

13.06.2024.
Court No. 13
Item No. 15
ap

W.P.A. No. 10285 of 2024

Smt. Priya Mukhopadhyay (Bhattacharyya)
Versus
The State of West Bengal & Ors.

Mr. Aniruddha Singh,
Ms. Anjana Mehebab,
Ms. Susmita Ghorai.

...For the petitioner.

Mr. Sunit Kumar Roy.

...For the School Service Commission.

Mr. Tushar Sinha Mahapatra,
Ms. Riya Ballav.

...For the State.

1. Affidavit-of-service filed in Court today be taken on record.
2. The petitioner is aggrieved by an order dated 14th February, 2019 passed by the Commissioner of School Education, West Bengal rejecting her application for compassionate employment on the sole ground that she is the married daughter of Late Swapan Kumar Mukhopadhyay.
3. The said Swapan Kumar Mukhopadhyay died in the year 2011 in harness as an Assistant Teacher in Bondutia Free Primary School. The petitioner applied for compassionate employment in the same year shortly after her father's death.
4. The said application was kept pending and finally decided in February, 2019. The writ petitioner claims in paragraph 9 of the writ petition that she was

prevented by financial hardship, huge debt and loans and the COVID Pandemic in approaching this Court.

5. This Court finds that there are some pleadings to explain the delay of five years in filing the instant writ petition. While the reasons may not be convincing enough, this Court is of the view that the petitioner has been able to make out a case for maintaining the writ petition.

6. Counsel for the petitioner would rely upon two decisions of this Court, one of such decision is from the Full Bench of this Court in the case of ***The State of West Bengal & Ors. – Vs. – Purnima Das & Anr.*** reported in ***2017 SCC OnLine Cal 13121***.

7. By the said decision, it was held that the Notification of the State rejecting the cases of unmarried daughters, for compassionate employment, simplicitor was not sustainable in law. It was, however, held that the applicant must be able to demonstrate that her husband was not maintaining her or capable of maintaining her. It must also be demonstrated that the married daughter must have been dependent on the father's income even after marriage.

8. Applying the test laid down in the aforesaid decision of ***Purnima Das (supra)***, this Court finds that the impugned order nowhere discusses the aforesaid issues. The petitioner's application for compassionate

employment has been rejected only on the ground that she is a married daughter of the deceased employee.

9. For the reasons stated above, the impugned order dated 14th February, 2019 passed by the Commissioner of School Education, West Bengal (in short 'CSE') stands set aside.

10. The matter is remanded back to the CSE for consideration afresh. The CSE shall cause an enquiry as to whether –

(a) the petitioner was, since after her marriage, financially dependent on her father and

(b) Whether the husband's financial condition is such that the petitioner ought to have been dependent on her father for her basic requirement.

The CSE shall also factor in other relevant considerations in connection with the above.

11. In the event, there is any finding adverse to the claim of the petitioner, the same must be confronted to her. The petitioner shall thereafter be allowed to represent against the same and/or produce evidence to the contrary.

12. The CSE thereafter shall pass a reasoned order and communicate the same to the petitioner forthwith.

13. Let the aforesaid exercise be completed by CSE within a period of four months from date mandatorily and positively.

14. With the aforesaid directions, the instant writ petition is allowed and disposed of.

15. There will be no order as to costs.

16. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)