

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 19788 of 2016

Md. Miftahul Akhtar

Versus

The State of West Bengal & Ors.

Md. Yusuf Ali

.....For the Petitioner

Mr. Pinaki Dhole

Mr. Avishek Prosad

.....For the State

Heard on : 15.02.2022

Judgment on : 24.02.2022

Krishna Rao, J.: The writ petitioner has challenged the order passed by Commissioner, School Education, West Bengal dt. 13.06.2016 wherein the request of the petitioner for appointment on compassionate ground has been rejected.

The father of the petitioner Md. Emajuddin was working as Head Teacher of Mothabari Sishu Vidya Niketan, Primary School under Mothabari Circle, Malda District.

The father of the petitioner became physically disabled and was not in a position to continue his service due to his illness and accordingly the father of the petitioner had made an application to the Chairman, Malda District Primary School Council, through the Sub-Inspector of Schools on 15.12.2008 for declaring him as medically disabled.

As per the request made by the father of the petitioner a Medical Board was constituted on 04.11.2009 and altogether 11 teachers have been sent for medical examination before the Board including the father of the petitioner. The father of the petitioner had appeared before the Medical Board and on 13.11.2009, the Superintendent, District Hospital, Malda had submitted the report wherein at Sl. No. 10, the name of the father of the petitioner is appearing and the opinion of the Medical Board was "Unfit".

On receipt of the report of the Medical Board, the Chairman, Malda District Primary School Council vide his letter dt. 15.07.2010 informed the Sub-Inspector of School that the father of the petitioner has been declared "Unfit" with effect from 04.11.2009.

As per the direction of the Chairman, Malda District Primary School Council a three (3) men Enquiry Committee was constituted to examine the financial condition of the unfit teachers. Vide letter dt. 12.03.2013 the Chairman, Malda District Primary School Council has directed the Sub-

Inspector of School, Mothabari to submit the proposal for appointment of the legal heir of the unfit teacher on compassionate ground. As per the direction of the Chairman, school authorities have submitted the details of the father of the petitioner to the Chairman under the subject proposal for appointment of ward of Disabled teacher on compassionate ground. In the year 2015, the petitioner had made a representation to the Chairman requesting for appointment on compassionate ground as his father has been declared “Unfit” for the job. The authorities have not considered the request made by the petitioner and accordingly the petitioner had preferred a writ application being WP 27328 (w) of 2015 and the same was disposed of by the Coordinate Bench of this Court on 04.12.2015 by directing the Commissioner of School Education to consider and decide the application filed by the petitioner in accordance with law preferably within a period of four weeks from the date of communication of the order.

In compliance of the order passed by the Coordinate Bench of this Court, the Commissioner, School Education, West Bengal had passed following order on 03.06.2016:-

“a) Department of Health and Family Welfare, G.A. Branch, Government of West Bengal vide order no. HF/O/GA/901/W-31/98 dated 28th April, 1988 entrusted Zonal Medical Board North Bengal Medical College Hospital, Darjeeling for medical examination for determination of physical fitness of the employees of the State and Union Govts. and Govt. undertakings of both Central and State Govts. Seeking premature retirement on physical ground.

So, District Hospital, Malda is not competent for such medical examination. Moreover, ‘unfit’ by any means can’t be treated as ‘permanently incapacitated’.

b) The Government framed two years of time for applying for appointment. In the instant case, the Council allowed the father of the petitioner to retire on 4.11.2009 and the petitioner applied on 09.02.2015 which is much more later of two years.

In the aforesaid circumstances, the petitioner is not eligible for consideration of compassionate appointment in any category.”

The father of the petitioner was declared “Unfit” on 04.11.2009 but the petitioner had made an application for appointment on compassionate ground in the year 2015 i.e. about more than 5 years.

School Education Department vide notification No. 106-SE (Pry) dated 28th January, 2008 amended the rule 14 of West Bengal Primary School Teachers Recruitment Rules, 2001.

Rule 4 (2) of the said amended is as follows:-

“When a teacher applies to the council for being declared permanently incapacitated on medical ground before attaining 58 years of age and discontinues to attend his duty for the reason of such incapacitation, the Council may direct him for appearing before the Medical Board set up for the purpose according to the procedure laid down in the relevant rules or order of the time being in force, and after receiving the report from the Council, if the Medical Board declares him permanently incapacitated to continue in further service, he may be allowed by the council to retire on and from the date of submission in such application and by virtue of his early retirement, if his family is in such extreme financial hardship that it fails to provide two square meals and other essentials to the members of the retired teacher’s family, the – (i) **spouse**, (ii) **son**, (iii) daughter.

Of the permanently retired teacher, who is possessing required educational qualification as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach, may make within two years from the date of such retirement, a prayer in writing to the Council for appointment as primary teacher on compassionate ground:”

The Commissioner, School Education, West Bengal had rejected the claim of the petitioner with the reason that though the father retired as unfit on 04.11.2009 and the petitioner had applied on 09.02.2015 which is much more than two years.

A question was raised before the Hon'ble Larger Bench of this Court in the case of Piali Saha -Vs- State of West Bengal reported in (2015) 1 CHN 18 whether a subsequent application can be deemed to be held as a continuous process notwithstanding the fact that such application was made after statutory period of 2 (two) years. The Hon'ble Larger Bench held that Court cannot have any amending power of the legislation and the rule is a mandatory in character. The judgment passed by the Larger Bench (supra) is squarely applicable in the instant case and the Commissioner, School Education, West Bengal has rightly rejected the application of the petitioner.

In the facts and circumstances of the above this Court do not find any illegality in the impugned order dt. 03.06.2013

WPA No. 19788 of 2016 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)