

16.03.2022
SL No. 65
Court No. 24
(P.M)

WPA 4314 of 2022

**Azizul Mallick
Vs
The State of West Bengal & Ors.**

Mr. Tulsi Das Maiti,
Mr. Pradip Kr. Ghosh,
Mr. Snehasish Bala
... for the petitioner

Mr. Ratul Biswas
... for the Board.

The petitioner seeks appointment on compassionate ground. His father was a primary school teacher who died-in-harness on 7th July, 2006. On the date of death of the teacher the petitioner did not have the requisite qualification for being appointed as a primary school teacher.

The petitioner was advised by the Chairman/Secretary of the Howrah District Primary School Council on 12th July, 2010 to submit the proposal for being appointed on compassionate ground as a Group-D staff under the control of the District Inspector of Schools, Secondary Education, Howrah.

The petitioner challenged the order passed by the Council refusing his claim for appointment as primary teacher in the died-in-harness category.

The learned Single Judge of this Court by an order dated 7th May, 2015 passed in WP 1565 (W) of

2011 was pleased to direct the Council to send the proposal to the Commissioner of School Education and further directed the Commissioner to issue appointment letter on the basis of the approval in favour of the petitioner.

The said order was challenged in appeal and the Hon'ble Division Bench by an order dated 24th February, 2016 in MAT No. 1162 of 2015 (The District Primary School Council, Howrah & Anr. Vs Md. Azizul Mallick & Ors.) was pleased to set aside the order passed by the learned Single Judge.

The Court specifically observed that, the father of the petitioner, a primary teacher, expired on 7th July, 2006. On 15th June, 2007 the mother of the petitioner applied for appointment on compassionate ground without specifying the post for which the appointment was sought. Thereafter, again on 6th November, 2009 the widow applied afresh for her son. The prayer stood rejected as it was made after a lapse of two years from the date of death of the deceased teacher.

The Court further observed that, admittedly, the writ petitioner passed Madhyamik examination in 2009 i.e. after more than two years from the date of death of the father. In view of the Rules relating to appointment, the petitioner was not eligible to be

considered for appointment on compassionate ground as a primary teacher.

With regard to the prayer for being appointed as Group – D staff, the Court observed that no Rule has been shown that the Chairman of the Primary School Council has the authority to send such application to the District Inspector of Schools, Secondary Education.

The Court held that the writ Court does not have power to direct appointment on compassionate ground when rules in that respect exist. A writ Court in breach of the existing Rules cannot issue direction to give appointment on compassionate ground.

The order was passed by the Hon'ble Division Bench on 24th February, 2016. The petitioner has filed this writ petition in March, 2022 reiterating his prayer for being appointed on compassionate ground.

Law relating to appointment on compassionate ground is well settled. Appointment on compassionate ground cannot be claimed as a matter of right and it is a concession given to the heir of the deceased employee to tide over the sudden financial crisis faced on the death of the bread-earner.

In the instant case, the teacher died in the year 2006. Late in the year 2022, the prayer of the petitioner for being considered for appointment on compassionate ground cannot be accepted by the

Court. The very purpose and object for providing appointment on compassionate ground gets defeated if such type of prayer is entertained by the Court after so many years.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)