

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 1129 of 2022

Sandip Deb
Vs.
The State of West Bengal and Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
..for the petitioner

Mr. Bikramaditya Ghosh
Mr. Pretom Das
...for the State

Item No. 03

Judgment on: 01.02.2023

BIBEK CHAUDHURI, J. : –

The petitioner has approached this Court in its constitutional writ jurisdiction for issuance of a writ of mandamus and other suitable writs to reconsider his prayer for compassionate appointment on the death of his father while he was in employment.

Brief fact leading to filing of the instant writ petition is as follows:-

Father of the petitioner, since deceased was an Assistant Teacher of Baidya Chakra Primary School and while in employment he died on 11th October, 2011. Within one and half years of his death the petitioner being the only son made an application before the competent authority on 19th April, 2013 for compassionate appointment for the post of Assistant Teacher in a Government aided primary school. The Commissioner, School Education, West Bengal by a Memo date 30th January, 2019 rejected his prayer on the following grounds:-

“3. In the light of the RTE Act, 2009, the rule 6 of the West Bengal Primary School Teachers Recruitment Rules, 2001 was amended vide notification no.285-SE (EE) dated 24.07.12 where under the required qualification of a candidate for appointment to the post of primary school teacher enhanced as Higher Secondary pass under the West Bengal Council of Higher Secondary Education or its equivalent with at least 50% marks and 2 years Diploma in Elementary Education (by whatever name known).

04. The applicant is not qualified to be appointed as Primary School Teacher due to lack of Teachers' Training and passed certificate in the Teacher Eligibility Test in terms of the provision of the RTE Act, 2009 and the subsequent amendment of the provision of the West Bengal Primary School Teacher Recruitment Rules 2001 vide Notification No.285-SE(E) dated 24.07.2012.

5. Hence, in the light of the aforesaid provision of the RTE Act, 2009, existing Government Notification, the materials or records vis-à-vis the law applicable thereto, the applicant herein is not eligible for appointment as an Assistant Teacher in a Primary School as per report submitted by the Dy. Director of School Education (Rural Primary), West Bengal. You would appreciate that as per the existing rules, the Commissioner of School Education, West Bengal is not competent to dispose of died-in-harness cases other than those relating to appointment as a primary school teacher.”

Being aggrieved the petitioner has approached this Court. It is submitted by the learned advocate for the petitioner that the Commissioner rejected the prayer of the petitioner on the

basis of Notification dated 23rd August, 2010. However, if it is found that the petitioner is not entitled to the post of an Assistant Teacher, he may be given compassionate appointment in the cadre of Group – C or Group- D in a secondary school as per his academic qualification. It is also submitted by him that compassionate appointment cannot be denied when financial condition of the family left by the deceased employee deserves favourable consideration of compassionate appointment

In support of his contention the learned advocate for the petitioner refers to notification No.559 dated 6th July, 2015. The relevant portion runs thus:-

“3. It is further order that the appointment of the spouse/son/daughter of the deceased /declared permanently incapacitated teachers on medical ground in the Group C or Group D posts of the aided recognized secondary schools on compassionate grounds can be considered, if the family of the deceased is determined as under financial crisis as per financial criteria in the yardstick as specified in paragraph 1 and 2 of Schedule V of the West Bengal School Service

Commission (Selection of persons for appointment to the Posts of Non-teaching Staff) Rules, 2009 published under Notification No.697-ES/S dated 09.07.2009 and the candidates has requisite qualification as per said rules.

The District Primary District Inspector of Schools (Primary Education) concerned shall send the names of deserving cases with its recommendation to the District Inspector of Schools (Secondary Education) concerned who in turn shall include such cases along with other deserving cases processed at his end in terms of provision of rule 26 of the said rules and shall then send these cases to the respective Regional School Service Commission with the following particulars for disposing of he applications in accordance with sub-rule (2) to (5) of rule 20 of the said rules:-

- (i) Serial No.
- (ii) Name
- (iii) Address
- (iv) Date of Birth
- (v) Educational Qualification
- (vi) Category

- (vii) Choice of posting area
- (viii) Name of the deceased or incapacitated teacher
- (ix) Family pensioners's Name and PPO No.
- (x) Date of receipt of the case from the concerned District Primary School Council.
- (xi) Date of transmission to the Commission.

Thereafter the respective Regional School Service Commission shall consider those applications for appointment as Group C or Group D staff of the schools in the existing vacancies of the district category wise (Exempt Category) and medium wise in accordance with the provisions of rule 20 or rule 21 of the said rule as the case may be."

In view of the above notification the instant writ petition is disposed of directing the respondent Nos. 3 and 4, i.e., the District Inspector of Schools (P.E.), Darjeeling and the Chairman District Primary School Council, Siliguri in the district of Darjeeling to forward all relevant papers pertaining to the petitioner's case to the District Inspector of Schools (S.E.), Siliguri in the district

of Darjeeling, respondent No.6 herein within two weeks from the date of communication of this order. Respondent No.6 will take steps to forward the papers to the West Bengal School Service Commission within two weeks thereafter. The School Service Commission, though is not a party in the instant writ petition shall take steps for inclusion of the name of the petitioner in the panel of died-in-harness category in the district of Darjeeling for giving appointment to the post of Group C or Group D in accordance with law as expeditiously as possible.

With the above direction the instant writ petition is disposed of.

(Bibek Chaudhuri, J.)