

WPA 3226 of 2018

**Deep Shankar Prasad
Vs.
State of West Bengal & Ors.**

**Mr. Arabinda Chatterjee
Mr. Arkadipta Sengupta**

...for the petitioner

**Mr. Sirsanya Bandopadhyay
..for the State**

**Mr. Ratul Biswas
..for the Council**

The writ petition pertains to appointment under compassionate ground. Petitioner is the son of a teacher working in a primary school in Howrah. Petitioner's father died-in-harness on 31st January, 2017 which prompted the petitioner to apply for appointment on compassionate ground in the post of non-teaching staff in a Government aided secondary school. The application of the petitioner was initially processed by the concerned respondent authorities and ultimately reached the office of the District Inspector of Schools (SE), Howrah, respondent no. 3 for taking final decision. The respondent no. 3 by issuing memo dated 29th November, 2017 spurned the prayer of the petitioner for appointment on compassionate ground on coming to a finding that at

the material point of time the family income of the petitioner was higher than the initial gross salary of Group-D staff working under the State Government. Such decision of the respondent no. 3 as contained in memo dated 29th November, 2017 is under challenge in the present writ petition.

Mr. Arabinda Chatterjee, learned senior Advocate appears on behalf of the writ petitioner and has questioned the decision of the respondent no. 3 chiefly on the ground that since the petitioner is the son of a primary teacher, died-in-harness, he could have applied either for appointment in the post of primary teacher or in the post of non-teaching staff in a Government aided secondary school. According to the petitioner, both the avenues were left open to him. Petitioner chose to apply for appointment in the post of non-teaching staff in a secondary school. It has been submitted on behalf of the petitioner that since he applied for appointment in a Government aided secondary school, the methodology under “*Explanation*” to Schedule V of the West Bengal School Service Commission (Selection of Persons for Appointment to the post of Non-Teaching Staff) Rules, 2009 (for short “Rules of 2009”) was applied. It has further been submitted by Mr. Chatterjee that had the petitioner applied for appointment in the

post of a teacher in primary school perhaps different methodology would have been applied for ascertaining the financial hardship of the family of the petitioner which could have made him entitled to get appointment on compassionate ground in primary school. According to the petitioner, he has unnecessarily been prejudiced since he opted for appointment in secondary school where on applying the methodology as contained in Schedule V to the Rules of 2009, he was adjudged not entitled.

Having heard this submission on behalf of the petitioner, this Court in order to elicit the position relating to appointment of teacher in primary school on determination of financial hardship of the family of the deceased teacher thought it fit to add the District Primary School Council, Howrah as an additional respondent.

Today, Mr. Ratul Biswas, learned advocate having received the notice has entered his appearance representing the Council. On posing query to Mr. Biswas on the methodology which is required to be followed for determination of financial hardship of the family of the deceased primary teacher, he has drawn attention of this Court to Rule 20 of the West Bengal Primary School Teachers Recruitment Rules, 2016 (for short “Rules of 2016”).

For better appreciation of the issue raised on behalf of the petitioner said Rule 20 is quoted below:-

“20. Compassionate Appointment—*If the family of a deceased primary school teacher (while in service) or the primary school teacher retired on being permanently incapacitated before 58 years is in financial hardship and needs financial assistance and the same is absolutely necessary to support the family, application for appointment to the post of primary school teacher is to be submitted within two years from the date of death or retirement on permanent incapacitation:*

Provided that the applicant seeking appointment as a primary school teacher under this category shall be allowed relaxation upto 5% in the qualifying marks in TET as well as marks in the Higher Secondary or equivalent examination:

Provided further that the applicant has to complete the age of 18 years as on 1st day of January of the year of advertisement:

Provided also that the expression of financial hardship and the definition of family shall be taken into account as specified in Schedule V of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009.”

This Court having considered Schedule V of the Rules of 2009 as well as Rule 20 of Rules of 2016 can safely draw an inference that there is no difference in the methodology which is required to be applied for determining the financial hardship of the family of the deceased teacher either working in primary

school or in secondary school while taking decision on entitlement of the applicant to be provided with appointment on compassionate ground.

In view of above discussion, now this Court is required to consider the legality of the decision of the respondent no. 3 as contained in the impugned memo dated 29th November, 2017. Respondent no. 3 on arithmetical calculation came to a finding that the monthly income of the family of the petitioner at the material point of time was Rs 13639/- whereas initial gross salary of the Group-D staff of the West Bengal Government was Rs. 13170/-. Since the respondent no. 3 came to a specific finding that the family income of the petitioner was higher than the initial monthly gross salary of the Group-D staff therefore there is no infirmity in the decision of the respondent no. 3 while rejecting the prayer of the petitioner for appointment on compassionate ground.

In view of above discussion, this Court does not find any merit in the writ petition and the same stands dismissed.

However, 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.)