

31.07.2023

MAT 1770 of 2015
With
CAN 2 of 2016 (Old CAN 313 of 2016)
With
CAN 3 of 2016 (Old CAN 1455 of 2016)

The State of West Bengal & Ors.

Vs.

Pravat Kumar Pal & Ors.

Mr. S. M. Nandi

Mr. Avishek Prasad

... .. for the appellants

Mr. Ekramul Bari

Mr. S.M. Ali

Mr. T. Basak

Mr. Sk. Imtiaj Uddin

... .. for the respondent no.1/writ petitioner

There is a delay of 142 days in preferring the appeal. Sufficient cause being shown for not being able to present the appeal within a period of limitation. The delay of 142 days in presenting the appeal is hereby condoned.

Accordingly, application CAN 3 of 2016 (Old CAN 1455 of 2016) is allowed and disposed of.

The writ petitioner is the son of the deceased. He was minor when his father died. His father was working in the District Primary School Council, Bankura. He filed an application under the died-in-harness category after attaining the age of majority. The said application was disallowed. This has resulted in a writ petition being filed being WP 8540 (W) of 2009 in which an order was passed on 15th June, 2012.

Admittedly, the father of the writ petitioner was a primary school teacher. He died on 7th November, 1993 while in service. The mother of the present writ petitioner

made an application for appointment on compassionate ground. However, she was not given any appointment before her death. In the meantime, the present writ petitioner along with her sister made an application praying for appointment on compassionate ground in the died-in-harness category. Since the said application was not considered, the aforesaid writ petition was filed. While disposing of the said application, the learned Single Judge observed as follows :

“The petitioners have assailed and Memo no. 2284/2 dated 27th October 2008 passed by the Chairman, District primary School Council, Bankura whereby and whereunder the application for appointment on compassionate ground is rejected on the ground that the petitioners were minor at the time of death of their father.

Admittedly, the father, who was a primary school teacher, died on 7th November 1993 while in service. Mother of the petitioners made an application for appointment on compassionate ground.

Although the mother was included in the Live Register but no appointment could be made before her death. In the meantime, the petitioners attained majority and took out an application seeking appointment on compassionate ground.

In affidavit-in-opposition, it is stated that the application filed by the petitioners was much beyond the prescribed period and reiterated the stand that the petitioners had not attained the

age of 18 years at the time of death of the deceased employee.

Interestingly, it is specifically stated that the mother did not file any application seeking her appointment. The petitioners have disclosed the application and various communications made by the authorities on the application filed by the mother which necessarily prove that such statement of the authority has no semblance of truth. Therefore, it could unhesitatingly be held that the process was initiated immediately upon death of the teacher within the prescribed period, which yielded no result as no appointment was made in favour of the mother.

Division bench in the case of Syed Iftikar 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 :

“7. 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 of the appellant herein on the ground that the said 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 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.

Chairman, District Primary School Council is hereby directed to consider the application afresh on merit without taking into consideration that the same has been made after attaining the age of 18 years, in accordance with law.

The authority shall complete the entire exercise within six weeks from the date of communication of this order.

It goes without saying that this order shall not have any persuasive effect, so far as merit of the application is concerned, and the authority shall be free to decide the same in accordance with law.

The writ application, is, thus, disposed of. However, there will be no order as to costs.

Urgent photostat certified copy be supplied to the parties, if applied for, on priority basis.”

On that basis, the Chairman of the Council after proper enquiry, investigation and verification and upon scrutiny recommended petitioner’s case for approval with a finding that the family is in financial crisis.

The Commissioner passed an order on 20th January, 2023 refusing to accept the recommendation of the Chairman on the ground that in view of the notification no.04-EMP. Dt.04.01.2011 would not be applicable to the petitioner as it is not retrospective effect. The said order appears to have been passed perfunctorily and in a cavalier manner without considering the spirit of the order and the direction passed by the learned Single Judge. The learned advocate for the appellants made an attempt to impress upon us that the petitioner was minor at the time of death and after attaining age of majority he had approached the authority. This submission is not acceptable in view of the coordinate Bench decision in Syed Iftikar Ali (*supra*).

Mr. Bari reiterated the submission made by him before the learned Single Judge that the Commissioner of School Education is not

adjudicating the matter as an Appellate Authority and his power is circumscribed by Rule 14 of the Primary Teachers Recruitment and Leave Rule. Mr. Bari has relied upon two coordinate Bench decision of this Court namely **Soumik Dandapath v. State of West Bengal; 2012(1)CHN Cal 60** and **Satyagopal Mishra & Ors. v. State of West Bengal and Ors.; (2011) 2 WBLR (Cal) 757** in order to show the interpretation of Rule 14 made in such decisions. It is submitted that the decision in **Satyagopal** (supra) has since been affirmed by the Hon'ble Supreme Court and the Special Leave Petition being dismissed.

Both the aforesaid decisions are in respect of Rule 14 of the Primary Teachers Recruitment and Leave Rule was considered by the learned Single Judge. The said Rule is reproduced below:

“Rule 14. Appointment on compassionate ground.- The Council may appoint primary teachers, with the approval of the Director of School Education, West Bengal or his authorized officer, on compassionate ground in the following cases where, in the opinion of the Council, the cases deserve compassionate consideration:-

- (1) when a teacher dies in harness before the date of his superannuation i.e. at the age of 60 years, leaving a family which, in the opinion of the Council, is in extreme financial hardship that is it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the following

members of the deceased teacher's family, viz,
the

- (a) widow wife, or
 - (b) widower, or
 - (c) son, or
 - (d) unmarried daughter, or
 - (e) divorce dependent daughter-divorced before the date of death of the teacher, possessing required educational qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years from the date of such death, a prayer in writing to the Council for appointment as primary teacher on compassionate ground, provided that only one member of a deceased primary teacher's family may be appointed on compassionate ground.
- (2) when a primary teacher applies for being declared permanently incapacitated on medical ground, to the Council for appearing before the Medical Board set up according to the procedure laid down in the Government Board, before attaining 58 years of age and discontinues to attend the school for such incapacitation, he may be allowed by the Council to retire on and from the date of submission of such application, provided that the Council is satisfied with such incapacitation and other conditions through Enquiry Committee, and provided further that, after receiving the report from the Council, the Medical Board set-up for this purpose declares him permanently incapacitated to continue in further service for a reasonable time and if his family is in extreme financial hardship after such retirement, the

- (a) wife, of

- (b) husband, or
- (c) son, or
- (d) unmarried daughter, or
- (e) the divorce dependent daughter-divorced at least one year before submission of application for declaration of permanent incapacitation, of the incapacitated prematurely retired primary teacher, possessing requisite qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach may be appointed as primary teacher on compassionate ground on submission of prayer in writing within three months from the date of issue of certificate by the competent Medical Board. Only one member of the family of the declared permanently incapacitated teacher may be appointed.”

In the instant case, it is an admitted position that this is a case of appointment in die-in-harness category. Petitioner made application after attaining majority. His case was not considered. He moved this Hon’ble court. On that occasion matter was contested by the State authorities. The writ petition was disposed of. However, the judgment delivered on 15th June 2012 is the decisive factor, because the point of minority was raised and this court directed Chairman of the Council to consider the application afresh on merit without taking note of attaining majority of the applicant.

The basis for rejection of the recommendation of the Chairman, District Primary School Council, Bankura is clearly erroneous and is contrary to the record that

were scrutinized by the Chairman, District Primary School Council, Bankura before recommending the case of the petitioner.

It is not in dispute that the decision in **Satyagopal Mishra's** case was upheld by the Hon'ble Supreme Court and therefore there is no scope of re-adjudication of this decision.

The appellants have accepted the said order and accordingly the said plea is barred by res judicata. Moreover, all the investigations have been conducted by the Chairman of the Council and he being satisfied make the recommendation. Unless there are factual inaccuracy the question of the Commissioner considering the said matter as an appellate authority could not and does not arise. The interpretation to Rule 14 in the aforementioned two decisions namely, **Soumik Dandapath (supra)** and **Satyagopal Mishra (supra)** had clearly laid down the law.

It is admitted that the writ petitioner was entitled to be considered in a died-in-harness category and mother had made an application at the relevant point of time. The writ petitioner made an application after attaining the age of majority and his case was not considered in time.

The eligibility of the writ petitioner in the died-in-harness category was considered in detail as would appear from the order of the District Primary School Council, Bankura before recommending the case of the

writ petitioner. All relevant factors were considered before the recommendation was made.

It is the clear finding of the Chairman, District Primary School Council that the deceased teacher's family is in acute financial hardship.

On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal stands dismissed.

However, the time to give appointment to the petitioner is extended by four weeks from date.

Connected application being CAN 2 of 2016 (Old CAN 313 of 2016) is also dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)