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W.P.A. 6505 of 2015

Shibani Samui (Pal)

-vs-

State of West Bengal & Ors.

Mr. Samiran Mandal,
Mr. S. C. Dhara,
Mr. Abhinaba Dan,
Mr. Nitish Samanta

....for the petitioner.

Mr. Avishek Prasad

....for the State.

Question arises for consideration in this writ petition is whether a married daughter on the death of her mother is entitled to get appointment on compassionate ground or on mere consideration of fact that the applicant seeking appointment on compassionate ground was married at the time of death of her mother is not entitled to be considered for such appointment.

Petitioner is the only daughter of one Sushama Samui who died in harness on 10th November, 2007 while working as Class-IV staff of a Government recognized high school in the district of Bankura. After death of petitioner's mother on 10th November, 2007 petitioner applied for appointment on compassionate ground and it was specifically submitted before the District Inspector of Schools (S.E.), Bankura being respondent no.3 that petitioner is the only daughter of the deceased

Class-IV staff and after the death of father of the petitioner she was looking after her mother.

The application of the petitioner was processed by the office of the District Inspector of Schools but no decision was taken whether to grant compassionate appointment in favour of the petitioner which prompted the petitioner to file writ petition being WPA 1223 of 2012 claiming the benefit of compassionate appointment. The said writ petition was disposed of vide order dated 14th February, 2013 by a coordinate Bench thereby directing the respondent no.3 to take decision on the entitlement of the petitioner to be appointed on compassionate ground within a specified time.

In terms of the said direction of the coordinate Bench as contained in order dated 14th February, 2013 the respondent no.3 took decision by issuing memo dated 7th February, 2014 whereby the claim of the petitioner for appointment on compassionate ground was rejected on the sole ground that at the time of death of the mother of the petitioner, she was married.

Such decision of the respondent no.3 dated 7th February, 2014 is subject matter of challenge in the present writ petition.

This Court has heard the learned advocates

representing the petitioner and the State respondents.

Mr. Prasad, learned advocate has defended the decision of the respondent no.3 dated 7th February, 2014 and submitted that since the petitioner at the time of death of her mother was married there was no scope left open to the respondent no.3 to take decision otherwise than to reject the prayer of the petitioner for grant of appointment on compassionate ground.

After considering the contentions made on behalf of the respective parties and on perusal of the decision of the respondent no.3 it appears that there is substance in the argument made on behalf of the petitioner that the respondent no.3 upon finding the petitioner was a married daughter on the date of death of her mother on 10th November, 2007 rejected the prayer of the petitioner to grant appointment on compassionate ground.

Mr. Mandal, learned advocate representing the petitioner has relied upon the judgment of the Special Bench dated 13th September, 2017 passed in **FMA 1277 of 2015 (The State of West Bengal & Ors.-vs- Purnima Das & Ors.)**.

On perusal of the judgment of the Special Bench, it appears that the issue has been set at

rest by the Special Bench. It has been succinctly decided by the Special Bench that on the death of the deceased employee while in service his/her married daughter must succeed in her claim being entirely dependant on the earnings of her father/mother and agree to look after the other family members of the deceased provided need for compassionate appointment is established in terms of the laid down formula.

In view of the judgment of the Special Bench dated 13th September, 2017 the decision of the respondent no.3 as contained in memo dated 7th February, 2014 stands set aside.

The respondent no.3 is directed to take decision afresh in accordance with law and appropriate Government notification governing the claim for appointment on compassionate ground in case of death of non-teaching staff working in Government aided recognized school after granting opportunity of hearing to the petitioner or her representative within a period of twelve weeks from the date of communication of this order.

While taking decision the respondent no.3 shall take into consideration the judgment delivered by the Special Bench dated 13th September, 2017 in **Purnima Das (supra)**.

The decision to be taken by the respondent no.3 shall be communicated to the petitioner within two weeks thereafter.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)