

12 09.10.2023
Sc Ct. no.22

WPA 21379 OF 2011

Md. Sarfuddin
Vs.
The State of West Bengal & Ors.

Mr. Priyabrata Batabyal
Mr. Anirban Sarkar.

....For the petitioner

Mr. Jayanta Samanta
Mr. Manas Kumar Sadhu.

....For the Respondent
Nos. 1 to 3

The previous order speaks for itself.

Mr. Priyabrata Batabyal, learned counsel appears
for the petitioner.

Mr. Jayanta Samanta, learned State counsel
appears for respondent Nos. 1 to 3.

Drawing attention to an order dated **August 18, 2022** passed by the Hon'ble Division Bench in **FMA 1276 of 2016**, learned counsel for the petitioner submits that, this writ petition has already been restored to its original file with number.

Through this writ petition the petitioner had challenged the impugned reasoned decision of the respondent No. 3 dated **November 14, 2011, Annexure P-7 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 **Khosbartola U.C.P. Sr. Madrasah, Malda**. He died in harness on **March 11, 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 **March 11, 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 **March 11, 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 **November 14, 2011**.

In view of the above, the said impugned order dated **November 14, 2011, Annexure P-7 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.

Drawing attention to ***Annexure-P3 at page 23*** to the writ petition learned counsel for the petitioner submits that, the managing committee of the school had adopted a ***resolution dated March 2, 2011*** whereunder the managing committee of the relevant school decided to forward the application of the petitioner before the respondent no.3 for his consideration. This makes it evident that, within the two-year span from the date of death of the employee, his son being the petitioner had applied for obtaining the compassionate appointment.

Thereafter, this writ petition was filed in ***2011*** challenging the decision of the respondent no.3 dated ***November 14, 2011, Annexure-P7 at page 32*** to the writ petition whereunder the ***claim for compassionate appointment made by the petitioner was rejected***, as discussed above. The writ petition is therefore pending since ***2011. During pendency of this writ petition the petitioner has crossed his age bar.***

It is settled that the pendency of the proceeding before a Court of Law cannot harm a litigant.

Considering the above, while revising the issue, the respondent no.3 shall revisit the same as on the basis of the material available before it as on ***November 14, 2011***

when the impugned order was passed, the respondent no.3 shall consider the case of the petitioner ***without taking into cognisance of the age bar of the petitioner which has crossed during the pendency of the writ petition.***

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 ***WPA 21379 of 2011*** stands ***allowed***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)