

03
21.04.2022
d.p./AB

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

W.P.A 3374 of 2021

**Samaresh Sarkar
-versus
State of West Bengal & Ors.**

**Mr. Biswarup Biswas,
Mr. Kamal Mishra,
Mr. Pratap Sanfui.
...For the Petitioner.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Gourav Das.
...For the DPSC.**

**Mr. Susanta Pal,
Mr. Prabir Roy.
...For the State.**

Petitioner's father was a primary school teacher. He was declared permanently incapacitated on 20th February, 1998.

The petitioner made an application for being appointed on compassionate ground.

The prayer of the petitioner was rejected by an order dated 24th April, 2000.

The petitioner challenged the said rejection order by filing a writ petition being W.P. No. 10046 (W) of 2001. By an order dated 23rd June, 2010, this Court was pleased to set aside the order of rejection and the respondent authority was directed to consider the claim of the petitioner for appointment on compassionate

ground after giving him or his representative an opportunity of hearing.

In compliance of the direction passed by the Court, fresh order was passed by the Director of School Education, West Bengal instructing the Chairman, District Primary School Council, South 24-Parganas to submit proposal for compassionate appointment in favour of the writ petitioner if the Council was satisfied that the family was in extreme financial distress at the material point of time as per prevailing rules and the petitioner fulfils other conditions for compassionate appointment.

As no steps were thereafter taken by the respondent authorities, the petitioner filed a further writ petition being W.P. 6829 (W) of 2012 which was heard and disposed of by this Court on 7th May, 2012 by directing the Sub-Inspector of Schools, Kulpi-1 No. Circle to forward all documents required by the Chairman, District Primary School Council within a stipulated time period. The Chairman, District Primary School Council was directed to take steps to forward the proposal to the Director of School Education (P.E.), if it was found that the petitioner was entitled to compassionate appointment.

By an order dated 24th/30th November, 2016, the prayer of the petitioner for compassionate appointment was rejected on the ground that the total monthly income of the family of the teacher was sufficient to provide two square meals and other essentials to the dependent family members of the disabled teacher.

The petitioner again challenged the said order of rejection by filing a further writ petition being W.P. No. 14147(W) of 2017. By an order dated 7th February,

2018, the ground for rejection of the petitioner's prayer that the family income is higher than the initial basic income of Group 'D' staff was set aside by the Court. The Court directed the Commissioner of School Education to re-visit the issue and take a decision within a stipulated time period.

In compliance of the order passed by the Court, the prayer of the petitioner was again considered by the Commissioner of School Education and rejected once again on the ground that the family of the teacher cannot be considered to be in extreme financial hardship as per the provision of recruitment rules and his prayer was rejected.

The petitioner was compelled to approach this Court once again by filing a writ petition being W.P. No. 20465 (W) of 2018. The said writ petition was disposed of on 16th April, 2019 wherein the Court was again pleased to set aside the impugned order of rejection of the petitioner's prayer and was pleased to direct the Commissioner of School Education to re-visit the issue.

The Commissioner re-considered the prayer of the petitioner and rejected the same on identical ground which was earlier set aside by the Court. An additional ground has been taken in the impugned order dated 26th July, 2019, communicated to the petitioner vide communication dated 31st July, 2019, wherein it has been mentioned that the basic intention for providing compassionate appointment is to get over sudden financial crisis. The very fact that the family of the deceased teacher subsisted for nearly twenty years is proof enough that the first contingency, carved out as an exception to the general rule – sudden financial crisis owing to the pre-mature retirement of the teacher on medical ground - meant that the petitioner was not

entitled to get any relief as prayed for. The prayer for compassionate appointment was again rejected.

The petitioner is presently before this Court challenging the impugned order of rejection communicated to the petitioner vide communication dated 31st July, 2019.

Learned advocate appearing for the petitioner submits that the respondent authority has repeated the same ground which was earlier set aside by this Court for rejecting the prayer of the petitioner. Once the ground for rejection has been set aside, the same ground ought not to have been cited for the purpose of rejecting the prayer of the petitioner.

It has been submitted that the petitioner is running from pillar to post for a job since 1998 and the respondent authority is repeatedly rejecting the prayer of the petitioner.

The petitioner relies upon the order dated 21st January, 2022 passed in WPA 21094 of 2021 (Sri Paramjit Jana Vs. State of West Bengal & Ors.). in support of his stand that once the ground for rejection has already been set aside by the Court on an earlier occasion, the same ought not to have been repeated to reject the prayer of the petitioner all over again.

Learned advocate representing the State respondents has filed a report signed by the Commissioner of School Education wherein the ground as mentioned in the impugned order of rejection has been reiterated. It has been submitted that the monthly income of the family of the disabled teacher was sufficient to provide two square meals and other essentials to the dependent family members.

I have heard the elaborate submissions of the learned advocates representing the respective parties and have perused the materials on records.

It appears that time and again the petitioner has approached this Court praying for consideration of his prayer for providing appointment on compassionate ground. The prayer of the petitioner stood rejected primarily on the ground that the family income of the petitioner was sufficient to provide two square meals.

The gross monthly family income of the petitioner was assessed by the respondents at Rs.3,898/- only. Out of the said amount, Rs.2,898/- was from pension and Rs.1,000/- was the income from other sources.

The ground for rejecting the prayer of the petitioner on the basis of sufficient family income was set aside by the Court on an earlier occasion as it is settled law that the amount received on account of pension cannot be taken into consideration for assessing the financial income of the family of a deceased/disabled employee at the time of consideration of the prayer for compassionate appointment.

The respondent authorities on repeated occasions assessed the family income of the petitioner by taking into consideration the amount received on account of pension. If the amount received from pension i.e. Rs.2,898/- is deducted from the total monthly income of the family of the deceased teacher, then only Rs.1,000/- is available with the petitioner as income from other sources. The sum of Rs.1,000/- only per month cannot be held to be as sufficient monthly income to provide two square meals and other essentials to the surviving

three dependent family members of the disabled teacher.

The respondents ought to have appreciated that once the ground for rejecting the prayer of the petitioner has been set aside by the Court, the same ground ought not to have been repeated again.

Repetition of the self-same ground for rejecting the prayer of the petitioner on successive occasions implies that there is no other ground for rejecting the prayer of the petitioner.

The conclusion of the Commissioner of School Education in the impugned order that the family of the deceased Teacher subsisted for nearly twenty years without the job on compassionate ground is proof enough that there is no requirement for providing job on compassionate ground. The same is an absolute insensitive approach on the part of the Commissioner. The Commissioner failed to appreciate that a family of three cannot survive with a mere amount of Rs.1,000/- per month which has been assessed to be the family income of the petitioner barring the amount received on account of pension.

The Commissioner failed to appreciate that survival does not mean mere animal existence and survival ought to be read in the line of right to life as enunciated in Article 21 of the Constitution of India.

The Court in *Paramjit Jana (Supra)* held that it is not accepted that the Court will decide the merits of the impugned order all over again as the ground for rejection has already been set aside by the Court on an earlier occasion.

In the present case also, the ground assigned for rejecting the prayer of the petitioner was earlier rejected by the Court and accordingly the same cannot be resorted to once again for rejecting the prayer of the petitioner.

In view of the above, the impugned order communicated to the petitioner by communicating memo dated 31st July, 2019 is set aside and quashed.

The Commissioner of School Education is directed to take necessary consequential steps for issuance of appointment letter in favour of the petitioner on compassionate ground at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

The writ petition stands disposed of.

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

Amrita Sinha, J.)