

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. 6907 of 2022

Sumitra Adhikary
vs.
State of West Bengal & Ors.

For the Petitioner : Mr. Mahadeb Sarkar, Advocate
Mr. Bikash Chowdhury, Advocate

For the State : Mr. Biswabrata Basu Mallick, Advocate
Mr. Sanjib Das, Advocate

Hearing concluded on : 5th July, 2024

Judgment on : 5th July, 2024

Saugata Bhattacharyya, J.:

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. The writ petition is heard in presence of the learned advocates representing the petitioner and the State respondents.
3. In the writ petition the order dated 6th December, 2021 passed by the District Inspector of Schools (S.E.) North 24 Parganas being respondent no.3 is under challenge whereby application of the petitioner for appointment under died-in-harness category due to

death of her husband has been spurned on the ground that on the date of submitting application by the petitioner seeking appointment on compassionate ground i.e. 7th July, 2021 petitioner crossed the upper age of limit of 45 years.

4. While determining the issue involved in this writ petition based on the decision taken by the respondent no.3 this Court is required to consider the relevant provisions of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff), Rules, 2009 (hereinafter referred to as 'the said Rules of 2009'). The eligibility criteria in terms of age and educational qualification have been prescribed under Schedule-V to the said Rules of 2009. Under Schedule-V it has specifically been provided that if a teacher or non-teaching staff dies-in-harness in that event in an appropriate case surviving members of the family of the deceased employee namely spouse, son and daughter may be appointed on compassionate ground provided the applicant is possessing requisite educational qualification for the post of Clerk or Group-D staff and unemployed and the age of the applicant is not below 18 years and not above 45 years may within two years from the date of death, make an application to the District Inspector of Schools (SE) for appointment as non-teaching staff on compassionate ground.

5. In the present case the husband of the petitioner who was working as an approved Clerk in a Government aided school died-in-

harness on 19th July, 2019 and on the date of death of the husband of the petitioner age of the petitioner was approximately 43 years. However, while considering the eligibility of the petitioner to be appointed on compassionate ground the respondent no. 3 rejected the application of the petitioner since it was found that on the date of submitting application seeking compassionate appointment i.e. 7th July, 2021 age of the applicant was 45 years 3 months.

6. Schedule-V of the said Rules of 2009 prescribes that upper age limit is 45 years and from the aforesaid facts it appears that on the date of death of the husband of the petitioner she was within the upper age limit. The respondent no.3 while appraising the candidature of the petitioner for being appointed on compassionate ground needs to take into account the date of death of the husband of the petitioner instead of date of submission of application seeking appointment on compassionate ground. For better understanding of the issue relevant part of Schedule-V of the said Rules of 2009 is quoted below :-

“1. When a Teacher or non-teaching staff dies in harness before the date of his superannuation, i.e., the age of 60 years, leaving a family which is, in the opinion of the District Inspector of Schools (Secondary Education), in such extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher’s family, the –

- (i) Spouse;
- (ii) Son;
- (iii) Daughter

of the deceased Teacher or non-teaching staffs family who is possessing required educational qualifications as laid down in Schedule I for the posts of Clerk or Group-‘D’ staff and unemployed and not below 18 years of age and not above 45 years of age may, within two years from the date of such death, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-teaching staff on compassionate ground:

Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule.”

(Emphasis supplied)

7. In the present case husband died on 19th July, 2019 whereas application seeking compassionate appointment was submitted on 7th July, 2021. As per said Rules of 2009 application needs to be submitted within two years from the date of death of the employee. If the employee dies at the juncture when age of his spouse is within 44 years and 45 years and on submitting application just before the expiry of prescribed period of two years from the date of death, invariably it is to be found that the applicant has crossed the upper age limit. In that event whether the right of the applicant is withered away or not.

8. Answer is found from the relevant part of Schedule-V of the said Rules of 2009 as quoted above. While prescribing the eligibility criteria it has been provided therein that surviving member of the family of the deceased in an appropriate case can make application for compassionate appointment within two years from the date of death of the employee provided age of the applicant is in between 18 years and 45 years which connotes the age of the applicant needs to be determined on the date of death of the employee.

9. The judgment of the Hon'ble Division Bench delivered in two writ petitions first being W.P.S.T. 35 of 2018 (Arindam Choudhury vs. The State of West Bengal & Ors.) dated 4th February, 2019 decided in the case of Anirban Jana that Swapna being over aged had applied for appointment of Anirban on compassionate ground notwithstanding the fact that Anirban was minor at the time of his father's death and in the backdrop of aforesaid facts it was decided therein that the right of a candidate who is minor on the date of death of employee cannot be preserved till he obtains majority. At the same time it was also decided therein that an over aged candidate has no right to be considered for appointment on compassionate ground unless statutory provisions prescribe relaxation of age limit. But in the case which is at my hand the fact situation depicts the petitioner being the wife of the deceased employee was within the prescribed upper age limit on the date of death of the employee. But at the time of

submitting application she crossed the upper age limit. It needs to be recorded herein that the application seeking appointment on compassionate ground was made by the petitioner within the stipulated time of two years from the date of death of her husband. Therefore, the ratio of the judgment of the Hon'ble Division Bench dated 4th February, 2019 does not come in aid of the impugned decision taken by the District Inspector of Schools (SE) as contained in memo dated 6th December, 2021. This aspect has not been delved into by respondent no. 3 while negating the application of the petitioner.

10. Accordingly, the impugned decision of the respondent no.3 dated 6th December, 2021 stands set aside.
11. The Commissioner of School Education, West Bengal being respondent no.2 is directed to take decision on the application of the petitioner seeking appointment on compassionate ground within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or her representative.
12. The decision to be taken by the respondent no.2 shall be communicated to the petitioner within one week thereafter.
13. While taking decision the respondent no.2 shall take into account the observations made by this Court while disposing of this

writ petition and application of the petitioner for appointment on compassionate ground shall not be rejected on the ground of over age.

14. Accordingly, the writ petition stands disposed of.
15. However, there shall be no order as to costs.
16. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)