

Item-13. 13-10-2023

sg Ct. 8

FMA 245 of 2016
CAN 1 of 2015 (old CAN 11776 of 2015)

Sandhya Middya
Versus
The State of West Bengal & Ors.

Ms. Tapati Samanta, Adv.
...for the State

1. The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.
2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6th October, 2023. The appeal is again listed today in the main cause list. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.
3. The appeal was filed on 10-12-2015. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellant is not interested to proceed with the appeal and have virtually abandoned the appeal.
4. However, we have considered the materials on record and the impugned order. The appeal is arising out of an order dated 16th November, 2018 passed by the learned Single Judge. This matter relates to compassionate appointment of the son of the deceased teacher. The wife of the deceased teacher had applied for appointment on compassionate

ground in her favour in 1981 on the death of the teacher in October 1980. She unfortunately was not given appointment in spite of selection. She attained the age of superannuation due to passage of time. On attainment of the age of superannuation, she had applied for appointment on compassionate ground in died-in-harness category.

5. The authorities concerned declined to accept the said request. The writ petitioner contended that she has been wrongly denied an appointment in the died-in-harness category although she was selected for the purpose. The passage of time, therefore, should not be construed as against her son in giving appointment. Reliance was placed on *(2006) 9 SCC 195 (Syed Khadim Hussain vs. State of Behar and Ors.)*.
6. It appears that an application for compassionate appointment in favour of her son was rejected by the authorities on 7th August, 2012 and was received by the writ petitioner on 19th April, 2013. It was rejected on the ground that the period of 31 years have lapsed since the death of date.
7. Since we are of the prima facie view that the authorities were responsible for not giving an appointment to the writ petitioner without any reasonable cause or excuse and the widow cannot be asked to run from pillar to post for his lawful entitlement, as a special case, we direct the Chairman, Primary School Council, South 24 Parganas to consider the prayer for giving appointment to the son of the petitioner upon an inquiry being conducted as to the present financial condition of the family in question.
8. It is recorded that the plight of the widow was overlooked

and bureaucratic red-tapisam cannot stand in the way of depriving the family of the deceased and the benefit of compassionate appointment.

9. The matter would have been disposed of if the widow was given an appointment after the selection was completed. Her entitlement to the post has not been denied by the respondent authorities. The grounds given for not considering the appointment of the son of the petitioner cannot be accepted as the inaction and lackadaisical conduct of the respondent authorities cannot furnish a decision for denial on such right.
10. We request Mrs. Tapati Samanta, learned Counsel to represent the respondents and communicate this order to the Chairman, Primary School Council, South 24 Parganas within one week from date in order to enable the Chairman to carry out the order within a period of eight weeks from the date of communication of this order.
11. The respondent no.8 shall provide all necessary details, if required.
12. Since the writ petitioner is not represented, we direct the department to communicate this order to the appellant for information and doing the needful and a copy of this order shall also be forwarded to the Chairman and Secretary of District Legal Services Authority (DLSA), south 24 Parganas by the department concerned.
13. The Chairman and the Secretary of DLSA, South 24 Parganas shall immediately establish a contact with the petitioner i.e. Sandhya Middya, wife of Late Sanat Kumar Middya, residing at Village Kultukari, Post Office Raniago

Bindapur, Police Station Nodakhali via Birlapur, South 24-Parganas, Pin.-743318 and facilitate implementation of this order. All assistance should be rendered by the Chairman and/or Secretary of DLSA, South 24 Parganas in this regard.

14. The learned Registrar Administration (L&OM) is directed to ensure compliance of this order.
15. With the aforesaid directions, the appeal and the connected application stand disposed of.
16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)