

S/L 3
18.08.2022
Court. No. 22
Sourav

WPA 7296 of 2015

**Salimuddin Sheikh
Vs.
The State of West Bengal & Ors.**

*Mr. Shanti Ranjan Das
Mr. Kshetra Prasad Mukhopadhyay*

... for the Petitioner.

*Mrs. Chaitali Bhattacharya
Mr. Mrinal Kanti Biswas
Mr. Kartik Chandra Kapat*

... for the State.

This writ petition has been filed challenging the *vires* of a portion of Rule 22 of **The West Bengal Primary School Teachers Recruitment Rules, 2001** praying, *inter alia*, for the following relief:

“(a) A declaration to declare that the relevant portion of impugned “Rule 22 of The West Bengal Primary School Teachers Recruitment Rule, 2001” is Unconstitutional to hit/attack the Articles 14, 16, 19 (1)(g) and 21 of the Constitution of India and thereby to declare ultra-vires to the Constitution of India and thereupon to struck down the same by this Hon’ble Court.”

The writ petitioner seeks a compassionate appointment in place and stead of his physically incapacitated father who received a premature/voluntary retirement from the post of **Headmaster at Ram Krishnapur F.P. School at**

Lakshmipur, Burdwan (for short, the School). The respondent State authorities had approved such voluntary/premature retirement of the father of the petitioner with effect from July 1, 2006, on the prayer of the father that he had suffered from paralyses and became physically incapacitated to run the affair of the school as Headmaster.

On a careful scrutiny of the records, it appears that the relevant application by virtue of which the father of the petitioner received such voluntary/premature retirement was not made available before this Court, so that, this Court can ascertain what was the nature of the application submitted by the Headmaster.

Mr. Shanti Ranjan Das, learned Advocate appears for the writ petitioner drew attention of this Court to **“Annexure P-2”** to the writ petition which was a complaint dated June 28, 2006 lodged by the father of the petitioner before the jurisdictional Police Station contending that the father while applying for the said voluntary/premature retirement from the post of Headmaster of the School, the then Sub-Inspector of School, Purbasthali Circle by way of coercion obtained an undertaking in writing from the father that no legal heir would claim the service in place and stead of the father due to his said voluntary/premature retirement. From the tenor of the said complaint, it was also evident that the father of the writ petitioner, according

to him, became physically incapacitated and had served the school as Headmaster with serious physical disability. On the strength of this complaint and on the basis of such plea of coercion, the petitioner submits that a valuable right of the petitioner to receive a compassionate appointment was taken away by the respondent authorities in an arbitrary, wrongful, illegal and capricious manner which also was in violation of Articles 14, 16, 19 (1)(g) and 21 of the Constitution of India.

In this backdrop, the writ petitioner filed a previous writ petition which was disposed of by a coordinate Bench by an order dated January 31, 2012 and the respondent no. 2 was directed to consider the case of the petitioner and pass a reasoned order/decision thereupon.

Pursuant to the said direction dated January 31, 2012, the respondent no. 3 passed its decision/order on September 19, 2012.

Challenging the said impugned order dated September 19, 2012, passed by the respondent no. 3, the connected writ petition being **WPA 6861 of 2013** was filed.

From a close scrutiny of the said order dated September 19, 2012, it appears from the connected writ petition that the relevant Rules governing the issue was considered.

Rule 14 of the West Bengal Primary School Teachers Recruitment Rules, 2001 (for short, the Recruitment Rules) amended from time to time states the provisions for ***Appointment on Compassionate Ground***. **Rule 14(2) of the said Recruitment Rules**, *inter alia*, provides for that when a primary teacher applies for being declared permanently incapacitated on a medical ground to the council for appearing before the Medical Board set up according to the procedure laid down in the Government Order, before attaining 58 years of age and discontinues to attend the School for such incapacitation, he may be allowed by the council to retire on and from the date of submission of such application, provided that the council is satisfied its such incapacitation and other conditions through Enquiry Committee.

It was also provided further that, after receiving the report from the council, the Medical Board set up for this purpose must declare him permanently incapacitate to continue in further service for a reasonable time and if his family is in extreme financial hardship after such retirement, then the legal heirs as mentioned thereunder can seek for a compassionate appointment subject to fulfilment of all the conditions mentioned therein.

In the instant case, no such application was disclosed on the record. The pre-conditions mentioned under Rule 14(2) of the said Recruitment Rules was

also not satisfied. The father of the petitioner did not apply for his medical test by constituting a proper Medical Board in terms of the relevant Rules. On the Contrary, the father died on February 22, 2007 and within a period of two years from the date of death of the father of the petitioner an application was filed by the petitioner seeking an appointment on compassionate ground, as would be evident from the order dated January 31, 2012 passed in the previous writ petition.

From a close scrutiny of the said impugned order passed by the respondent no. 3 it appears that the application seeking a compassionate appointment was made by the petitioner in terms of Rule 22 of the said Recruitment Rules. As stated above, the petitioner had not disclosed the application of the father by which he sought for and received the said premature/voluntary retirement.

Learned Counsel appearing for the writ petitioner placed much stress upon **“Annexure P-4”** to the writ petition and submitted that from the said document the nature of application submitted by his father and the coercion practised upon him would clearly be evident. On a close scrutiny of the said document, this Court is of the considered view that, the father of the petitioner did not avail of the provisions laid down under Rule 14 of the said Recruitment Rules. He availed of Rule 22 of the

Recruitment Rules which in any event, specifically states that **in case of a premature retirement of a teacher no member of family of the retired teacher shall be allowed any employment in this respect.**

So even if, the contention of the petitioner is taken to be accepted that the undertaking was extracted from the father of the petitioner to the extent that his heirs will not claim any service due to his premature retirement by coercion, even then such an undertaking was in sync with Rule 22 of the Recruitment Rules.

Inasmuch as, the compassionate appointment is not a matter of right. It is a matter of State policy for the immediate benefit of the family members of a permanent State employee, so that, immediately after losing his job either by way of untimely death or due to physical incapacitance, as in the instant case, the family of the State employee can survive. From the facts of this case, as would be evident from the order dated January 31, 2012 passed in the previous writ petition, the application was made by the petitioner within a period of two years from the date of death of his father seeking a compassionate appointment. It was, therefore, evident that the family could survive for two years after the death of the employee and there was no immediate need of service for survival of the family. The employer has discretion for granting compassionate appointment, of course, such

discretion should be used fairly, judiciously and within the frame work of law.

In support of his contention that, the rejection of the prayer for compassionate appointment of the petitioner by the respondent no. 2 through the said impugned order, had violated both the fundamental and legal rights of the petitioner, the learned counsel relied upon the following decisions:

i) In the matter of: Ashok Kumar Vs. Chairman, Banking Service Recruitment Board, reported in (1996) 1 Supreme Court Cases 283;

ii) In the matter of: M/s. Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, reported in (1989) 3 Supreme Court Cases 293;

iii) In the matter of: B. P. Sharma Vs. Union of India, reported in (2003) 7 Supreme Court Cases 309 and

iv) In the matter of: Narinderjit Singh Sahni and Another Vs. Union of India and Others, reported in (2002) 2 Supreme Court Cases 210.

The *ratio decidendi* of a judgment is the declaration of law stands as a binding precedent. Such ratio of a judgment must be understood in the facts and circumstances of that particular judgment on which it was rendered. Merely, what can be contended on a given facts of a case will not be a binding precedence unless such contention can be construed

from the facts of that particular precedent. The judgments relied upon by the learned Counsel appearing for the petitioner were all rendered on different sets of facts and circumstance and none of them relates to compassionate appointment. The principle for grant of compassionate appointment is already settled and much water has flown on the subject. None of the said judgments are of any assistance to the writ petitioner in the facts and circumstances of this case and as such, this Court does not think it fit to discuss them in detail. Refusal to grant a compassionate appointment cannot amount to violation of Article 21 of the Constitution of India neither the same violates Article 14 or 16 of the Constitution of India as the compassionate appointment is not a matter of right. It depends upon the State policy as also in terms of various rules and procedures framed for the same. If a compassionate appointment is rejected the same will also not violate the provision under Article 19 (1)(g) of the Constitution of India, if it is rejected within the parameter of law.

To consider whether a particular provision of a rule or any part thereof stands to be ultra vires to the constitutional provisions or not, the same needs to be assessed in the light, whether a right of a citizen guaranteed under the constitution is offended by such rule or any part thereof. To obtain a Compassionate Appointment is not a right. It is a matter of policy of

the State and/or the respective employer. An employment under the Compassionate Appointment is not a right within the meaning of Article 19(1)(g) of the Constitution. To grant or not to grant such an appointment also does not attract discrimination within the meaning of Article 12 of the Constitution, provided the relevant policy and/or Rules for the same framed by the employer while exercising the discretion does not cause any discrimination. In the facts of this case as discussed in detail already, this Court is of the considered view that, Rule 22 of the Recruitment Rules, 2001 or any part thereof does not offend any provision laid down under the Constitution. Therefore, the instant writ petition is devoid of any merit. Rule 22 of the Recruitment Rules, 2001 in its entirety stands within the provisions of the Constitution of India.

In view of the foregoing discussions and reasons, this writ petition being **WPA 7296 of 2015** stands dismissed.

There shall, however, be no order as to costs.

(Aniruddha Roy, J.)