

Item-21. 18-10-2023

MAT 1899 of 2023
CAN 1 of 2023

sg Ct. 8

Jahanara Bibi
Versus
The State of West Bengal & Ors.

Mr. Bikash Ch. Das, Adv.
Mr. Mahadeb Sarkar, Adv.
Mr. Bikash Chowdhury, Adv.
...for the appellant
Mr. Malay Singh, Adv.
Mr. Nilay Baran Mandal, Adv.
...for the State

1. The mother of the deceased was a teacher. The mother of the deceased filed an application for compassionate appointment of his second son. The deceased, at the relevant point of time, was an Assistant Teacher in Banipur Baniniketan High School. He died in harness on 14th December, 2009. Immediately thereafter, the mother of the writ petitioner filed an application on 23rd December, 2009. The District Inspector of School (SE), North 24 Parganas, by a communication dated 8th January, 2010, called for information from Sajjat Ali Mondal, who happens to be the brother of the deceased. The matter did not progress thereafter.
2. On 17th December, 2018, the mother of the deceased sent a reminder to which a reply was given by the D.I. North 24 Parganas that the brother is not a ward of a deceased employee to apply for service in compassionate ground.
3. The learned Single Judge, on consideration of the 2009 Rules, arrived at a finding that the claimants can only be spouse/son/daughter of the deceased employee and not the

brother. Admittedly, 2009 Rules does not permit the brother of the deceased to be considered for compassionate appointment. It is elementary that the authorities are to act on the basis of the scheme or the rules applicable to the deceased at the time of his death.

4. The learned Counsel for the appellant submits that in 2013, the Compassionate Appointment Rules permit brother or sister in case of death in harness of an unmarried employee provided his/her parents. All the brothers and sisters were fully dependent on him/her. The elder son of the appellant had died within nine years from the employment.
5. We find that at the relevant point of time, the 2009 Rules does not permit constitution of the brother of the petitioner. However, on the date of consideration of the said application, it appears that the West Bengal Scheme for Compassionate Appointment, 2013 defines dependant family members to include a brother who may be considered for compassionate appointment. However, the said Rule is not applicable to the writ petitioner as the deceased was teacher in a Government sponsored institution.
6. The learned Counsel for the appellant has relied upon the Education Department Circular dated 12th October, 1997 to contend that the power of relaxation of the condition, insofar as the wards of teachers and non-teaching employees of recognized non-government primary/junior high/secondary/higher secondary schools are concerned, there is a provision for relaxation of the conditions mentioned in paragraph 5 which permits 'ward' to include

son/a department daughter/the widow/the husband of the deceased teacher or of a deceased non-teaching employee. The learned Counsel has, however, fairly conceded that the 2009 Rules as applicable to the petitioner does not include a brother.

7. The argument that the Rules applicable to the teachers and the Government employees are discriminatory and cannot be decided in this writ petition. The said issue was never raised nor the said Rules have been challenged on the ground of discrimination.
8. In view of the fact that the brother is not included in the definition of the dependent, we are not inclined to interfere with the order passed by the learned Single Judge.
9. The appeal fails. The appeal and the application are disposed of accordingly.

(Uday Kumar, J.)

(Soumen Sen, J.)