

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
Hon'ble Justice Shekhar B. Saraf

WPA 12287 of 2019

Ankita Saha & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Sujit Kr. Rath

Mr. Sukumar Sarkar

... for the petitioners

Mr. Bhaskar Prasad Vaisya

Mr. Suman Dey

... for the State

Mr. Supriyo Chattopadhyay

Ms. Iti Dutta

... for the D.P.S.C

Heard on: 22.09.2023

Judgement Dictated in Open Court on: 22.09.2023

Shekhar B. Saraf, J.:

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioners are aggrieved by an order vide memo no. 1049 dated December 15, 2017, passed by the Chairman/Secretary, District Primary School Council, Dakshin Dinajpur (hereinafter referred to as 'Chairman') which rejected their prayer for compassionate appointment of petitioner no.1.

2. The facts of the case are that petitioner no.1's father was a Primary Teacher of Kochpara, F.P. School under Banshihari North Circle, Dakshin Dinajpur. Petitioner no.1's father died in-harness on November 1, 2010, where on the date of the death of the father, petitioner no.1 was only 14 years old. An application was made by petitioner no.2, that is, mother of petitioner no.1, upon the death of the father for appointment on compassionate grounds, dated December 1, 2011. The prayer of the mother of petitioner no.1 would not be acted upon, and subsequently, petitioner no.1 made a representation before the respondent authority for appointment on December 10, 2014. The Chairman, i.e., respondent no.3, through memo no. 17 dated April 5, 2016, had directed petitioner no.1 to submit all relevant documents pertaining to the request for compassionate appointment. Petitioner no.1 submitted the relevant documents on April 21, 2016, but no action was taken by the respondent authority. Petitioner no.1 filed a writ petition bearing W.P. No. 17451(W) of 2017 before a co-ordinate bench of this High Court wherein an order was passed on November 1,

2017, directing the Chairman/respondent no.3, to consider petitioner no.1's representation within a period of six weeks.

3. In compliance with order dated November 1, 2017, of the coordinate bench of this High Court, the Chairman requested petitioner no.1 to appear for a personal hearing through memo no. 967 dated November 17, 2017. On December 15, 2017, the Chairman passed a reasoned order rejecting petitioner no.1's prayer. The Chairman stated that petitioner no.1 was a minor at the time of the first application by her mother/petitioner no. 2, through the letter dated December 1, 2011. Furthermore, the impugned order cited a Notification by the Government of West Bengal, School Education Department, Primary Branch, i.e., G.O. No. 106-SE(Pry.)/(P) 4A-38/07 dated January 28, 2008 (hereinafter referred to as 'Government Notification dated January 28, 2008'), wherein the period of application for appointment on compassionate ground under the West Bengal Primary School Teachers Recruitment Rules, 2001 (hereinafter referred to as '2001 Rules') is stipulated to be two years after death of the employee. The Chairman rejected the prayer of petitioner no.1 on the ground that such two-year period for seeking compassionate appointment had expired, wherein the second application for compassionate appointment, was made on December 10, 2014, i.e., close to four years after the death of the deceased employee/father on November 1, 2010. The relevant paragraphs of the Government Notification dated January 28, 2008 have been reproduced below:-

“14. **Appointment on compassionate ground** – When a teacher dies in harness before the date of his superannuation, i.e. the age of 60 years, leaving a family which is, **in the opinion of the Council, in such extreme financial hardship that it fails to provide two square meals and other essentials** to the surviving members of the deceased teacher's family, the

- (i) spouse;
- (ii) son;
- (iii) daughter

of the deceased teacher's family who is possessing required educational qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and **not below 18 years of age** and not above 45 years of age and found eligible to teach, may **within two years from the date of such death make a prayer in writing to the Council for appointment as primary teacher on compassionate ground.**

Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule.

Explanation – The expression "financial hardship", in relation to income of a deceased teacher consisting of up to five members in his family, shall mean an amount of income less than the initial gross salary of Group-D staff of the Council at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than provident fund, gratuity and 20% of family pension of the first seven years or upon the attainment of sixty-five years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into account:

Provided that if the family of the deceased teacher exceeds five members, the income so computed under this explanation shall

be reduced by 20% for each member exceeding five and the amount so arrived at shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group-D staff at the initial stage at the material point of time.

4. This Court does not find any infirmity with the order passed by the Chairman dated December 15, 2017, because not only was petitioner no.1 a minor of 14 years of age on the date of death of her father, but the two-year application period had also expired for petitioner no.1 after she attained the age of majority. It is settled law that compassionate appointment is not a right, rather an exception to Articles 14, 15 and 16 of the Constitution of India wherein the same must be provided in terms of the rules framed for such an appointment. We shall now consider the jurisprudence of compassionate appointment as given by the Supreme Court and this High Court in previous judgements which affirms the aforementioned observations of this Court.

5. In ***Ipsita Chakrabarti Vs. State of West Bengal*** reported in **2018 (3) CHN (CAL) 472** and **(2018) 2 CAL LT 177 (HC)** this Court summarized the key principles to be noted in cases of appointment to be granted on compassionate grounds. The relevant paragraphs of the judgement have been reproduced below:-

“10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an **exception craved out to the general rule** that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The **right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer** and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is **given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner.** When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has **to be exercised only in warranting situations and circumstances** existing in granting appointment and **guiding factors should be financial condition of the family.**

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13. One must not lose sight of the object of compassionate appointment - to **enable the family to tide over the sudden crisis.**”

6. Furthermore, this Court in **Sri. Bijon Mukherjee Vs. The State of West Bengal & Ors.**, reported in **2018(4) CHN (CAL) 454** and **(2018) 3 CAL LT 136 (HC)** rejected the claim of the petitioner for compassionate appointment, stating that such appointments must always be in consonance with the specific rules applicable to the employee and that the financial status of the family following the death of the employee, must be to the extent as specified in the relevant rules. The relevant paragraph of the judgement has been reproduced below:-

*“26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined above, I am persuaded to opine that **appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased.** It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in mind, it is palpably clear to me that this **appointment must be done in accordance with the rules for such appointment. The dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules.**”*

7. In the instant writ petition, the petitioners are bound by the 2001 Rules where Government Notification dated January 28, 2008, specifically mentions that the applicant needs to be above the age of 18

years and such an application must be submitted for consideration to the Council within two years from the date of the death of the deceased employee. Petitioner no.1 was 14 years of age upon the death of the deceased employee and therefore they could have never sought compassionate appointment as per the 2001 Rules and the Government Notification dated January 28, 2008, as the two-year period for the application seeking compassionate appointment would have expired by the time petitioner no.1 would have reached the age of majority. The application made by petitioner no.1 on December 10, 2014, was four years after the death of the deceased employee/father of petitioner no.1 on November 1, 2010, and such a request would not be granted due to the two-year bar of applying under the 2001 Rules and the Government Notification dated January 28, 2008.

8. Additionally, this Court must also consider financial exigency of the petitioners today. The Supreme Court in ***Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B.***, reported in **2022 SCC OnLine SC 1331**, drew attention to the objective of granting compassionate appointment and affirmed that such a favour is contingent on financial exigency of the deceased employee's family. The relevant paragraph of the judgement has been reproduced below:-

*“18. Thus, as per the law laid down by this Court in the aforesaid decisions, **compassionate appointment is an exception to the general rule of appointment** in the public services and is*

in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.”

9. As discussed in the two precedents of this Court including, ***Ipsita Chakrabarti Vs. State of West Bengal (supra)*** and ***Sri. Bijon Mukherjee Vs. The State of West Bengal & Ors. (supra)***, along with the judgement of the Apex Court in ***Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B. (supra)***, it is observed that the objective of providing compassionate appointment is to assist the family of the deceased who face a sudden financial crisis due to the death of the sole earning family member, in lieu of the rules established. In the present case, the death of the deceased employee/father of petitioner no.1 was in 2010 and now, 13 years after such death, the petitioners no longer have the financial exigency for seeking compassionate appointment.

10. After observing the factual matrix of the instant writ petition, this Court does not see any reason to interfere with the order of the

Chairman dated December 15, 2017. The impugned order of the Chairman dated December 15, 2017, has been passed in terms of the 2001 Rules, Government Notification dated January 28, 2008, and is in consonance with the aforementioned judgements of this Court and the Supreme Court. The petitioners cannot be given compassionate appointment after 13 years of death of the father/employee when there is no financial exigency and the two-year period of limitation as per 2001 Rules for application seeking compassionate appointment had expired when petitioner no.1 had applied for compassionate appointment.

11. In light of the aforementioned discussion, I am of the view that no interference is required in the present case and accordingly, the writ petition is disposed of.

12. All parties are to act on the basis of *website* copy of this order.

(Shekhar B. Saraf, J.)