

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

ORIGINAL SIDE

RESERVED ON: 01.05.2025

DELIVERED ON: 06.05.2025

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

W.P.O. 1020 OF 2024

SAMBRIITA GANGULY

VERSUS

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

Appearance:-

Mr. Alak Kumar Ghosh, Adv.

Mr. Arijit Dey, Adv.

.....For the Petitioner

Mr. Joydeep Kar, Sr. Adv.

Mr. Swapan Kumar Debnath, Adv.

Ms. Piyali Sengupta, Adv.

.....For the KMC

JUDGMENT

Gaurang Kanth, J.

1. The Petitioner has preferred the present writ petition being aggrieved by the impugned order dated 12.07.2024 passed by the Chief Manager (Personnel), Kolkata Municipal Corporation (hereinafter referred to as "KMC"), vide communication No. P/317/IVC/2024-25 dated 12.07.2024, whereby the Petitioner's application for compassionate appointment was rejected.
2. The facts leading to the present writ petition are as follows:
3. The Petitioner's father, Mr. Snehangshu Sekhar Ganguly, was employed as an Assistant Engineer (Civil) in the CME (Civil) Department of the Respondent Corporation, bearing Employee ID No. 38100. He suffered a

massive cardiac arrest and passed away on 18.06.2019, leaving behind his widow and the Petitioner as his sole surviving legal heirs.

4. All death-cum-retirement benefits were disbursed to the Petitioner's mother. Additionally, the monthly family pension of the deceased was sanctioned in favour of the Petitioner's mother.
5. It is pertinent to mention that the Petitioner was married to one Mr. Prasun Debnath on 16.08.2010. However, due to incompatibility, the parties were divorced on 08.11.2017. Accordingly, on the date of her father's demise, the Petitioner was a divorced daughter, and her case is that she was entirely dependent on her father for sustenance.
6. In view of the above circumstances, the Petitioner submitted an application for compassionate appointment on 27.09.2019. The Petitioner's mother also submitted an affidavit declaring that she had no objection if the employment benefit of her deceased husband was granted to the Petitioner. The Petitioner further undertook to take care of her mother during her lifetime.
7. Subsequently, vide letter dated 24.02.2023, the Deputy Personnel Officer, Personnel Department of the Respondent Corporation, informed the Petitioner that her application had been considered in the 127th Meeting of the Special Regulation Committee held on 29.11.2022, and it was resolved to reject the application under Clause 2B of the extant Special Regulations.
8. The Petitioner challenged the said rejection in W.P.O. No. 24 of 2024. This Hon'ble Court, by order dated 09.04.2024, was pleased to set aside the said rejection. The relevant portion of the order is extracted herein below:

“The Petitioner seeks compassionate appointment. She happens to be the married daughter of a deceased employee of the Kolkata Municipal Corporation. The Petitioner’s prayer has been rejected by the authority on the ground of her marriage.

The fact that married daughters cannot be excluded from the zone of consideration for compassionate appointment has been conclusively decided by a Larger Bench of this Court in its judgment dated 13th September 2017 in F.M.A. 1277 of 2015 (The State of West Bengal & Ors. Vs. Purnima Das & Ors.).

The same principle has been reiterated by a Division Bench of this Court in its judgment dated 17th February 2023 passed in M.A.T. 698 of 2020 with C.A.N. 1 of 2022 (Payel Bhattacharya Vs. Kolkata Municipal Corporation & Ors.).

In light of the settled position of law, there is no justification for rejecting the Petitioner’s application on the ground of her marital status. The impugned order dated 24th February 2023 and the decision taken by the Special Regulation Committee in its 127th meeting dated 29th November 2022 are accordingly set aside.

The Corporation is directed to reconsider the Petitioner’s application in view of the judgments in Purnima Das (supra) and Payel Bhattacharya (supra) after affording the Petitioner an opportunity of hearing. Such reconsideration shall be completed at the earliest, but positively within four months from the date of communication of this order. A reasoned order shall be passed and communicated to the Petitioner immediately thereafter.”

9. Pursuant to the directions of this Hon’ble Court in W.P.O. No. 24 of 2024, and after granting the Petitioner an opportunity of hearing, the Respondent Corporation passed the impugned order dated 12.07.2024 once again rejecting the Petitioner’s claim for compassionate appointment.
10. Being aggrieved by the said impugned order dated 12.07.2024, whereby the Petitioner’s application for compassionate appointment was again rejected, the Petitioner has filed the present writ petition seeking appropriate reliefs.

Argument on Behalf of the Petitioner

11. Learned Counsel for the Petitioner submits that the Respondent Municipality has erroneously rejected the Petitioner’s prayer for

compassionate appointment. It is submitted that at the time of her father's death, the Petitioner was a divorced daughter and was wholly dependent upon her deceased father for her livelihood. The learned Counsel further submits that the bar of marital status cannot be a ground for rejection of compassionate appointment, particularly in view of the judgment rendered by the Full Bench of this Court in ***The State of West Bengal & Ors. vs. Purnima Das & Ors.*** reported as **2017(4) CHN (CAL) 362.**

12. Learned Counsel further submits that the Petitioner entered into a second marriage with a Government Employee on October, 2022, which was much after the demise of her father. It is, therefore, contended that the eligibility of the Petitioner for compassionate appointment ought to have been considered as per her status on the date of her father's death, when she was a divorced daughter and financially dependent upon him.
13. Learned Counsel also submits that the monthly family income of the family of the deceased, as on the date of his death, was less than 90% of the gross salary drawn by the deceased employee. Accordingly, in terms of the DMC (Personnel) Circular No. 47/VIII/2008-09 dated 17.01.2009, the Petitioner is eligible for the grant of compassionate appointment.
14. In support of his contention, learned Counsel for the Petitioner places reliance on the judgment of the Hon'ble Supreme Court in ***Mohinder Singh Gill vs. Chief Election Commissioner***, reported in **(1978) 1 SCC 405**, to submit that administrative decisions must be judged based on the reasons disclosed contemporaneously and not on post-facto justifications.

Arguments on Behalf of the Respondent:

15. Per contra, learned Counsel for the Respondent Corporation submits that compassionate appointment is not a vested right, but a concession

extended to mitigate financial hardship faced by the family of a deceased employee. It is submitted that mere death of an employee does not entitle the family to compassionate appointment unless the family is demonstrably in financial distress.

16. Learned Counsel submits that, in terms of DMC (Personnel) Circular No. 47/VIII/2008-09 dated 17.01.2009, a family is considered to be in financial hardship only if the monthly family income falls below 90% of the last drawn gross salary of the deceased employee. In the present case, the Petitioner failed to submit necessary documentation substantiating the family's financial condition as required under the circular, despite multiple opportunities extended by the Respondent.
17. It is further submitted that all death-cum-retiral benefits have already been disbursed to the Petitioner's mother, who is also in receipt of monthly family pension. In the absence of evidence to show financial hardship or eligibility under the extant regulations, the Petitioner's claim cannot be sustained.
18. In support of his contentions, learned Counsel for the Respondent relies upon (i) ***Umesh Kumar Nagpal vs. State of Haryana***, reported as **(1994) 4 SCC 138** (ii) ***State of Himachal Pradesh vs. Shashi Kumar***, reported as **(2019) 3 SCC 653** (iii) ***Steel Authority of India Ltd. vs. Madhusudan Das***, reported as **(2008) 15 SCC 560** (iv) ***Arpita Sarkar vs. State of West Bengal***, **(2017) 4 CHN (Cal) 362**.
19. On the strength of the aforesaid submissions, learned Counsel for the Respondent prays that the writ petition be dismissed.

Legal Analysis

20. This Court heard the arguments advanced by both the parties and examined the documents.
21. Law regarding the compassionate appointment is no more *res integra*. Compassionate appointment is a humanitarian measure aimed at providing immediate financial relief to the family of a government employee who dies while in service. However, it is not an absolute or vested right; rather, it is a discretionary benefit governed by specific policies and judicial interpretations. The Supreme Court has consistently held that compassionate appointment is not a matter of right. It is intended to assist families in sudden financial distress due to the untimely death of a breadwinner. Compassionate appointment is an exception to the general recruitment rules and is subject to the policies in place at the time of the employee's death. Compassionate appointments are governed by specific schemes formulated by the respective government departments or organizations. These schemes outline the eligibility criteria, procedures, and conditions for granting such appointments. Authorities are bound to follow these policies, and deviations can lead to legal challenges.
22. In the present case, the parties are governed by DMC (P)'s circular No. 47/VIII/2008-09 dated 17.01.2009. The relevant provisions of the said circular, reads as follows:

“ 1. The Municipal Commissioner shall appoint a dependant of the employee of the Corporation who dies in harness or retires prematurely on being declared permanently incapacitated for active service leaving his/her family in immediate need of assistance to a post not requiring recommendation of the Municipal Service Commission...

.....
.....

3. One of the conditions that needs to be fulfilled for offering appointment on compassionate ground is that the family of deceased or prematurely retired employee is in need of immediate financial assistance.

It is hereby clarified that a family of a deceased or prematurely retired employee shall be considered to be in need of immediate financial assistance, if any of the two conditions mentioned below is satisfied:-

(a) The family of the deceased/prematurely retired employee will be considered to be in need of immediate financial assistance if the monthly income falls below 90% of the gross monthly salary of the employee before the death or premature retirement.

(b) The monthly income of the family falls below the minimum salary of a Category-D employee (in case of Category-D employees) or the minimum salary of a Junior Assistant (in case of employees other than those belonging to the Category-D).

The gross monthly salary, for the purpose of this definition shall mean basic pay along with dearness pay, dearness allowance, house rent allowance and medical allowance.

The monthly income of the family shall mean the aggregate of:

a) Total family pension per month (Basic, Dearness Pension and Relief etc.).

b) Monthly interest income @8% p.a. on the total amount received by the family after death of the employee or retirement of the incapacitated employee (Gratuity, Leave Encashment, any other payments).

Since G.P.F. accumulation is entirely out of savings of the Corporation employee during his service period, the same shall not be reckoned for the purpose of computing the monthly interest income.

Provided that, where an ex-employee had to incur medical expenses as indoor patient prior to and leading to his/her death/incapacitation, such expenses may be

deducted from the amount received. All such expenses must be supported by original receipt/cash memo, hospital discharge certificates.

.....

(d) Monthly income of the dependants of the ex-employee named in the application on (the family members are expected to submit a declaration on the matter)."

23. Now, this Court proceeds to examine the facts of the present case in light of the settled legal position, as discussed above, and the DMC (P)'s Circular No. 47/VIII/2008-09 dated 17.01.2009.

24. The admitted facts that emerge from the record are as follows:

(i) Late Sh. Snehangshu Sekhar Ganguly, an employee of the Kolkata Municipal Corporation, died on 18.06.2019, leaving behind his wife and daughter as his legal heirs.

(ii) The Petitioner herein, the daughter of the deceased, was a divorcee at the time of her father's demise.

(iii) Family pension and other retiral dues were released to the widow of the deceased in accordance with law.

(iv) The matter of compassionate appointment in the Respondent Municipality is governed by DMC (P)'s Circular No. 47/VIII/2008-09 dated 17.01.2009.

25. In view of the above, the issue that falls for consideration is whether the Petitioner is entitled to compassionate appointment.

26. The Petitioner has relied on the judgment in *State of West Bengal v. Purnima Das* (supra), to contend that a married daughter is also entitled to consideration for compassionate appointment. There is no dispute as to

the legal proposition laid down in the said judgment. The eligibility of the Petitioner to apply for compassionate appointment is not under challenge by the Respondent. The dispute, however, centers around the question of whether the Petitioner is entitled to compassionate appointment under the terms and conditions laid down in DMC (P)'s Circular No. 47/VIII/2008-09 dated 17.01.2009.

27. As per the said Circular, a family of the deceased government employee shall be considered to be in immediate need of financial assistance if their monthly income falls below 90% of the gross monthly salary drawn by the employee prior to his death. It is clear that for this determination, the relevant consideration is the financial status of the family immediately after the demise of the deceased. This Court concurs with the submission of the learned counsel for the Petitioner that subsequent remarriage of the Petitioner or the income of her current spouse is irrelevant for such determination. The financial condition of the family immediately after the death of the deceased is the relevant consideration.
28. However, upon perusal of the records, it is observed that the Petitioner has failed to produce any document or material evidence to substantiate the monthly income of the family of the deceased employee immediately after his demise. The Respondent has furnished a calculation indicating that an amount of Rs. 11,14,367/- was received by the widow of the deceased towards death-cum-retiral benefits, and that she receives a monthly pension of Rs. 47,468/-. Further, the Respondent has calculated that the monthly interest income on the death-cum-retiral benefits would be approximately Rs. 7,429/-, resulting in a total monthly family income of Rs. 54,897/-. Despite repeated requests, the Petitioner failed to produce

any documentary evidence to disprove this calculation or to demonstrate that the family had no other source of income. Accordingly, the Respondent drew an adverse inference and concluded that the family income exceeds 90% of the deceased's gross salary.

29. The record further reveals that the Petitioner has failed to submit any document to establish that there is no other income accruing to the family. As per the divorce documents on record, the Petitioner is an educated person and her occupation is mentioned as 'service', suggesting that she was employed. This raises a reasonable doubt as to whether the Petitioner has made full disclosure regarding the income of the family. The Petitioner has also not produced her bank statements or those of her mother. Additionally, no information has been provided regarding any movable or immovable properties held by either the Petitioner or her mother. It was incumbent upon the Petitioner to produce such material evidence to establish the financial condition of the family. Furthermore, this being the second round of litigation, the Petitioner had ample opportunity to rectify earlier deficiencies and present her case effectively. Hence, this Court is of the considered opinion that the Petitioner failed to discharge the onus of proving that the family of the deceased was in financial distress as contemplated under the relevant circular.

30. In light of the above discussion, this Court finds that although the Petitioner was eligible to apply for compassionate appointment as the daughter of the deceased employee, she has failed to establish that the family of the deceased was in a state of financial hardship immediately after his demise, as required under DMC (P)'s Circular No. 47/VIII/2008-09 dated 17.01.2009. The failure to produce relevant and material

documents, including income proof, bank statements, and details of movable and immovable properties, weakens the Petitioner's claim. The benefit of compassionate appointment, being an exception to the general recruitment rules, must be extended strictly in accordance with the prescribed policy and only to those who fulfill all the required conditions.

31. Compassionate appointment is not a matter of right, but a matter of policy governed by specific rules. The objective of the scheme is to provide immediate financial relief to the family of a deceased employee who dies in harness, leaving the family in indigent circumstances. In the absence of sufficient proof demonstrating such indigency, the claim cannot be entertained.
32. In view of the above findings, this Court finds no merit in the writ petition. Accordingly, the writ petition is dismissed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A.)

