

W.P.A. 14773 of 2018

Rangana Das

-vs-

The State of West Bengal & Ors.

Mr. Raghunath Das,
Ms. Jamuna Saha

....for the petitioner.

Ms. Chaitali Bhattacharya,
Mr. Kartick Chandra Kapas

....for the State.

The writ petition pertains to appointment on compassionate ground which according to the petitioner, she is entitled to in terms of relevant scheme as framed by the State respondents in terms of Schedule V to the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 (hereinafter referred to as the “Rules of 2009”).

Petitioner’s mother was an assistant teacher in a Government aided recognized High School in the district of Purba Medinipur and died-in-harness on 17th January, 2012. Subsequently, the petitioner, being the dependent daughter made application to the concerned respondent authorities on 2nd November, 2012 for providing her appointment on compassionate ground upon

enrolling her name on the live register maintained by the Office of the concerned District Inspector of Schools (S.E.), Purba Medinipur. It has been submitted that at the time of death of her mother she was not married but by this time she has been married but still it has been submitted that she is required to be considered as dependent daughter.

Since the claim of the writ petitioner was not considered contemporaneously which triggered the first writ petition being W.P.16972 (W) of 2014 (Rangana Das -vs- State of West Bengal & Ors.) and the same was disposed of by a coordinate Bench vide order dated 20th June, 2014 whereby direction was given upon the concerned District Inspector of Schools to take decision on entitlement of the petitioner to get appointment on compassionate ground. Pursuant thereto the claim of the petitioner was decided by the concerned District Inspector of Schools (S.E.), Purba Medinipur, being the respondent no.3 whereby the prayer of the petitioner for appointment on compassionate ground was spurned. The decision of the respondent no.3 as contained in Memo dated 8th May, 2017 is under challenge in the present writ petition.

It appears from the said Memo dated 8th

May, 2017 that while determining the eligibility of the petitioner to be appointed on compassionate ground the respondent no.3 on application of Schedule V to the Rules of 2009 came to the conclusion that the monthly income of the petitioner's family is more than initial gross salary of a Group-D Staff at the material point of time. Upon making detailed calculation in terms of the formula as contained in the said Schedule V, District Inspector of Schools made a finding in his order dated 8th May, 2017 that the family income of the petitioner was Rs.15,613/- whereas the initial gross salary of Group-D Staff was found at that point of time was Rs.10,860/-. Therefore, the respondent no.3 rejected the claim of the petitioner for providing compassionate appointment.

Being aggrieved by such decision of the respondent no.3, present writ petition has been preferred challenging such decision.

Mr. Das, learned advocate representing the petitioner, while advancing argument in support of the case made out in the writ petition and in order to substantiate the claim of the writ petitioner that she is entitled to get appointment on compassionate ground, has submitted that while calculating the monthly income of the petitioner the

respondent no.3 has wrongly taken into consideration the family pension which the father of the petitioner was receiving due to death of her mother. According to the petitioner, respondent no.3 cannot take into consideration family pension in view of law settled by our Court as well as the Apex Court. In support of such contention petitioner has placed reliance upon the following judgments:-

1. *2015 Supreme (SC) 422 (CANARA BANK & ANR. -vs- M. Mahesh Kumar) Paragraphs- 15, 16 & 17;*
2. *(2005) 10 SCC 289 (Govind Prakash Verma -vs- Life Insurance Corporation of India & Ors.), paragraphs- 6 & 7;*
3. *One unreported judgment by a coordintate Bench passed in W.P.25164(W) of 2014 (Shib Narayan Das- vs- The State of West Bengal & Ors.)*

Per contra, Ms. Bhattacharya, leaned senior Government advocate has defended the decision taken by the respondent no.3 while apprising the claim of the petitioner for being appointed on compassionate ground and it has further been submitted that respondent no.3 has rightly applied

the formula as contained under Schedule V to the Rules of 2009 in order to ascertain the “financial hardship” of the family of the petitioner. It has been submitted further that though the petitioner in the present case could have been considered as dependent daughter at the time of death of the teacher but by this time she is married and therefore she cannot be considered as dependent daughter. It is contended since there is a specific policy formulated by the State respondents as contained in the said Rules of 2009 therefore the respondent no.3 while examining the claim of the petitioner for appointment on compassionate ground cannot take any decision *de horse* such policy and it has been submitted that there is no illegality in such decision of the respondent no.3 as contained in Memo dated 8th May, 2017.

This Court has heard the learned advocates representing the parties and considered the materials available on record. Questions arises for consideration is whether the respondent no.3 was correct in taking into consideration the family pension which the father of the petitioner was receiving due to death of the teacher. This Court while considering the judgments relied upon by the petitioner as aforementioned has also come across

the judgment of the Apex Court delivered in Civil Appeal No.988 of 2019 arising out of SLP(C) No.7079 of 2016 (State of Himachal Pradesh & Anr. –vs- Shashi Kuamr) dated 16th January, 2019. In the said judgment, it appears that the Apex Court considered all past relevant judgments delivered by the Apex Court including **Govind Prakash Verma** (supra) which has been relied upon by the petitioner and accordingly, in no uncertain terms has answered the question formulated by the Apex Court in **Shashi Kumar** (supra). One of the questions which was formulated is quoted below:

“(i) whether the amount of family pension and other retiral benefits, received by the family of the deceased-employee, can be included in the family income for denying the compassionate appointment?”

Accordingly, the Apex Court came to the following conclusion:

“ We find merit in this submission, for the simple reason, that it is in accord with the express terms of the Scheme of 18th January 1990, as modified by the State. The

Scheme contemplates that payments which have been received on account of welfare measures provided by the State including family pension are to be taken into account. Plainly, the terms of the Scheme must be implemented.

For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma (supra) in issuing a direction to the State to act in a manner contrary to the express terms of the Scheme which require that the family pension received by the dependants of the deceased employee be taken into account”.

In view of such decision of the Apex Court in **Shashi Kumar** (Supra) it can be concluded that the respondent no.3 while taking decision on claim of compassionate appointment of the petitioner has rightly taken into consideration 60% of the family pension in terms of Schedule V to the Rules of 2009 in determining the financial hardship of the family of the petitioner.

The two other judgments relied upon by the

petitioner, those are Canara Bank (Supra) and Shib Narayan Das (Supra) are of no help in view of the subsequent decision of the Apex Court in **Shashi Kumar** (Supra).

In aforesaid conspectus this Court finds no merit in the writ petition and accordingly, 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.)