

Court No. 22
08.12.2022
(Item No. 87)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 26644 of 2022

Sajina Khatun
VS
The State of West Bengal & Ors.

Mr. Sarwar Jahan
Mr. Sk. Nayeemul Haque
..... for the petitioner
Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
Ms. Sunita Guha
.....For Madrasah Service Commission
Ms. Chaitali Bhattacharya
Mr. Kartik Chandra Kapas
.... For the State

Affidavit of service filed in Court today, is
taken on record.

The father of the petitioner was an **Assistant Teacher** at **Enayetpur R.S.A. Senior Madrasah, District - South 24 Parganas**. The father died on October 22, 2014 the relevant death certificate is at **page 30** to the writ petition. After demise of the father, the elder daughter of the deceased employee i.e. the elder sister of the petitioner applied on January 6, 2015 seeking a compassionate appointment in place of the deceased father at **page 32** to the writ petition. The elder daughter of the deceased employee then got married some time in 2018. No decision was taken on the application filed by her seeking compassionate appointment way back on January 6, 2015.

The elder daughter and the surviving widow of the deceased employee then issued their No Objection in favour of the writ petitioner at **page 36** to the writ petition for providing a compassionate appointment to the petitioner. The writ petitioner applied accordingly seeking a compassionate appointment on April 19, 2022 at **page 38** to the writ petition in the prescribed format. Another application was also submitted by the petitioner at **page 39** to the writ petition before the respondent No. 5.

Mr. Sarwar Jahan, learned advocate appearing for the petitioner submitted that the application filed by the petitioner seeking compassionate appointment has not yet been considered by the respondent No. 5 since April 2022.

Mr. Prosenjit Mukherjee, learned advocate appearing for respondent No. 4 submitted that, there is a scheme prevailing for compassionate appointment in terms of **Rule 32 under Chapter 10 of West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the Posts of Teacher and Non-Teaching Staff) Rules 2010.**

Ms. Chaitali Bhattacharya, learned State counsel appears for respondent Nos. 1 to 3 and 5. She submits that, the competent authority is respondent No. 3 to take a call on this.

Mr. Prosenjit Mukherjee, learned advocate appears for respondent No. 4 opposed this submission and referring to **sub-Rule 5, 6 and 7 to the said Rule 32 of the 2010 Rules** submitted that, it is the respondent No. 5 who shall recommend after due consideration of the case, the name of the candidate before the respondent No. 4 and then in terms of such recommendation the respondent No. 4 shall issue the recommendation for appointment.

Considering the submissions made on behalf of the appearing parties and upon perusal of the materials on record and upon considering the relevant provisions of law, to sub-serve justice, the respondent No. 5 is directed to decide the application of the petitioner filed in the prescribed format at page 39 to the writ petition upon giving at least seven days prior hearing notice to the petitioner and the respondent Nos. 6 and 7 and then after affording an opportunity of hearing to them shall decide the application of the petitioner with a reasoned order/decision.

The entire exercise as directed above, shall be carried out and completed by the respondent No. 5 positively within a period of six weeks from the date of communication of this order. The respondent No. 5 then shall communicate its reasoned order to the petitioner, respondent Nos. 4, 6 and 7 within a further period of two weeks from the date of the said reasoned order to be passed.

In the event, the reasoned order goes in favour of the petitioner then the respondent No. 4 shall take all consequential and necessary steps positively within a further period of four weeks from the date of communication of this order to the respondent No. 4.

It is made clear that, this Court has not gone into the merit of the claim of the petitioner in any manner. The petitioner shall be at liberty to urge whatever points she wishes to urge before the respondent No. 5 and shall be at liberty to rely upon whatever documents and records she wishes to rely upon before the respondent No. 4. The respondent Nos. 6 and 7 shall render all co-operation to the respondent No. 5 and shall produce all the relevant records and documents if they are directed to do so by the respondent No. 5.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

It is further made clear that, this order shall not create any equity in favour of the petitioner, in the event, the petitioner is not otherwise eligible to receive her claim for compassionate appointment strictly in accordance with law.

In view of the above, this writ petition being **WPA 26644 of 2022** stands dismissed.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)