

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

05.12.2022
Sl. No.29(DL)
srm

W.P.A. No. 2883 of 2022

Priyanka Das

Versus

The State of West Bengal & Ors.

Mr. Debasish Mukhopadhyay,
Mr. Anirban Banerjee,
Ms. Sriya Basu

...for the Petitioner.

Mr. Hirak Barman,
Mr. Pretom Das

...for the State-respondents.

Mr. Amales Ray,
Mr. Deborshi Dhar

...for the respondent No.3/
District Primary School Council, Cooch Behar.

Affidavit-of-service is taken on record.

The learned Advocate-on-record for the petitioner is directed to add the Commissioner, School Education, West Bengal as a respondent, here and now.

The writ petition has been filed by a dependant/spouse of a deceased primary school teacher, who died-in-harness on June 15, 2013. The petitioner is aggrieved by the reasoned order passed by the Chairman-in-

Charge, District Primary School Council. The prayer for compassionate appointment was rejected. The prayer was rejected on the ground of delay in making the application. The contention is that the authority ought to have considered the reason for the delay and dealt with the same.

The petitioner submits that although the husband died in 2013, she could not apply before 2020 in the prescribed form with all relevant records, as a criminal case was pending against the petitioner at the instance of the husband's family. After the petitioner was acquitted from the criminal case, the petitioner collected the relevant documents, namely heirship certificate and death certificate and thereafter applied in the prescribed form. As the authorities did not take steps, a writ petition was moved before this Court. The Court directed the authorities to consider the case in accordance with law. A reasoned order was passed on September 6, 2022, pursuant to the direction of a co-ordinate Bench of this Court. Such order is under challenge.

Although the petitioner had filed a representation explaining the reasons for the delay, the same were not at all considered by the authority.

The law is well settled that compassionate appointment is guided by a policy. It is within the jurisdiction of the employer to interpret and apply such policy. However, in cases of delay, the circumstances leading to such delay, at least, should be considered. There may be special situations for which the delay may have occurred. The other check points like income, financial hardship, qualification, the amount of retirement benefits received, etc. can be quantified on the basis of records and there would be no scope for variation of these elements or parameters by the authority. These are fixed parameters. Whereas, the ground of delay, as pleaded by the petitioner ought to have been at least taken into account and dealt with in the reasoned order. It is not for the court to direct condonation of the delay because compassionate appointment has to be given strictly in accordance with the policy, but the interpretation of the policy is in the hands of the policymaker and as such, this Court is of the view that the reasoned order lacks material particulars and suffers from non-consideration of the vital issue raised by the petitioner with regard to the delay. The issue of financial hardship and whether the petitioner was at all qualified for the post should have been decided on the basis of records. An outright rejection on the ground of

delay, without assigning other reasons, is not accepted. The authority quoted the rules but did not decide the applicability thereof.

Under such circumstances, the order impugned is set aside. The entire issue is sent to the Commissioner of School Education, West Bengal for a decision in the matter in view of the peculiar circumstances, which have arisen. The writ petition shall be treated as the representation of the petitioner and disposed of accordingly upon interpretation of the rules and the policy. Any other authority who may throw some light on the issue shall be heard including a representative of the Chairman, District Primary School Council, Cooch Behar. The eligibility of the petitioner on all scores shall be decided. A reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

A copy of the writ petition along with the server copy of this order be served upon the Commissioner, School Education Department, West Bengal.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)