

16 06.12.2021
rkd Ct.15

W.P.A. 3620 of 2020
Through Video Conference)

Baxi Nabi Nawaz Reza Choudhury
-vs-
The State of West Bengal & Ors.

Mr. Himadri Sikhar Chakraborty

....for the petitioner.

Ms. Kakali Samajpaty

....for the State.

Affidavit-in-opposition filed on behalf of the respondent and affidavit-in-reply filed on behalf of the writ petitioner are taken on record.

In the present writ petition Memo dated 5th January, 2016 being No. 9 issued by the District Inspector of Schools (S.E.), Malda, respondent no.3 is under challenge. On detailed reading of this impugned Memo dated 5th January, 2016 it appears that the prayer for appointment on compassionate ground of the writ petitioner being son of a deceased assistant teacher in Ratua High Madrasah, District-Malda was spurned upon placing reliance chiefly on Government Notification dated 11th November, 2010 being No. 1641-MD.

Now the question has arisen in this present writ petition is which notification would apply while determining the eligibility of the writ petitioner who is seeking appointment on compassionate ground

in view of untimely death of his father who was an assistant teacher in a Government recognized High Madrasah. In order to find answer this Court has to look into the order passed by a coordinate Bench on 26th February, 2015 on a writ petition being W.P.3904(W) of 2015 (Baxi Nabi Reza Choudhury-vs-The State of West Bengal & Ors.) wherein the coordinate Bench has unequivocally directed the authorities to consider the entitlement of the writ petitioner to get appointment on compassionate ground in terms of the rules that were prevalent on the death of the father of the writ petitioner (13th October, 2009). The impugned Memo dated 5th January, 2016 of the respondent no.3 has been issued in terms of the said order dated 26th February, 2015 passed by the coordinate Bench.

On perusal of this impugned Memo dated 5th January, 2016 it appears that chiefly the respondent no.3 has relied upon Government notification dated 11th November, 2010 being no.1641-MD and came to the conclusion which was against the claim of the writ petitioner for appointment on compassionate ground. It appears from the said Memo dated 5th January, 2016 that the respondent no.3 has admitted while examining the claim of the writ petitioner that for the first time

norms were set relating to appointment on compassionate ground in respect of teaching and non-teaching staff working in Government recognized High Madrasah by virtue of the said Government Notification dated 11th November, 2010 after the Minority Affairs and Madrasah Education Department, Government of West Bengal was separated from the School Education Department, Government of West Bengal vide Government Notification No.896-MD dated 31st August, 2006. It has also been stated at the relevant part of the said Memo dated 5th January, 2016 that prior to separation of Minority Affairs and Madrasah Education Department, Government of West Bengal, cases relating to appointment on compassionate ground were dealt with in terms of G.O. No.457-Edn(P) dated 12th October, 1987 along with amendments issued by the School Education Department from time to time.

In view of such consideration made by the respondent no.3 as depicted from the relevant part of the impugned Memo dated 5th January, 2016 it appears that the claim of the writ petitioner for appointment on compassionate ground ought to have been considered in terms of the Government

Order No.457-Edn(P) dated 12th October, 1987 as amended from time to time in view of the order passed by the coordinate Bench on 26th February, 2015 which has not been appealed against till date and accordingly the direction contained in the said order dated 26th February, 2015 has attained finality.

In view of the above discussion, the impugned Memo dated 5th January, 2016 issued by the respondent no.3 as well as Memo dated 26th February, 2015 being no. 372/SD/G are set aside and the Director of Madrasah Education, respondent no.2 is directed to pass a reasoned order on the claim of the writ petitioner for appointment on compassionate ground strictly in terms of the observations made by the coordinate Bench in the previous order dated 26th February, 2015 as well as taking into account the observations made by this Court aforesaid with regard to the applicability of the Government Notification dated 11th November, 2010 being No.1641-MD. Before taking such decision the respondent no.2 is directed to give opportunity of hearing to the writ petitioner and the authority of Ratua High Madrasah, Malda. Such exercise shall be completed by the respondent no.2 within a

period of twelve weeks from the date of communication of this order and the order shall be communicated to the writ petitioner within two weeks thereafter.

With the above direction, the writ petition is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)