

31.03.2022
SL No. 2
Court No. 24
(P.M)

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**WPA 11258 of 2014
With
IA No. CAN 1 of 2020**

**Smt. Arati Saha & Anr.
Vs
The State of West Bengal & Ors.**

Mr. Sufi Masih Aftab
... for the petitioners

Mr. Sudipto Panda,
Ms. Munmun Tewary
... for the State

The petitioners are aggrieved by the order passed by the District Inspector of Schools, Secondary Education, Murshidabad vide Memo No. 963-g dated 3rd April, 2012.

The petitioner No. 1 is the widow and the petitioner No. 2 is the daughter of a deceased teacher of a Madrasah. The teacher died-in-harness on 30th January, 2000.

After death of the teacher, the widow made an application for being appointed on compassionate ground. Her name was sponsored to four High Schools, but she was not selected for appointment.

The daughter of the deceased teacher was a minor at the time of death of her father.

The widow of the teacher surrendered her claim for appointment in favour of the petitioner No. 2, her daughter, in the year 2011. She also submitted a no-objection certificate in favour of her daughter, in the event, appointment is given to her.

The said application praying for replacement of her name and for providing appointment to her daughter stood rejected by the impugned order dated 3rd April, 2012.

The impugned order mentions that the name of the petitioner No. 1 (widow) was enlisted in the Live Register for sponsoring the name of the candidate for appointment on compassionate ground. Her name was sponsored to four schools, but she was not selected for appointment. The date of birth of the petitioner No. 2 is 13th April, 1987 and she has passed the Madhyamik Examination.

The prayer of the petitioner No. 1 for considering the prayer for compassionate appointment in favour of the petitioner No. 2 was rejected on the ground that the petitioner no. 2 did not complete the requisite minimum age of eighteen years within the time limit from the date of death of the employee.

The impugned order further mentions that the prayer for replacement of the name of the petitioner No. 1 in favour of the petitioner No. 2 cannot be considered as per Memo No. 1641 MD dated 11th November, 2010 of the Minority Affairs and Madrasah Education Department.

According to the learned advocate representing the petitioners, the petitioner No. 1 surrendered her claim in favour of the petitioner No. 2 who has the requisite qualification for appointment, and accordingly, the respondent authorities ought to consider the prayer of the petitioner No. 2 for providing appointment.

Learned advocate relies upon a decision delivered by the Hon'ble Division Bench of this Court in Syed Iftikar Ali – vs – The State of West Bengal reported in 2011 (2) CHN (CAL) 17. Learned advocate also relied upon the order of the Hon'ble Supreme Court as referred to in the order passed by the Hon'ble Appeal Court in the matter of Syed Iftikar Ali (supra).

Prayer has been made for setting aside the impugned order and for considering the prayer of the petitioner No. 2 for appointment.

The State respondents oppose the prayer of the petitioner.

It has been submitted that as the petitioner No. 2 was a minor at the time of death of her father, accordingly, she cannot be considered for compassionate appointment after lapse of a considerable period of time.

It has further been submitted that the Government Memo as referred to in the impugned order stands in the way of consideration of the prayer of the petitioner No. 2 for appointment.

It has also been contended that the teacher died in the year 2000 and the very purpose of providing compassionate appointment, at this stage, cannot arise.

I have heard the submissions made on behalf of both the parties and have perused the documents on record.

It is an admitted fact that the application made by the widow for providing compassionate appointment was duly taken into consideration and her name was duly registered in the Live Register. Her name was thereafter sponsored to as many as four High Schools, but for some reason whatsoever, the petitioner No. 1 remain unselected and accordingly appointment letter could not be issued in her favour.

The daughter of the petitioner No. 1 attained majority in 2005 more than five years after the death

of the deceased teacher and the widow surrendered her claim for appointment nearly six years after her daughter attained majority.

The very object of providing compassionate appointment is to tide over the immediate financial crisis that may be faced by a family on the death of a bread-earner. The same can never be claimed as a matter of right.

The teacher, in the present case, expired in January, 2000. Late in the year 2022, the prayer of the daughter for providing compassionate appointment, hardly can be accepted by the Court. The very purpose of providing compassionate appointment gets defeated when the claim remains pending for nearly twenty two years.

The Hon'ble Division Bench in the matter of Syed Iftikar Ali (supra) permitted consideration of the case of the son of the deceased teacher after the widow surrendered her claim on account of her ill-health. Here there is no ground made out that, the widow, because of her ill health, is unable to join service.

The learned advocate for the petitioner, at this stage, points out to the affidavit filed by the widow wherein it has been mentioned that she has some difficulties with her movement. The same does not

imply that the petitioner No. 1 was in such a condition that she could not have accepted the job if the same was offered to her. Moreover, the Court does not find any document in support of the ill-health of the petitioner No. 1, to such an extent that, she cannot perform her duty if the job was offered to her.

The Hon'ble Supreme Court in the matter of Sanjay Kumar – vs – State of Bihar & Ors. reported in (2000) 7 SCC 192 clearly laid down that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner, who had left the family in penury and without any means of livelihood. There cannot be any reservation of a vacancy till such time the heir of a deceased employee becomes a major after a number of years, unless there is some specific provision. The very basis of compassionate appointment is to see that the family gets immediate relief.

In the present case no provision has been shown before this Court which permits reservation of vacancy till the time the heir of the deceased attained majority. Mere death of an employee in harness does not give any right to the heir to get appointment. It is not a source of employment. The idea is to prevent destitution. More than two decades have elapsed from

the date of death of the employee. There is no point showing compassion at such a belated stage.

In view of the above, the Court does not find any reason to interfere with the impugned order rejecting the prayer of the petitioners for providing compassionate appointment on the ground that the applicant No. 2 was a minor at the time of death of her father.

No relief can be granted to the petitioners in the instant case.

The writ petition fails and is hereby dismissed.

CAN 1 of 2020 stands allowed.

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

(Amrita Sinha, J.)