

18.02.2022  
Item No.29  
Crt. No.11.  
KB

**WPA 810 of 2016**  
**Pranab Kumar Ghosh**  
**-Vs-**  
**The State of West Bengal & Ors.**  
**(Via Video Conference)**

Md. Yusuf Ali  
... For the petitioner.

In spite of service of notice, none appears on behalf of the respondent authorities. Let the notice be kept with record.

One Sri Nagendra Nath Ghosh was appointed as an Assistant Teacher of Jagirtala Primary School, Malda in the year 1994. The said Nagendra Nath Ghosh had adopted the petitioner by executing an Adoption Deed which was duly registered before the competent authority. The said Nagendra Nath Ghosh died on 09.06.2009 leaving behind the petitioner as his legal heir being an adopted son. After the death of Nagendra Nath Ghosh, the petitioner, being adopted son, had prayed for release of the pensionary benefit as well as appointment on compassionate ground.

The request of the pensionary benefit was not considered and accordingly the petitioner had approached this Court by filing a writ application and

this Court had directed the authorities to consider the case of the petitioner for grant of pensionary benefit and accordingly family pension was released.

As regards the appointment of the petitioner on compassionate ground was pending before the authority. The application submitted by the petitioner for appointment on compassionate ground, the school authorities have sent proposal for appointment of the petitioner to the Chairman, District Primary School Counsel, District-Malda. The S.D.O. & Ex-officio Secretary, School Education Department *vide* communication dated 17<sup>th</sup> June, 2015 informed that the proposal for appointment of the petitioner on compassionate ground has not been considered.

Being aggrieved with the said communication, the petitioner has filed the instant writ petition and prayed for a direction upon the authority for his appointment on compassionate ground on account of the death of the father of the petitioner in harness.

The counsel for the petitioner submitted that the order of rejection is without any reason and only on the said ground itself the order is liable to be set aside.

The counsel for the petitioner further submitted that the petitioner was aged about 24 years at the time of the death of his father and on 14.6.2010 i.e. within

two years of death of his father, the petitioner, being the adopted son has submitted an application for appointment on compassionate ground and the school authorities have duly sent proposal to the competent authority. The O.S.D. Ex-officio Spl. Secretary without any assigning reason the same was rejected without considering the fact that the petitioner has submitted an application within the specified period.

The counsel for the petitioners draw the attention of this court to the affidavit in opposition filed by respondents and refer para 06 inter alia,

*“It is further stated that the proposal for appointment of the petitioner being the adopted son of deceased primary Ex-teacher late Nagendra Nath Ghosh was considered and rejected by the Financed department. Further the said Ex-teacher late Nagendra Nath Ghosh died on 9<sup>th</sup> June 2009 and the relevant Recruitment Rules prevailing at that point of time governing the compassionate appointment of family member of deceased teacher does not provide any provision for compassionate appointment in favor of adopted son. Accordingly the claim of the petitioner is not sustainable in the eye of law.”*

The counsel for the petitioner further submitted that it is the settled law that the adopted son is also

deemed to be the son as referred to Section 12 of the Hindu Adoption and Maintenance Act, 1956.

Section 12 of Hindu Adoption of 1956 reads as follows:

***“12. Effects of adoption.***

*An adopted child shall be deemed to be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:*

*PROVIDED that –*

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;*
- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;*
- (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption”*

The counsel for the petitioner also relied upon the judgement passed by the Hon’ble High Court at Jharkhand reported in (2004) 1 JCR 119 wherein the Hon’ble Court had held that once a child is adopted the

authority cannot create an embargo on his right which are identical to that of a natural born child.

The petitioner further relied upon the judgement passed in the case of District Primary School Council vs. Sanjay Paul, (FMA 855 of 2006) dated 8<sup>th</sup> July, 2009 wherein the Hon'ble Division Bench has held that the legislature has not expressly excluded the adopted son from the definition of son, discerning the provision of Hindu Adoption and Maintenance Act as well as General Clauses Act (view the son enclosed an adopted son)

Considered the submissions made by the counsel for the petitioner, documents available on record, Affidavit in opposition & judgement relied by the petitioner.

Admittedly, Nagendra Nath Ghosh was working as an Assistant Teacher died-in-harness on 09.06.2009. Prior to death, he had adopted the petitioner by way of a registered deed and he was treated as an adopted son. Just immediately after the death of the father, the petitioner has made an application for appointment on compassionate ground as well as release of pension.

In compliance with the order passed by this Court, the authorities have released the pension but without assigning any reason the respondents have rejected the claim of the petitioner for appointment on

compassionate ground. In the affidavit in opposition the respondents have made out a case that there is no provision for appointment of adopted son.

The judgements relied by the petitioner and Section 12 of the Hindu Adoption & Maintenance Act, 1956 an adopted son shall be deemed to be the child of his or her adoptive father or mother for all purposes.

Considering the above facts and circumstances, this Court is of the view that the impugned communication dt. 17.06.2015 is without any reason and the same is set aside and quashed.

The respondent authorities, particularly respondent no.3, the Commissioner of School Education, is directed to dispose of the representation of the petitioner for appointment of petitioner on compassionate ground by passing a reasoned and speaking order within a period of four weeks from the date of communication of the order.

WPA 810 of 2016 is thus disposed of.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

**(Krishna Rao, J.)**

Later:

After passing order, the counsel for the respondent, Mr. Bhaskar Prasad Vaisya, appeared and prays for stay of the operation of the order. Prayer made by the counsel for the respondent is considered and allowed.

Let the order be stayed for a period of two weeks.

**(Krishna Rao, J.)**