

20.04.2022

Sl. 13

Ct.No. 03

Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA/834/2015

Subhra Ketan Halder

Vs.

State of West Bengal & Ors.

Mr. Debabrata Ray

Mr. Gazi Faruque Hossain

Ms. Priyanka Mondal

Mr. Soumik Mondal

Ms. Sarbani Mukhopadhyay

...for the appellant/
writ petitioner

Mr. Supriyo Chattopadhyay

Mr. Sabyasachi Mondal

...for the State

The first writ, by the writ petitioner filed in 2007, was disposed of by this court on 11th September, 2013 by directing the Secretary, Regional School Service Commission (Southern Region) to consider his prayer for compassionate appointment on the death of his father on 10th January, 1993.

It was sent to the Secretary for consideration. On 9th January, 2014, he declined to do so on the ground that he could only recommend candidates under the died-in-harness category for the posts of clerk, group 'D' staff only and not for a teaching post.

This administrative order of 9th January, 2014 was challenged in this writ.

The learned single judge has rejected it on the ground that since the appellant/writ petitioner has been able to survive “for more than two decades since the death of a father” his appointment on compassionate ground was not considered necessary, as he did not belong to the exceptional category.

The appellant/petitioner appeals from this order.

On appreciation of the prima facie case of the appellant/writ petitioner this court by its order dated 11th September, 2013 had remitted the matter to the Secretary, Regional School Service Commissioner for consideration of his case. The Secretary did not consider the case on merits at all. He rejected it on a technical ground that he had no power to make the recommendation. When the court had vested the power in him, we do not understand why he relinquished that power or ruled that he suffered from absence of power to decide the issue.

On the said judgment and order dated 11th September, 2013 being pronounced in the first writ at least one point or issue became finally decided between the parties. It was that the

appellant/petitioner had a prima facie case for consideration by the government. When the instant writ application was filed, in our view, this court ought not to have disregarded this factor and taken the view that by passage of time, the appellant/petitioner was not entitled to compassionate appointment. It could have been better to refer the case to the authority, which had the power to make the recommendation.

In those circumstances, we are of the view that the case of the appellant/petitioner deserves consideration on merits.

We direct the Chief Secretary of the State of West Bengal to forward this judgment and order to the appropriate authority to make recommendation for appointment on compassionate ground in terms of the application for compassionate appointment made by the appellant/petitioner.

The Chief Secretary will forward the application to the said authority within two weeks of communication of this order.

The appropriate authority shall arrive at a reasoned decision after giving a short hearing to the interested parties within three months of the receipt of the communication from the Chief Secretary.

The impugned judgment and order dated 8th August, 2014 is set aside.

The appeal is allowed.

(Aniruddha Roy,J.)

(I. P. Mukerji,J.)