

Court No. 22

23.8.2023

(Item No. 9)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 30738 of 2014

Kousik Ray

VS

The State of West Bengal & Ors.

Mr. Shamim ul Bari

.... For the petitioner

Ms. Tapati Samanta

.... For the State

This is a hearing matter upon affidavits.

The petitioner claiming to be the son of a deceased Assistant Teacher who died in-harness on **April 29, 2007**. From **page 17** onwards to the writ petition, applications galore would show that since May 4, 2007 the petitioner applied for obtaining compassionate appointment before the head of the institution save and except an application dated **April 5, 2010**, part of **Annexure P-1** at **page 19** to the writ petition, which was made before the respondent No. 3. The respondent No. 3 sat idle on the issue.

The writ petitioner travelled to this Court through the first round of writ litigation being **W.P. 13584 (W) of 2013**. By an order dated **May 14, 2013** the first writ petition was disposed of, **Annexure P-3** at **page 28** to the writ petition recording the facts as stated above and then with the direction upon the respondent No. 3 to consider the issue by passing a reasoned order in accordance with law within a specified time frame.

Pursuant to such direction the respondent No. 3 passed his reasoned order dated **September 4, 2014, Annexure P-5** at **page 30** to the writ petition.

Mr. Shamim-ul-Bari, learned counsel for the petitioner referring to the said impugned order submitted that, the provisions under the Government Notification dated **July 9, 2009** was applied while considering the case of the petitioner for compassionate appointment, when the father of the petitioner died on **April 29, 2007**. He then submitted that, the settled position of law is that, the law, guidelines and the provisions for compassionate appointment shall apply to a case for compassionate appointment which prevail upon the **date of death** of the deceased employee.

On this ground alone, learned counsel for the petitioner submitted that, the impugned order suffers from severe illegality and perversity and is liable to be set aside.

Ms. Tapati Samanta, learned counsel appearing for respondent Nos. 1 to 3 submitted that, though the petitioner had died on **April 29, 2007** but the first application in accordance with law was made on **April 5, 2010**, which would be evident from record annexed to the writ petition, before the respondent No. 3. She submitted that, all other applications which were made before the head of the institution, i.e. the Headmaster of the School would have no

relevance in law as because the application has to be made, for compassionate appointment, before the jurisdictional District Inspector of Schools as prescribed under the **West Bengal Schools Recruitment of Non-Teaching Staff Rules, 2005 (for short, the 2005 Rules)**. She submits that, any other mode and manner of application other than in compliance of the relevant Rule under the said 2005 Rules for compassionate appointment, is not a valid application and no reliance can be placed thereupon. She then submitted that, the application being a delayed one after about three years and admittedly after laps of two years as provided under the said 2005 Rules, the application for compassionate appointment was invalid and unlawful.

Learned counsel for the State then referred to the averments made in diverse sub-paragraphs under **paragraph 5** to the affidavit-in-opposition affirmed on March 24, 2015. Referring to such averments she submitted that, even if the 2005 Rules was taken into account the identical provisions being there, the petitioner would not have been qualified to his claim.

She then referred to the averments made in **paragraph 11** to the affidavit-in-opposition and submitted that, the claim of the petitioner for compassionate appointment was also barred under the income criteria, even in terms of the relevant Rules of 2006 and 2009.

In reply, Mr. Bari, learned counsel for the petitioner submitted that, the question of application of any other Rule which was prevailing as on the **date of the death** of the deceased employee could not arise as the law is well settled on this score. He submitted that, all along whenever the applications were made even before the head of the institution the copies were marked to the respondent No. 3. It is therefore incorrect to alleged on the part of the State that application was not there before the respondent No. 3 within the prescribed period of two years as provided under the relevant Rules.

After considering the rival contentions of the parties and after considering the materials on record, this Court is of the clear view that, all the points which have now raised on behalf of the State were considered and/or deemed to have been considered when the previous order dated **May 14, 2013** was passed by a co-ordinate bench in first round of writ litigation, **Annexure P-3** at **page 28** to the writ petition. This Court cannot travel beyond that as the same still holds the field.

The learned State counsel also confirmed this Court that, no appeal was carried out from the said order dated **May 14, 2013**. In as much as, accepting the said order the respondent No. 3 passed the said impugned order dated **September 4, 2014** in pursuance of the direction made there under.

At this belated stage this Court sitting in a co-ordinate jurisdiction cannot re-open the issues which has already been considered and/or deemed to have been considered by the co-ordinate bench in its said order dated **May 14, 2013**.

In exercise of power under judicial review under Article 226 of the Constitution of India, this Court has a very limited jurisdiction and authority to scrutinize the impugned order. This Court shall only interfere with the impugned order if there is any infirmity in the decision making process or existence of any glaring perversity on the face of the impugned order.

In the light of the above settled principle of law, this Court proceeds to scrutinise the said impugned order dated **September 4, 2014**. On a close scrutiny of the said impugned order it appears that, admittedly the deceased employee died on **April 29, 2007** and the impugned order proceeded on the basis of a Government Notification **No. 697-ES/S/15-18/08: dated July 9, 2009**.

The law is well settled now. **The date of the death of the deceased 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 deceased employee died on **April 29, 2007** and the respondent

No. 3 while deciding the issue had applied a subsequent Government Order dated **July 9, 2007**. Thus, the respondent No. 3 had proceeded on a wrong premise and passed the impugned order. The infirmity is *ex facie* apparent and the perversity is glaring on the face of the impugned order dated **September 4, 2014**.

In view of the above, the said impugned order dated **September 4, 2014, Annexure P-5** at **page 30** to the writ petition stands **set aside** and **quashed**.

The respondent No. 3 is directed to re-visit 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 and law prevailing as on the **date of death** of the deceased employee.

The entire exercise shall be carried out and completed by the respondent No. 3 positively within a period of **four 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 with all consequential benefits, strictly in accordance with law and positively within a period of **three weeks** from the date of communication of the said reasoned order to such authorities.

On the above terms, this writ petition being **WPA 30738 of 2014** stands allowed.

There shall, however, be no 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.)