

AD-12
Ct No.09
19.06.2023
TN

WPA No. 13768 of 2023

Gopa Sinha
Vs.
The State of West Bengal and others

Mr. Indranath Mitra

.... for the petitioner

Ms. Sangeeta Roy,
Ms. Sujata Mukherjee

.... for the State

Learned counsel for the petitioner contends that upon the demise of the petitioner's husband, who was functioning as an NOMO (non-official Marriage Officer), within the contemplation of the relevant Act, the petitioner applied for getting appointed in the same category on died-in-harness ground.

Vide recommendation dated November 13, 2020, the Registrar General of Marriages, West Bengal also recommended appointment of the petitioner on such ground. The petitioner, subsequently, got a degree equivalent to Higher Secondary in West Bengal, from the Bihar Board of Open Schooling and Examination, Patna subsequently.

However, the respondent-authorities ultimately refused to give such appointment to the petitioner merely on the ground of non-fulfillment of required qualification as per the West Bengal Special Marriage

Rules, 2010 (hereinafter referred to as “the 2010 Rules”), without disclosing the exact Rule which had been contravened.

It is further submitted, by placing reliance on Annexure-P/9 to the writ petition, that the Joint Secretary to the Government of West Bengal had intimated to the Principal Secretary to the Government of West Bengal that the former’s office was to let the department know whether Senior Secondary course is equivalent to Class-XII issued by National Institute of Open Schooling and whether the same can be termed as pass certificate in Higher Secondary (10+2) Examination.

In reply to the same, vide communication dated August 08, 2022, the Deputy Secretary to the Government of West Bengal wrote to the Joint Secretary to the Government of West Bengal, Law Department that Senior Secondary Certificate issued by the National Institute of Open Schooling (NIOS), New Delhi is recognized by the Government and is equivalent to Higher Secondary Certificate issued by West Bengal Council of Higher Secondary Education.

Learned counsel appearing for the respondent-authorities controverts the contentions of the petitioner and submits that the documents and communications relied on by the petitioner to

establish that the National Institute of Open Schooling, Bihar, from where the petitioner obtained a certificate was given in a different context in another writ petition and it is denied by the respondents that the certificate obtained by the petitioner is recognized in West Bengal as equivalent to the Higher Secondary certificate.

That apart, it is argued that the proviso to Rule 4(1)(a) includes an applicant in a died-in-harness situation on the demise of a NOMO appointee. As such, it is argued that the eligibility criteria stipulated in Rule 4 are all applicable to even such an applicant as well, which includes Clause (c) that the applicant shall not be less than 25 years and more than 40 years, as on the closing date of receipt of applications. Moreover, the applicant is required to have a pass Certificate in Higher Secondary Examination from a recognized Board/Council/Madrasah, as per Clause (d) of Rule 4. Since it is reflected from the recommendation of the Registrar General of Marriages itself that the petitioner was 52+ years of age even on November 13, 2020, she was not eligible to be given the appointment-in-question. It is further argued that such recommendation is not binding and it is open to the respondent-authorities to decide on such recommendation in accordance with law.

A careful perusal of the 2010 Rules shows that Rule 4 has been captioned to be Qualifications and other conditions for appointment as non-official Marriage Officers. In such context, the applicant is required to have certain qualifications as stipulated in sub-clause (a) onwards of the same.

The proviso to sub-clause (a) of sub-rule (1) of Rule 4 has been given under the category “he shall be a citizen of India”. In the proviso, it has been stipulated that a dependent of an appointee who has died-in-harness may be appointed by the Government to the post, subject to the procedures as given therein. The said procedures, from sub-clauses (1) to (6), however, are not a part of the subsequent sub-clauses (b) onwards.

The stipulations (1) to (6) under the proviso fall under the sub-category (a) of Rule 4(1) and are disjunctive from sub-clauses (b) onwards of Rule 4(1). As such, the appointment of any dependent of an *ex officio* Marriage Registrar to the post is not necessarily circumscribed by the other restrictions given in sub-clause (b) onwards, which are, in terms, applicable only to appointments as non-official Marriage Officers at the inception.

Rule 6 of the 2010 Rules, on the other hand, contemplates appointment of Marriage Officers from

the panel prepared by District Committee. Under sub-Rule (1) thereof, the State Government shall, in accordance with the provisions of Section 3, appoint non-official Marriage Officers from the panel prepared by the District Committee on the procedure followed therein. The proviso thereto has a similar clause which stipulates that when a non-official Marriage Officer dies or becomes permanently incapacitated due to accident or serious illness, while performing the duties of non-official Marriage Registrar, the State Government may appoint any dependent of such non-official Marriage Registrar to the post, subject to certain procedures as envisaged therein.

The said procedures, which are akin to the procedures given under the proviso to Rule 4(1)(a), also do not envisage any of the riders as found in sub-clauses (b) onwards of Rule 4(1).

Moreover, the basic premise of compassionate appointment is to give support to an indigent person who was the dependent of a particular appointee in a government post in order to provide support and succour to the family.

That apart, as evident from the recommendation of the Registrar General of Marriages dated November 13, 2020, the petitioner's age and educational qualification were clearly dealt with in such

recommendation insofar as the recommendation itself highlighted that the age of the petitioner even at that juncture was 52+ years and educational qualification was Higher Secondary “appeared”. Even in such circumstances, it was observed by the Registrar General of Marriages that Rule 6(1) of the 2010 Rules, as amended, provide for such option of appointment on died-in-harness ground.

Hence, read in conjunction between themselves, Rule 6 and Rule 4 of the 2010 Rules leave sufficient scope for a compassionate appointment on the ground of demise of an appointee under the NOMO category, even if the eligibility criteria of an applicant are not fulfilled strictly.

In any event, in the specific context of a similar query dated June 07, 2022 by the Joint Secretary to the Government of West Bengal, the Deputy Secretary of the Government had communicated that the National Institute of Open Schooling (NIOS), New Delhi is recognized by the State Government of West Bengal and is equivalent to Higher Secondary certificate issued by the West Bengal Council of Higher Secondary Education. The certificate of the petitioner, a photocopy of which has been annexed herein, clearly shows that the same was issued by the

Bihar Board of Open Schooling and Examination,
Patna.

As such, the petitioner has at least provided a semblance of a document to indicate that she had the necessary eligibility for the purpose of becoming an appointee in the NOMO category. Although the age criteria of the petitioner was not met on an equivalent footing with an original applicant, the same could very well be relaxed in case of compassionate appointment, particularly in view of no such strict eligibility criteria being appended to Rule 6(1) of the 2010 Rules.

In any event, the respondent-authorities have nowhere challenged the validity or equivalence of the degree obtained by the petitioner from the Bihar Board, vis-à-vis the Higher Secondary certificate issued by the State of West Bengal. In the absence of any such refutation, there is no scope for the refusal of the petitioner's application for compassionate appointment to the post of NOMO.

Accordingly, WPA No. 13768 of 2023 is allowed on contest, thereby setting aside the rejection of the petitioner's application for compassionate appointment to the post of non-official Marriage Officer under the 2010 Rules dated December 27, 2022 (Annexure P/11 annexed at page-29 of the writ petition). The respondent-authorities shall

immediately give appointment to the petitioner to the post of non-official Marriage Officer as per the West Bengal Special Marriage Rules, 2010. All formalities in that regard shall be completed at the earliest, preferably within a month from date.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)