

14
11.09.2024
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 11554 of 2024

**Samar Roy
-versus
The State of West Bengal & Ors.**

**Mr. Duke Banerjee.
...For the Petitioner.**

**Mr. Pradyut Kumar Das.
...For the State.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Gourav Das.
...For DPSC, South 24-Parganas.**

The reasoned order dated 12th December, 2022 rejecting the prayer of the petitioner for providing compassionate appointment on the ground that he is over aged is impugned in the instant writ petition.

The wife of the petitioner was a primary school teacher. She died-in-harness on 22nd April, 2021. The petitioner applied for compassionate appointment on 7th July, 2021. His prayer stood rejected as he exceeded 45 years on the date of death of his wife.

Reliance has been placed on G.O. 57-SE (Pry.) dated 15th January, 2002 as amended vide G.O. No. 418-SE (Pry.) dated 11th May, 2004 to reject the claim of the petitioner.

The petitioner submits that as his wife died of Covid which is a special case, accordingly, the notification of the Labour Department, Government of

West Bengal being No. 251-Emp. dated 3rd December, 2013 ought to have been applied for condoning the age of the petitioner and appointment ought to have been given to him.

Clause 6 (c) Note (a) of the Notification dated 3rd December, 2013 has been relied upon which mentions that condonation of excess age in case of eligible cases will be made by the respective head of the department or their subordinate officer who are competent to make the compassionate appointment as per existing provision.

Prayer has been made to set aside the impugned rejection order and to treat the petitioner as eligible for appointment on compassionate ground by condoning his age.

The prayer of the petitioner has been opposed by the respondents.

The District Inspector of Schools (P.E.), South 24-Parganas has filed a report.

It has been submitted that the case of the petitioner will be governed by the West Bengal Primary School Teachers Recruitment Rules, 2001. Rule 14 thereof mentions that employment may be given to candidates not below 18 and not above 45 years of age. In the instant case as the petitioner is above 45 years of age, accordingly, his case cannot be considered.

It has been submitted that the notification of the Labour Department will not be applicable in the facts and circumstances of the instant case.

The respondents rely on the decision of this Court in the matter of ***Badra Mandi –vs- West Bengal State Electricity Distribution Company Limited*** reported in ***(2018) 3 LLJ 342*** wherein the Court held that it is trite law that compassionate appointment is always a scheme related one. There cannot be any appointment on compassionate ground *de hors* the scheme.

While passing the aforesaid order the Court took into consideration the judgment of the Hon'ble Supreme Court in the matter of ***State Bank of India & Anr. – vs- Raj Kumar*** reported in ***(2010) 11 SCC 661*** wherein the Hon'ble Supreme Court observed that the claim for compassionate appointment is traceable only to the scheme framed by the employer for such appointment and there is no right whatsoever outside such scheme.

I have heard the submissions made on behalf of both the parties.

Admittedly, the provision for providing compassionate appointment is clearly indicated in the West Bengal Primary School Teachers Recruitment Rules, 2001. It clearly lays down that for the purpose of compassionate appointment the applicant must not be below 18 years of age and not above 45 years of age.

In the present case, the petitioner is over aged. As the law relating to compassionate appointment does not specify any provision for condoning the age bar, accordingly, it will be improper for the Court to direct the authority to consider the case of the petitioner by condoning his over age.

It is settled law that compassionate appointment can be made only in accordance with the scheme of the employer. The applicant does not have a vested right to be appointed *de hors* the prevailing law. As the scheme under which the petitioner made the application prescribes an age limit for making the application and as the petitioner does not fall within the said prescribed age limit, accordingly, the Court is not inclined to exercise jurisdiction in this matter.

The Court does not find any reason to interfere with the impugned order.

The writ petition fails and is hereby dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)