

WPA 6108 of 2017
(Via Video Conference)

Begum Bahar Ansari & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Syed Mansur Ali
Sk. Imtiaj Uddin
Ms. Tanuja Basak

..for the petitioners

Mr. Ranjan Saha

...for the respondent nos. 5 & 6

Petitioner no. 2 is the son of a Group-D staff of a Government aided secondary school who is desirous to be appointed on compassionate ground since the petitioner no.1 being the mother of petitioner no. 2 has been declared physically incapacitated by the competent medical board and was allowed to retire voluntarily on 17th December, 2012. According to the writ petitioner voluntary retirement of the petitioner no. 1 with effect from 17th December, 2012 on being declared physically incapacitated confers right upon petitioner to be appointed on compassionate ground in terms of the relevant circulars/rules applicable at the material point of time.

Mr. Ekramul Bari, learned advocate appearing for the petitioners submits that application was made by the petitioner no. 2 for appointment in a primary school as a result whereof matter was ultimately referred to the Chairman of the concerned District Primary School Council for taking decision pursuant to the order dated 2nd December, 2015 passed in a writ petition being WPA 25832 of 2015. Such order of the coordinate Bench is at page 41 of the writ petition being annexure P8.

Pursuant to such order dated 2nd December, 2015, decision has been taken by the Chairman, Paschim Medinipur District Primary School Council vide issuing memo dated 16th February, 2017 whereby it was communicated to the petitioners that in view of the provisions of Rule 14(2) of the West Bengal Primary School Teachers Recruitment Rules, 2001 being applicable only to the primary teachers and not applicable to the Group-D employees of the Higher Secondary Schools, no benefit of such rule can be extended to the petitioner no. 2 herein.

Mr. Ranjan Saha, learned Advocate appearing on behalf of Paschim Medinipore District Primary School Council submits that there is no post of non-teaching staff in primary school and for appointment of assistant teacher in primary school a candidate needs to be trained. Therefore, petitioner not having requisite

training qualification is not entitled to be appointed in the post of assistant teacher in primary school.

This Court has considered the rival submissions made on behalf of the respective parties and also perused the decision of the Chairman, Paschim Medinipore District Primary School Council contained in memo dated 16th February, 2017. It is true that apart from non-applicability of Rule 14 (2) of the West Bengal Primary School Teachers Recruitment Rules, 2001 in the case of claim of the petitioner no. 2, the petitioner is not a trained candidate, therefore, it is impermissible to appoint the petitioner in the post of Assistant Teacher of Primary School on compassionate ground. Therefore, it appears that the decision of the Chairman, Paschim Medinipore District Primary School Council dated 16th February, 2017 is not flawed.

Fact remains petitioner no. 2 claims appointment on compassionate ground since his mother was declared physically incapacitated and was allowed to retire voluntarily on 17th December, 2012. As it appears since the petitioner no. 2 applied for appointment in primary school the Chairman of the concerned District Primary School Council took such decision. However, it was open to the petitioner to apply for appointment in secondary school in a post commensurating his educational qualification.

Since the decision of the Chairman of the concerned District Primary School Council dated 16th February, 2017 appears to be correct the writ petition stands dismissed.

However, this order shall not prevent the petitioners to make an application for appointment on compassionate ground in a secondary school in terms of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009. If such application is made in terms of the said rules of 2009 the respondent authorities are directed to consider the same in accordance with law.

(Saugata Bhattacharyya, J.)