

64 14.02.2022  
NB Ct.15

**W.P.A. 29277 of 2015**

(Through Video Conference)

Hashim Abdul Halim

-vs-

The State of West Bengal & Ors.

Mr. Syed Mansur Ali.

....for the petitioner.

Mr. Anirban Ray,

Mr. Pinaki Dhole,

Mr. Avishek Prasad.

....for the State.

Petitioner's father was an Assistant Teacher in a government aided high school who died-in-harness in 19<sup>th</sup> August, 2010. After the death of father of the petitioner, an application was made on 29<sup>th</sup> September, 2010 for petitioner's appointment on compassionate ground in view of untimely death of his father. After death of petitioner's father, terminal benefits including family pension were sanctioned in favour of the mother of the petitioner upon issuance of Pension Payment Order.

The application of the petitioner for appointment on compassionate ground through the school where petitioner's father was working was forwarded to the District Inspector of Schools (SE) North 24-Parganas for taking decision on petitioner's claim for appointment on compassionate ground. Since the concerned District Inspector of Schools could not take any decision at the

material point of time which triggered the first writ petition being *WPA 37570 of 2013 (Hashim Abdul Halim vs. State of West Bengal & Ors.)* and the same was disposed of by a coordinate Bench of this Court by an order dated 9<sup>th</sup> June, 2014, directing the District Inspector of Schools (SE), North 24-Parganas to take decision on the prayer of the writ petitioner for appointment on compassionate ground.

Pursuant thereto, the District Inspector of Schools (SE), North 24-Parganas being the respondent no.3 passed order by issuing memo dated 31<sup>st</sup> October, 2014 refusing the prayer of the petitioner for appointment on compassionate ground. Such decision of the respondent no.3 as contained in memo dated 31<sup>st</sup> October, 2014 is questioned in the present writ petition. In addition thereto, petitioner has also made an attempt to challenge 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 "Rules of 2009").

This Court has heard Mr. Syed Mansur Ali, learned advocate representing the petitioner on both the issues. By pointing out relevant part of the impugned order of the respondent no.3, it has been contended on behalf of the petitioner that while assessing financial hardship of the family of the petitioner the respondent no.3 was required to deduct 60% of family pension

instead of 40%, which has not been done in the present case. As a result whereof, the family income was wrongly calculated by the respondent no.3.

In addition thereto, while challenging Schedule (V) of the Rules of 2009 point has been taken that while calculating the income of the family only the income of individual members of the family needs to be excluded.

This Court has considered submission of the petitioner as well as perused the order of the respondent no.3 as contained in memo dated 31<sup>st</sup> October, 2014. Relevant part of Schedule (V) to the said Rules of 2009 runs infra.

*“Explanation.-The expression “financial hardship”, in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family, shall mean an amount of income less than the initial gross salary of Group ‘D’ staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into account:*

*Provided that if the family of the deceased*

*teacher exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the initial stage at the material point of time."*

On a plain reading of relevant part of Schedule (V) under the heading "Explanation" it appears that the authority concerned while computing the income of the family needs to exclude 40% of the family pension not 60%. From the order of the respondent no.3 which is impugned in the writ petition it appears that the total income of the family of the petitioner was determined per month is Rs.16461/- (rupees sixteen thousand four hundred sixty one only) and the 40% of the family pension i.e. Rs.6584/- (rupees six thousand five hundred eighty four only) was deducted and it was determined upon applying the family income formula as contained in the "Explanation" under the said Schedule (V) that total income of the family of the petitioner was Rs.9877/- (rupees nine thousand eight hundred seventy seven only) per month, which is less than the gross salary of a Group 'D' staff which was Rs.9672/- (rupees nine thousand six hundred seventy two only) at the material point of time.

Therefore, considering the calculations as contained in the decision of the respondent no.3, this Court does not find any fault with the decision making process of the respondent no.3 in terms of Schedule (V) of the said Rules of 2009.

A faint attempt has been made by the petitioner to question the legality of Schedule (V) to the said Rules of 2009 but on perusal of the ground as contained in paragraph 25 of the writ petition, it does not appear to be satisfactory.

Accordingly, this Court does not find any wrong in the decision of the respondent no.3 while calculating the family income of the writ petitioner. Accordingly, the writ petition does not merit consideration and stands dismissed.

There shall be no order as to costs.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Saugata Bhattacharyya, J.)**