

04.09.2023
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Sl. No.15
Ct. No. 35

WPA 23005 of 2018

Sumita Biswas
-Versus-
State of West Bengal & Ors

Mr. Biswarup Biswas
.....for the petitioner
Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal
.....for the State

The petitioner who is the daughter of the erstwhile and now dead Assistant Teacher of a Secondary School, has come up in this writ petition to challenge a memo No. 682-SC/P dated 06.08.2018 issued by the Commissioner, School Education, West Bengal. The said memo reads as follows:

“With reference to above, he is informed that his proposal for appointment of Smt. Sumita biswas, daughter of late Anil Biswas, deceased Asst. Teacher of Khoardanga Jalaneswari High School, P.O. Khoardanga, Dist. Jalpaiguri on compassionate ground has not been approved since the ward could not attain eighteen years of age within two years from the date of death of the teacher as stipulated in G.O. no. 57-SE(Pry) dated 15.01.2002 prevalent at the material point of time of death of the teacher.”

Learned advocate appearing for the petitioner submits that grievance of his client are as follows:

After death of the father of the petitioner on 27.09.2006, her mother that is the wife of the deceased made an application for her appointment on

compassionate ground due to untimely death of the sole bread earner of the family. Such application was made fairly within time. Accordingly, proposal was sent to DSE, West Bengal vide letter dated 08.04.2008 for enlistment of the name of the present petitioner for consideration of a job on compassionate ground. He has further pointed out that vide letter dated 17.08.2010, it has been notified that name of the petitioner was registered under serial No. 7/31 dated 13.08.2010 on live register of died-in-harness category. Relevant testimonials were called for and the petitioner was called for interview vide letter dated 24.05.2013. However, subsequently the impugned letter dated 06.08.2018 was forwarded informing the present petitioner that her name has not been approved for appointment on compassionate ground as she was not of the stipulated age within two years from the date of death of her father.

Letter dated 6.8.2018 was in terms of the GO No. 57-SE(Pry), dated 30.01.2006 which learned counsel representing the petitioner has controverted strongly on the ground that the said Government Order is only applicable in case of compassionate appointment of the ward of a deceased primary teacher. According to him, the notification itself implies the same. He submits that petitioner's case could not have been dealt with under the said Government Order. As such, he has pointed out, that the impugned letter dated 06.8.2018 is de

hors law, not in terms of the Government Order applicable and may be set aside being illegal.

Respondents are represented by Mr. Supriyo Chattopadhyay, learned advocate. During his argument concedes to what has been submitted on behalf of the petitioner, that the petitioner's case may be governed under the notification issued by the Education Department dated 30.01.2006 and subsequently amended vide Labour department G.O. dated 16.11.2006. He does not dispute the submission made on behalf of the petitioner that since the person concerned had died in the year 2006, the notification dated 30.01.2006 would only be applicable in case of the present petitioner. He has submitted that the case may be remanded back to the concerned authority for consideration of the petitioner's case in terms of the said notification dated 30.01.2006.

Considering the entire facts and circumstances and materials on record, this Court finds such exercise to be unnecessary any further as the procedures within the department has already been concluded in the case of the present petitioner. It is not the case of the respondents that the process is still incomplete.

At this juncture, I would like to mention the Judgment referred to on behalf of the petitioner of the Hon'ble Division Bench of this Court dated 31.07.2023 in MAT 1770 of 2015 where, though in case of a compassionate appointment due to death of a primary

teacher, the Court has promulgated the ratio on the basis of the earlier Division Bench decision in case of **Syed Iftikar Ali vs. State of West Bengal** reported in **2011(2) CHN(CAL) 17**. The relevant portion of the said Judgment may be extracted as herein below.

“Division Bench in the case of Syed Aftikar Ali vs. State of West Bengal, reported in 2011(2) CHN(CAL) 17 held that an application seeking appointment on compassionate ground cannot be rejected on the ground that the claimant reached 18 years of age after lapse of considerable period of time from the date of death of the employee if an initiation, at the instance of the widow, is made within the time limited in the following words:

Considering the aforesaid decision of the Hon’ble Supreme Court, we are also of the opinion that in the present case, the director of School Education, West Bengal should not have rejected the proposal for appointment for the appellant reached 18 years of age after six years of the date of death of the teacher concerned without appreciating the fact that the chairman, Hooghly district Primary School Council sent the proposal for appointment of the appellant on compassionate ground in view of the special fact that the widow of the deceased teacher claimed appointment on compassionate ground within the time limit and pending such claim the said widow surrender her claim in favour of the appellant herein due to her ill health. Furthermore the authorities concerned failed to consider the claim of the widow of the deceased teacher for appointment on the compassionate ground even though appropriate application/representation was submitted by the said widow within

the prescribed time limit.(emphasis supplied)

In view of the enunciation of the law by the Division Bench of this Court, the impugned memo cannot survive and is thus quashed and set aside.”

Therefore, this Court is of the opinion that by following the said ratio as well as finding gross illegality in the impugned memo of the Commissioner of School Education, West Bengal dated 06.08.2018, the same is liable to be set aside. Accordingly, it is ordered that the impugned memo dated 06.08.2018 be set aside.

Respondent No. 9 is directed to take up the procedure for appointment of the petitioner, from the stage of publication of result of interview, which was held pursuant to its letter dated 24.05.2014 and if the case be so suitable, issue the appointment letter in favour of the petitioner. The entire exercise as above shall be concluded by the respondent No. 9 within a period of four weeks from the date of communication of this order.

With these observations, the writ petition is disposed of .

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Rai Chattopadhyay, J.)