

Court No.
24.7.2023

(Item No. 6)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 22519 of 2019

Md. Masum Reja
VS
The State of West Bengal & Ors.

Mr. Sounak Bhattacharyya
Mr. Anirban Sarkar
... for the petitioner
Mr. Shamim Ul Bari
... For the State

The previous order speaks for itself.

Today the writ petition appeared under the heading "For Dismissal".

Mr. Sounak Bhattacharyya, learned counsel appeared for the petitioner.

Mr. Shamim Ul Bari, learned State counsel appeared for respondent Nos. 1 to 4.

Since the relevant parties were present and they agreed for disposal of the writ petition on merit, the writ petition was taken up for consideration.

Through this writ petition the petitioner had challenged the impugned reasoned decision of the respondent No. 3 dated **December 23, 2011, Annexure P-5 at page 32** to the writ petition whereby the claim of the petitioner for compassionate appointment was rejected on the basis of a State **notification No. 1641-MD dated November 11, 2010.**

The relevant facts are that the father of the petitioner was an **Assistant Teacher** at one **K.B.K.R. Hazi Nawab High Madrasah, District – Malda**. He died in harness on **July 10, 2010**. The petitioner being the son of the deceased teacher applied for compassionate appointment. The respondent No. 3 rejected the claim as mentioned above through the said impugned order.

On a scrutiny of the impugned order it appeared to this Court that, by virtue of the said notification dated **November 11, 2010** and applying provisions there under the claim of the petitioner was rejected though the petitioner's father died on **July 10, 2010**.

The law is well settled now. **The date of the death of the State employee** shall be taken into account to decide the case of a compassionate appointment if otherwise the State policy is there.

In the instant case admittedly the petitioner's father died on **July 10, 2010** and the respondent No. 3 while deciding the issue had applied a subsequent notification dated **November 11, 2010**. Thus the respondent No. 3 had proceeded on a wrong premise and passed the impugned order. The infirmity is ex facie apparent on the face of the impugned order dated December 23, 2011.

In view of the above, the said impugned order dated **December 23, 2011, Annexure P-5 at page 32**

to the writ petition stands **set aside and quashed** and the respondent No. 3 is directed to revisit the issue on the basis of the existing materials before him and shall pass its reasoned order strictly in accordance with law by applying the relevant guidelines prevailing as on the **date of the death** of the deceased State employee.

The entire exercise shall be carried out and completed by the respondent No. 3 positively within six weeks from the date of the communication of this order.

In the event, the reasoned order goes in favour of the petitioner, then the respondent No. 3 and/or any other appropriate authority shall take steps to give effect thereto strictly in accordance with law but positively within a period of three weeks from the date of the communication of the said reasoned order to such authorities.

On the above terms, this writ petition being **W.P.A. 22519 of 2019** stands allowed, 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.)