. Arun Kumar Singh v. State of Manipur that a change comes about in the character of a work-charged employee after confirmation and the Scheme is applicable to him. In our view, the only change that is brought about as a result of confirmation of a work-charged employee is that, by virtue of the Terminal Benefits Rules, a confirmed work-charged employee is entitled to certain benefits including pension and gratuity under Rule 6 of the Terminal Benefits Rules which benefits he would otherwise have not been entitled to. But a work-charged employee after confirmation does not cease to be a work-charged employee and he continues to be a work-charged employee. The bar regarding applicability of the Scheme to work-charged employee would, therefore, continue to be applicable and the dependants of such a confirmed work-charged employee cannot claim the benefit of an appointment on the basis of the Scheme.”

6. We have also perused the judgement passed by the Hon'ble High Court in the case of **Manoj Kr. Misra supra**. However, the said judgement is not distinguishable being "per incurium" as the judgement of the Hon'ble Apex Court passed on same issue, was not referred before the Hon'ble High Court while dealing with the said case. Therefore, the Hon'ble High Court was not in a position to consider the judgement of the Hon'ble Apex Court, which held that the work charged-employee who even if further subsequently being regularized, the dependant of such work charged employee would not be entitled to be considered for compassionate appointment if there is a specific provisions for not to consider. In the instant case, in the scheme for compassionate appointment there is a specific bar i.e. 251-Emp dated 03.12.13 for dependant of those employees, who were engaged as work charged employee. As per the admission of the applicant, his father was not even regularized till his death. Further, the said Notification dated 03.12.2013 has also not been challenged by the applicant, which is still in existence and both the respondents and the applicant are bound by the said notification. Therefore, we do not find any reason to interfere with the decision of the respondents. Accordingly, the OA is dismissed being devoid of merit.

**P. RAMESH KUMAR**  
**MEMBER (A)**

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