

4 13-05-2022
AKG
Ct. 25

WPA 24842 of 2017
Tithi Roy
Versus
The State of West Bengal & Ors.

Mr. P. S. Deb Barman,
Mr. S. Alam
...For the Petitioner.

Mr. Pinaki Dhole,
Mr. Avishek Prasad
...For the State

The father of the petitioner namely, Late Narendra Nath Roy, who was working in the post of Assistant Teacher of Primary School under Dakshin Dinajpur District Primary School Council (hereinafter referred to as the 'Council') died in harness on March 21, 2013 leaving behind him surviving the petitioner, being the daughter and her mother as the only heiresses.

The mother of the petitioner applied on June 2, 2014 inter alia praying for grant of appointment to the petitioner on compassionate ground. Since the authority sat tight over the said application, petitioner made a further representation to the Chairman of the said Council on January 15, 2016.

The petitioner claims that she has the requisite qualification for appointment to the post of Clerk or Group-D staff in Secondary or Higher Secondary Institution. The concerned District Inspector of Schools (Primary Education) did not forward the

petitioner's application to the appropriate authority for consideration of her claim in terms of Rule 20 read with 21 of the West Bengal School Service Commission (Selection of Persons for Appointment to the post of Non-Teaching Staff) Rules, 2009, which compelled the petitioner to file a writ petition being W.P. No. 2081 (w) of 2016. A Coordinate Bench by an order dated February 22, 2016 directed the concerned District Inspector of Schools to consider the representation dated 2nd June, 2014 and to forward her claim to the concerned Regional School Service Commission.

Pursuant to the said order, the concerned District Inspector of Schools, by an order dated June 9, 2017, rejected the prayer of the petitioner contained in the representation dated June 2, 2014 on the ground that she lacked requisite qualification in terms of the School Education Department Notification number-285-SE (EE)/P dated July 24, 2012.

Being aggrieved by and dissatisfied with the aforesaid order, petitioner filed instant writ petition.

Mr. Deb Barman, learned advocate representing the writ petitioner contends that in spite of the specific direction passed by this Hon'ble Court to forward the name of the petitioner to the concerned Regional School Service Commission for appointment in the relevant category, respondent authority misconstrued the order passed by this Court.

Mr. Dhole, learned advocate representing the State submits that the application dated June 2, 2014

was made by the mother of the petitioner and not by the petitioner herself. He further contends that in the said representation that the mother prayed for appointment of the petitioner in the category of a primary teacher. According to Mr. Dhole, the prayer in the said application was for appointment to the post of primary teacher and not for forwarding the name of the petitioner to the concerned Regional School Service Commission. The respondent authority was, thus, perfectly justified in passing the order dated June 9, 2017, as the petitioner lacked the requisite qualification for being appointed to the post of primary teacher.

Heard learned advocates for the parties and considered the materials placed.

It is not in dispute that the petitioner lacked the requisite qualification for being appointed to the post of a primary teacher. A Coordinate Bench of this Court while disposing of W.P. No. 2081 (w) of 2016 by an order dated February 22, 2016 held as follows :-

“Upon hearing the learned advocates appearing for the respective parties and upon considering the materials on record, I am of the opinion that no useful purpose will be served by keeping the writ application pending and the matter needs to be relegated to the respondent no. 6.

A perusal of Rule 23 of the said Rules of 2009 reveals that in cases

where the candidate is not qualified for appointment to the post of a primary teacher, the respondent no. 6 may forward the name of the candidate to the concerned Regional School Service Commission for appointment in a Group-C or Group-D post in Secondary or Higher Secondary institutions. From the said Rules of 2009 it is thus explicit that the petitioner's claim needs to be forwarded by the respondent no. 6 but the petitioner has made a representation before the respondent no. 7. The said representation was admittedly submitted by the petitioner prior to expiry of a period of two years from the date of death of her father and the said representation has also not been disposed of by the respondent no. 7 till date. In the said conspectus of facts and for inadvertence on the part of the petitioner to file an application before the appropriate authority, the petitioner's right to be considered for compassionate appointment cannot be stand frustrated.

Accordingly, the respondent no. 6 is directed to consider the petitioner's representation dated 2nd June, 2015, as appearing at page 22 of the writ application and to forward the petitioner's claim to the concerned Regional School Service Commission observing the formalities specified in Rule 20 of the said Rules 2009 through the respondent no. 5.

The above exercise should be

completed by the respondent no. 6 within a period of eight weeks from the date of communication of this order along with a copy of the writ application.

In the event, the petitioner's claim for compassionate appointment cannot be forwarded to the concerned Regional School Service Commission, a reasoned order to that effect must be communicated by the said respondent no. 6 to the petitioner within the period as specified above."

Upon going through the said order, this Court finds that the Coordinate Bench directed the District Inspector of Schools (Primary Education) to consider the petitioner's representation dated 2nd June, 2014 (though inadvertently it was recorded in the said order as 2nd June, 2015) and to forward the petitioner's claim to the concerned Regional School Service Commission observing the formalities specified in 2009 Rules through the District Inspector of Schools (SE). The said order had attained finality, as the same was not challenged by any of the parties. On the other hand, the District Inspector of Schools (Primary Education) passed an order after considering the application filed by the mother of the petitioner on June 2, 2014.

A Coordinate Bench of this Court after going through the representation directed the representation

to be considered and the claim of the petitioner is to be forwarded to the concerned Regional School Service Commission after observing the formalities specified in 2009 Rules. It is not open for the State Respondent at this stage to take up a plea that the said claim could not have been forwarded as in the said representation dated June 2, 2014 a prayer for giving appointment to the post of primary teacher was made and not for the post of Clerk or Group-D staff in terms of Rule 21 of 2009 Rules or that the representation was not made by the petitioner herself.

Thus, this Court is unable to accept the contention of Mr. Dhole that merely because prayer for appointment to the post of Primary Teacher was made in the representation dated June 2, 2014, the same could not have been forwarded to the concerned Regional School Service Commission.

Thus, for the reasons as stated hereinbefore, the order of the District Inspector of Schools (P.E.), Dakshin Dinajpur dated June 9, 2017 is liable to be set aside and quashed and the same is accordingly set aside and quashed. The District Inspector of Schools (Primary Education), Dakshin Dinajpur being the respondent no. 6 herein is directed to reconsider the representation dated 2nd June, 2014 and to take steps in the light of the directions contained in the order dated February 22, 2016 passed in W.P. No. 2081 (w) of 2016 as well as the observations made hereinbefore. Since the matter relates to compassionate

appointment on the basis of the application made on 2nd June, 2014 and also that this writ petition is pending since 2017, the concerned respondent authorities are directed to complete the entire exercise within 12 weeks from the date of communication of this order.

The writ petition being WPA 24842 of 2017 stands allowed. There will be however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Hiranmay Bhattacharyya, J.)