

09.01.2025
Item No.47
gd/ssd

WPA/20811/2022
CHAITALI ROY (MANDAL)
VS
STATE OF WEST BENGAL & ORS.

Mr. Balailal Sahoo,
Mr. Kazi Sajjad Alam,
Mr. Mainul Thander
..for the Petitioner.

Mr. Biswabrata Basu Mallick,
Mr. Sayak Chakraborty
..for the State.

Affidavit of service filed in court today is taken on record.

The petitioner has challenged the order passed by the Director of Local Bodies pursuant to a hearing held on 16th August, 2022 and communicated to the petitioner vide letter dated August 30, 2022.

By the said order, the prayer for compassionate appointment of the petitioner stood rejected on the ground that there is no policy for compassionate appointment to the family members of the deceased employee of Urban Local Bodies under Urban Development and Municipal Affairs Department.

Mr. Sahoo, learned Advocate appearing for the petitioner strenuously contends that the Notification being No.303-EMP/1M-10/2000 dated 21st August,

2002 enables the family members of the deceased employee of Urban Local Bodies to claim compassionate appointment.

Mr. Basu Mallick, learned Advocate appearing for the State submits that the said circular dated August 21, 2002 as well as all previous circulars have been superseded vide Notification being No.251-Emp. dated December 3, 2013. He placed reliance upon a decision of the Hon'ble Supreme Court in the case of *State of West Bengal v. Debabrata Tiwari & Ors.* reported at 2023(3) CHN (SC) 52 in support of his contention that the Circular No.303-EMP cannot be held to be applicable to local authorities.

Heard the learned Advocates for the parties and perused the materials placed.

The father of the petitioner, who was an employee of Arambagh Municipality died in harness on 04.11.2014. The petitioner is the divorced daughter of the deceased employee. She claims appointment on compassionate ground. The prayer for compassionate appointment stood rejected by the order of the Director of Local Bodies pursuant to the hearing held on 16.08.2022 in compliance with the order dated 22.07.2022 passed in WPA 12853 of 2022.

The Director of Local Bodies in the order impugned has observed that after issuance of

Notification being No.251-Emp. dated December 3, 2013 all previous orders in respect of compassionate appointment was superseded and there was no existence of order dated 26th September, 2005 by which the DLB used to accord approval of appointment to the municipal employee on compassionate ground

It has been further observed by the Director of Local Bodies in the order impugned that the Finance Department has informed that the benefits of the order of Labour Department, vide No.251-Emp. dated 3rd December, 2013 will not be applicable to the municipal employees..

The Hon'ble Supreme Court in *Debabrata Tiwari (supra)* has held that Circular Nos.301-Emp, 302-Emp and 303-Emp cannot be held to be applicable to local authorities. The Hon'ble Supreme Court further noted that liberty was granted to the local authorities in Circular No.142-Emp. to formulate their own scheme for compassionate appointment which is an acknowledgement of the fact that there was no policy existing to govern compassionate appointment to posts under local authorities.

The Hon'ble Supreme Court held as follows:

“16.1 A scheme for compassionate appointment was introduced by Circular Nos. 301-Emp. to 303-Emp. dated 21st August 2002.

Circular No. 301-Emp identifies the exempted categories for the purpose of the Act of 1999. Dependents of employees dying in harness is one of the categories so identified. Circular No. 302-Emp provides that 30% of the vacancies arising in a year under any appointing authority shall be reserved to be filled by persons belonging to the exempted categories. Circular No. 303-Emp prescribes a procedure for filling up of vacancies reserved for the exempted categories, i.e., the procedure to be followed by the appointing authority on receipt of an application to be appointed on compassionate grounds. The said Circular provides that the administrative department shall, on finding a candidate eligible for compassionate appointment, either appoint him/her under the appointing authority which forwarded the application, or, identify a suitable department where there is a vacancy to be filled by a person belonging to an exempted category. The Circular further provides that any Department which has vacancy in the Exempted Category of posts will provide employment to the wife/son/daughter/near relation of the employee who died in harness.

The next notification is 97-Emp. dated 6th June, 2005 which specifies the criteria for a person seeking an appointment on compassionate grounds in the 'dependents of persons who died in harness' category. Further, Circular No. 142-Emp. dated 1st November, 2007, seeks to answer the question, whether the provisions of 97-Emp. would be applicable to State Government employees only or it would apply to the employees attached to other establishments as mentioned in the Act of 1999 as well. It answers the question in the negative so far as employees of other establishments are concerned. It further provides that local authorities may formulate their own policies having regard to the principles applicable to the State Government Employees to govern compassionate appointment.

16.2. There is no controversy regarding the applicability of Circular No. 97-Emp. dated 6th June, 2005 to employees of local authorities such as municipalities because Circular No. 142-Emp. dated 1st November, 2007 provides in no unclear terms that 97-Emp. would not be applicable to employees of local authorities.

It is trite that the effect of the clarification of any document is always retrospective and would relate back to the date of the notification in respect of which the clarification is issued, vide Ashok Lenka vs. Rishi Dikshit, AIR 2006 SC 2382. The clarificatory Circular, i.e., Circular No. 142-Emp. dated 1st November, 2007 has got no independent existence. It merely defines the scope of operation of Circular No. 97-Emp. dated 6th June, 2005. Therefore Circular No. 97- Emp. read with Circular No. 142-Emp. concern the procedure governing compassionate appointment, only qua State Government employees.

Further, applications for compassionate appointment are to be considered in light of the policy holding the field on the date on which the application is filed. In the present case, the applications were filed in the year 2006. Therefore, they would have to be decided in light of Circular No. 97-Emp. read with Circular No. 142-Emp. Given that the said Circular does not govern compassionate appointment to posts under local authorities, compassionate appointment cannot be granted to posts under local authorities.

16.3. It is the case of the Respondents-Writ Petitioners herein that though Circular No. 97-Emp. read with Circular No. 142-Emp is not applicable to local authorities, their applications for compassionate appointment ought to have been considered in light of 301-Emp., 302-Emp. and 303-Emp. which, according to the Respondents-Writ Petitioners is applicable to all departments and authorities covered under the Act of 1999. However, in our view, the said Circulars were not understood or read to be a scheme governing all employees of other

establishments governed by the Act of 1999. We say so for the following reasons:

i) Circular No. 303-Emp. provides that any Department which has vacancy in the Exempted Category of posts will provide employment to the wife/son/daughter/near relation of the employee who died in harness. Use of the word 'Department' would indicate that the said Circular would govern compassionate appointment to Departments of the State Government and not to local authorities.

ii) The meaning of the word 'Department' would have to be gathered, having regard to the fact that the immediate notification subsequent to 301-Emp., 302-Emp. and 303-Emp., being 97-Emp. dated 6th June, 2005 notifies the departments in whose vacancies the appointments would be granted. The Departments are of the State.

iii) If Circular Nos. 301-Emp, 302-Emp and 303-Emp. are to be read so as to cover all establishments of the Act of 1999, then 97-Emp. dated 6th June, 2005, should provide for appointment in the establishment covered by the Act of 1999 concerned. It does not do so. Therefore, Circular Nos. 301-Emp, 302-Emp and 303-Emp. cannot be held to be applicable to local authorities.

16.4. The existence of a policy issued by the State Government is a *sine qua non* for making appointments on compassionate basis, vide Mumtaz Yunus Mulani (Smt.) vs. State of Maharashtra (supra); State Bank of India vs. Surya Narain Tripathi, 2014 (15) SCC 739. The appointments must follow the stipulations made in the policy. It is therefore a no-brainer that in the absence of a policy governing compassionate appointment to posts under a local authority, no appointment could be made to such an authority on compassionate grounds.

Having held that Circular Nos. 301-Emp, 302-Emp and 303-Emp. cannot be held to be applicable to local authorities, we are unable to affirm the findings of the Division Bench of the High Court to the effect that given that Circular

No. 301-Emp., 302-Emp. and 303 Emp. were not specifically withdrawn, they would continue to remain applicable and therefore, compassionate appointment in respect of municipalities would be governed by the scheme under Circular Nos. 301-Emp., 302- Emp. and 303-Emp.

We are further of the view that the liberty granted to the local authorities in Circular No. 142-Emp. to formulate their own scheme for compassionate appointment, is an acknowledgement of the fact that there was no policy existing to govern compassionate appointment to posts under local authorities.”

The Hon'ble Supreme Court held that there was no policy existing to govern compassionate appointment to the posts under local authorities in the State of West Bengal.

It is well settled that existence of a policy is a *sine qua non* for making appointment on compassionate ground.

In the absence of any policy decision of the Government enabling the family members of the deceased employee of Urban Local Bodies to claim compassionate appointment, this court is of the considered view that the petitioner does not have any right to claim compassionate appointment.

The order of the Director of Local Bodies does not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.

For reasons as aforesaid, the writ petition stands dismissed without, however, any order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)