

Item No.7

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

30.11.2021
Ct-24

WPA 4931 of 2021
Tasneem Ara
v.
State of West Bengal & Ors.

Mr. Mohinoor Rahaman
Ms. Maria Rahaman
... for the petitioner.

Mr. Susanta Pal
Mrs. Kakoli Samajpati
... for the State.

Mr. Bhaskar Prasad Vaisya
Mr. Pinaki Bhattacharyya
... for DPSC.

The father of the petitioner was serving as an Assistant Teacher of Williamson Islamia Anglo-Urdu FP School. He died-in-harness on June 6, 2012.

The widow made an application for appointment of her daughter, the petitioner herein, on compassionate ground on August 12, 2013. The said application was made along with photocopy of the admit card, mark-sheet and the certificate issued in favour of the petitioner in her Madhyamik Examination.

On receipt of the aforesaid documents from the widow the Chairman, District Primary School Council, North-24 Parganas, Barasat wrote to the Sub-Inspector

of Schools to submit the requisite papers to the Council as soon as possible for considering the case for providing appointment on compassionate ground in favour of the petitioner herein, ward of the deceased teacher.

As no favourable consideration was made the petitioner approached this Court by filing writ petition being WP No. 8359(W) of 2019 which was heard and disposed of by this Court on March 13, 2020. The Court directed the respondent no. 2 to consider the petitioner's claim for compassionate appointment and to take a final decision in accordance with law.

The order passed by the Commissioner, School Education on September 18, 2020 communicated vide Memo No. 46/01(04)/LP/RO, IC-404-LP-2019 dated September 28, 2020 rejecting the prayer of the petitioner on the ground that she submitted application for compassionate appointment beyond two years from the date of her father's death is impugned in the instant writ petition.

According to the petitioner application was made within a period of two years by her mother and all the papers in respect of the petitioner were annexed and forwarded with the said application.

Attention of the court has been drawn to a communication dated April 8, 2014 issued by the Chairman of the District Primary School Council to the

Sub-Inspector of Schools with a copy to the petitioner wherefrom it appears that the proposal for providing compassionate appointment in favour of the petitioner was already under process.

Attention of this Court has further been drawn to a Memo dated May 14, 2019 issued by the Chairman-in-Charge of the District Primary School Council, North 24-Parganas that the file was processed and sent to the Director of School Education for approval by Memo dated October 7, 2015.

Learned advocate for the petitioner submits that since the application of the mother was made in favour of the petitioner within the time prescribed in law, accordingly, the application of the petitioner ought not to have been rejected on the ground that the same was filed at a delayed date.

The petitioner has relied upon a judgment passed by this Court in the matter of *Namita Pramanik v. State of West Bengal & Ors.*, reported in (2008) 1 CAL LT 217(HC) paragraph 14 wherein it has been mentioned that Rule 14 of the Primary Teachers Recruitment Rules, 2011 postulates a “family” but not an “individual” for making application. The process for seeking appointment on compassionate ground by the family began within two years from date of death of the employee.

The petitioner submits that in view of the law laid down in *Namita Pramanik (supra)* the case of the petitioner is to be considered by the respondent authorities and the impugned order rejecting the prayer for compassionate appointment is liable to be set aside.

The learned advocate representing the State respondents submits that the petitioner applied beyond the prescribed period and accordingly, it is not open for the court to relax the time period as mentioned in law.

The learned advocate representing the State respondents relies upon a Larger Bench decision of this court in the matter of *Piali Saha v. State of West Bengal* reported in 2013(1) CHN (CAL) 18 paragraphs 11, 16 and 17 which mentions that when the legislature has fixed a time limit the Court cannot take the task of legislature and extend time limit. It amounts to amendment of Rule. The Court cannot have any amending power of legislation.

From the submissions made on behalf of the parties it appears that the teacher died in harness on June 6, 2012 and the widow applied on August 12, 2013 for providing appointment to the petitioner herein. The documents of the petitioner i.e.; her admit card, mark-sheet and the certificate for the Madhyamik Examination were forwarded by the widow to the District Primary

School Council at the time of making the application itself.

On receipt of all the necessary documents the claim of the petitioner for compassionate appointment was taken into consideration by the respondent authorities.

To process the application of the petitioner the Chairman of the Council sought for a formal application by the ward of the deceased through the Sub-Inspector of Schools. A copy of the said communication was forwarded to the petitioner. Neither the Council nor the District Inspector or Sub-Inspector of Schools directed the petitioner to file a fresh application for consideration. The same implies that the application which was made by the widow was good enough to be considered for processing the claim of the ward of the deceased for grant of compassionate appointment.

The observation of the Commissioner that the petitioner applied beyond the prescribed period of two years accordingly, cannot be accepted in the facts and circumstances of the case. Had the application of the widow not been taken up for consideration and processed at all, then the matter would have been different.

In the present case, the application of the widow in favour of the daughter was duly taken up for

consideration and processed further. Accordingly the ground for rejection that the application was made at a delayed date is misconceived.

At this juncture the judgment in the matter of *Namita Pramanick (supra)* comes to the aid of the petitioner wherein it has been stated that the application made by any member of the family of the deceased within a period of two years from the date of death of the employee may be processed for seeking appointment on compassionate ground.

In *Piali Saha's* case the court laid down that the time limit fixed by the legislature cannot be extended. The same is a very settled proposition of law. In the case at hand, the application for compassionate appointment was made within the prescribed period of limitation. There is no question of extending time limit by the court or by the authority as the application was made within the due date. It is only because the application was made within time, that the same was taken up for consideration and processed by the authority, otherwise the same would have been dismissed at the very first step and would not have been processed at all. At this stage the authority cannot turn around and say that the application was made beyond the period of limitation.

The Commissioner ought to have appreciated that the District Primary School Council by a communication

dated April 8, 2014 requested the Sub-Inspector of Schools to forward the documents in respect of the petitioner. There was no formal communication from the respondent authorities directing the petitioner to file any fresh application. The proposal made by the widow in favour of the petitioner was duly taken up for consideration.

The Commissioner also failed to appreciate that the application was made by the widow on 12th August, 2013 and the Chairman of the District Primary School Council requested the Sub-Inspector of Schools to forward the application from the ward by a communication dated 8th April, 2014. The delay on the part of the Council in calling for documents from the Sub-Inspector of Schools cannot be attributed to the petitioner. The petitioner was no way responsible in the delay in processing the application.

In view of the above, the impugned order of rejection is set aside.

The matter is remanded back to the Commissioner of School Education being the respondent no. 2 herein to take a fresh decision in the matter, in accordance with law, at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

Sh

(Amrita Sinha, J.)