

Court No.
27.7.2023

(Item No. 12)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 4283 of 2020

Shibasis Kundu & another
VS
The State of West Bengal & Ors.

Mr. Anjan Bhattacharya
Mr. Kazi Sajjad Alam
..... for the petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey
.... For the State

This is a hearing matter upon affidavits.

Time to file affidavit-in-opposition and reply, brought to Court by their respective parties, are extended till today and the same are taken on record.

The petitioner claimed compassionate appointment. The petitioner's father who died in harness on **May 17, 2018** was working as an Assistant Teacher of a school. The petitioner being the eldest son of the deceased Teacher applied for compassionate appointment.

By the impugned order dated **December 31, 2019, Annexure P-7** at **page 35** to the writ petition the claim of the petitioner was rejected by the respondent No. 4 merely by referring to a government order dated **July 9, 2009**.

The decision making process of the respondent No. 4 while rejecting the claim of the petitioner has not depicted as to the bar, if any, exists in the said Government order which disentitled the petitioner to

receive his claim for compassionate appointment. The impugned order does not show how and what is the relevant provision of the said Government order dated **July 9, 2009** could apply in the facts of the case of the petitioner and would disentitle the petitioner to receive his claim. The decision making process in absence of such observations and findings suffers from serious infirmity and jurisdictional error. The impugned order dated **December 31, 2019, Annexure P-7, at page 35** to the writ petition cannot sustain in law.

Mr. Suman Dey, learned State counsel appearing in the matter has referred to the averments made in the affidavit-in-opposition affirmed on behalf of the respondent No. 4 and submitted that sufficient reasons being there as to why the petitioner was not entitled to receive his claim under the Government order dated July 9, 2009, the claim was rejected.

This Court is of the firm view that, while assessing the impugned order, the Court in exercise of its jurisdiction under judicial review, shall only look into the decision making process of the hearing authority and such decision making process would have to be assessed primarily on the face of the impugned order.

In the instant case, the impugned order does not even whisper as to which and what provision

could apply to create a bar for the petitioner to receive his claim.

In view of the above, the impugned order dated **December 31, 2019, Annexure P-7, page 35** to the writ petition stands **set aside** and **quashed**.

It is made clear that, this Court has not gone into the merit of the claim of the petitioner in any manner.

The respondent No. 4 shall revisit the issue upon issuing at least seven days prior hearing notice to the petitioner and the respondent No. 5 and after giving them an opportunity of hearing shall decide the issue by passing a reasoned order strictly in accordance with law.

The petitioner and the respondent No. 5 shall be at liberty to urge whatever points they wish to urge in support of their claim by relying upon whatever documents and records they wish to reply upon.

The petitioner shall be at liberty to file a written notes of argument with supportive materials in support of his argument before the respondent No. 4.

The entire exercise as directed above shall be carried out and completed by the respondent No. 4 positively within a period of **eight weeks** from the date of communication of this order. The respondent No. 4 then shall communicate his reasoned order within a further period of **two weeks** to the petitioner

and the respondent No. 5 from the date of the reasoned order to be passed.

It is further made clear that this order shall not create any equity or right in favour of the petitioner in the event, the petitioner is found to be ineligible to receive his claim strictly in accordance with law.

In the event, the reasoned decision goes in favour of the petitioner, then the respondent No. 4 and the relevant school authority shall take all necessary and consequential steps to give effect to the same. The respondent No. 3 shall also give effect to the said reasoned order positively within a period of **three weeks** from the date of such reasoned order being communicated to him.

On the above terms, this writ petition being **W.P.A. 4283 of 2020** stands disposed of, without any 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.)