

Form J(2)

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri**

**WPA 23173 of 2023**

**Mallika Daskarmakar Pal**

**Vs.**

**The State of West Bengal & Ors.**

**For the petitioner : Mr. Ram Anand Agarwala,  
Ms. Nibedita Pal,  
Mr. Ananda Gopal Mukherjee,  
Ms. Sonam Ray**

**For the State  
respondents : Mr. T.M.Siddiqui,  
Mr. Amritalal Chatterjee**

**Judgement on : 29.09.2023.**

**Bibek Chaudhuri, J.**

Affidavit of service be taken on record.

The mother in law of the petitioner was originally a fair price shop. She died on 17<sup>th</sup> October, 2022 leaving behind one married son and one married daughter. It is not in dispute that the said married son and his family used to reside with their mother/mother-in-law in the same house and mess being her dependents. After the death of the mother-in-law of the petitioner, the petitioner being the son's wife filed an application in prescribed proforma for compassionate

appointment. The said application was rejected by the Directorate, DDP&S vide order dated 4<sup>th</sup> May, 2023 on the following ground:-

“... Smt Mallika Daskarmakar Pal was not eligible to apply for FPS licence on compassionate ground as “son’s spouse” and was not a “family member” of the deceased Dealer as defined under the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 at the time of death of Sikha Pal.”

The petitioner made a representation for reconsideration of the said order but the State respondents failed and neglected to consider such representation so is the instant writ petition for necessary direction in the form of the writ of mandamus. At the time of hearing Mr. Agarwala, learned Advocate for the petitioner has placed a Government of West Bengal, Department of Food and Supplies Notification No.4644-FS dated 29<sup>th</sup> November, 2022 by virtue of which the provision of the compassionate appointment under the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 was amended and Clause–M (Item No. IV) has been substituted with the following term “IV” “son’s spouse” .

From the impugned order passed by the Director, DDP&S, it is found that since the aforesaid order of amendment was passed on 29<sup>th</sup> November, 2022 and the original licensee died on 17<sup>th</sup> October, 2022, i.e. before the amendment dated 29<sup>th</sup> November, 2022 and

application for compassionate appointment was made on 12<sup>th</sup> December, 2022, the prayer for granting licence on compassionate ground was refused.

It is submitted by the learned Advocate for the State respondents that during the lifetime of the mother-in-law of the petitioner, there was an allegation against her son for defalcation of ration articles from the fair price shop of the original licensee. A criminal case is pending against the said son of the original licensee. Therefore, during the pendency of criminal case, his wife should not be granted any licence even on compassionate ground. The question that has been raised for adjudication in the instant writ petition is as to whether an amendment introducing a particular category of family member of a deceased licensee will take effect from the date of amendment or retrospectively. Law is trite on this subject that if a substantive right is conferred to any person in any statute, that right shall be deemed to be in effect from the date of promulgation of the statute. In other words, it will be help that the amended provision was in the provision of compassionate appointment provided in Clause 20 of the WBPDS (Maintenance and Control) Order from the date of promulgation of the control order. However, in case of procedural amendment or amendment imposing any penalty will take effect on and from the date of amendment and not retrospectively.

Since a substantive right has been conferred on the son's wife to apply for grant of licence on compassionate ground on the death of her mother-in-law, the right of the son's wife ought to have been considered taking into consideration the amended provision dated 29<sup>th</sup> November, 2022 as if it was in the control order from the date of its promulgation. In other words, amendment of substantive law conferred any right to any class of person will operate from the date when the original control order of 2013 came into force.

In view of such circumstances, this Court is of the view that the order dated 4<sup>th</sup> May, 2023 passed by the Directorate, DDP & S is not legally sustainable and the same is liable to be quashed and set aside.

Accordingly, the order dated 4<sup>th</sup> May, 2023 passed by the Directorate, DDP & S is set aside and quashed.

The Directorate, DDP&S is directed to consider the representation filed by the petitioner on 8<sup>th</sup> June, 2023 in accordance with law and based on the observation made in the instant writ petition within 60 days from the date of communication of this order.

The writ petition be disposed on contest, however, there shall be no order as to costs.

**(Bibek Chaudhuri, J.)**

***Mithun.  
A.R. (Ct).  
SI No.6.***