

20.06.2024
Court No. 18
Item No. 12
(Suvendu)

WPA 13137 of 2022

Apurba Sardar

-Versus-

The State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh

.....for the petitioner

Mr. Pinaki Dhole

Mr. Avishek Prasad

...for the State

Mr. Bhaskar Prasad Vaisya, Ld. AGP

Mr. Gourav Das

.....for the respondent nos. 4 & 5

The writ petition is directed against the refusal on the part of the State respondents to grant compassionate appointment in favour of the petitioner in view of death of his mother on 24th January, 2013 who was a primary teacher.

It has been submitted by the learned advocate representing the petitioner that an application was made by the petitioner on 20th February, 2017 seeking appointment on compassionate ground but prior to that an application was made by the father of the petitioner on 6th May, 2014 wherein it was

expressed that appointment needs to be given in favour of his elder son being the petitioner.

On the date of death of the mother of the petitioner on 24th January, 2013, age of the petitioner was fifteen years. However, it has been submitted that at the time of taking decision by the District Inspector of Schools (SE), South 24 Parganas on 24th February, 2020 the petitioner attained majority. Therefore, the petitioner ought to have been found eligible for being appointed on compassionate ground. In support of such contention reliance has been placed on a circular of the Labour Department, Employment Cell, Government of West Bengal being No. 26-Emp dated 1st March, 2016 and a judgment of the Hon'ble Supreme Court dated 4th March, 2020 passed in **Civil Appeal Nos. 9280-9281 of 2014 (N. C. Santhosh Vs. State of Karnataka & Ors.)**.

The prayer made on behalf of the petitioner is opposed by the learned advocate representing the State respondents and submission has been made to defend the view expressed by the concerned District Inspector of Schools (SE), South 24 Parganas vide memo dated 24th February, 2020 which is annexed to

the report in the form of an affidavit filed by the Assistant Inspector of Schools affirmed on 6th July, 2023.

It has been submitted on behalf of the State respondents placing reliance on the judgment of the Hon'ble Division Bench passed in **WPST 35 of 2018 (Arindam Choudhury Vs. The State of West Bengal and Ors.)** with **WPST 38 of 2018 (Anirban Jana Vs. The State of West Bengal & Ors.)** dated 4th February, 2019 wherein according to the State respondents identical issue has been decided against the petitioner by negating the claim of the petitioner seeking appointment on compassionate ground since it was found by the Hon'ble Division Bench that on the date of death of the employee the applicant seeking appointment on compassionate ground was found to be minor. It has also been submitted on behalf of the State respondents that no provision has been made which would make the applicant entitled for being appointed on compassionate ground in the event the applicant is minor on the date of death of the employee/ teaching or non-teaching staff. In this regard reliance has been placed on the relevant provisions of the West Bengal School

Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009.

Having considered the submissions made on behalf of the parties and perusing the materials available on record and taking note of the relevant Government orders and the judgments relied upon, it appears that the moot question is whether the petitioner is entitled to be considered for appointment on compassionate ground in view of the fact that on the date of death of the petitioner's mother on 24th January, 2013 the petitioner was fifteen years old.

In pursuit of finding answer whether right of the petitioner to be considered for compassionate appointment can be preserved since the petitioner did not attain the requisite minimum age on the date of death of her mother, first this Court is required to consider the judgment of the Hon'ble Supreme Court in **N.C. Santhosh** (supra), which has been relied upon on behalf of the petitioner. In paragraph 20 of the said judgment, it has been held by the Hon'ble Supreme Court that consideration of the application for appointment on compassionate

ground needs to be made based on the norms which are applicable on the date of consideration of the application and not on the norms which were prevailing on the date when the employee died.

In view of the discussion as enumerated in the preceding paragraph, this Court finds that the decision in **N.C. Santhosh** (supra) is not applicable in the present case since here the Court is tasked to find out whether right of the petitioner being minor on the date of death of his mother can be preserved till he attains majority for being considered for appointment on compassionate ground. The issue has been succinctly decided by the Hon'ble Division Bench in **Arindam Choudhury** (supra). In paragraph 5(m) of **Arindam Choudhury** (supra), it has been decided that there cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there is some specific provisions.

Now the effort of the Court would be to find out whether the provisions governing appointment on compassionate ground in view of death of the petitioner's mother who was a primary teacher confers any right upon the

petitioner to be considered for appointment on compassionate ground though he was minor at the time of death of his mother.

Effort has been made on behalf of the petitioner to satisfy this Court based on the notification dated 1st March, 2016 of the Labour Department, Employment cell, Government of West Bengal which clarifies that consideration of application for appointment on compassionate ground is required to be made keeping note of the fact that the applicant attains minimum age of appointment at the time of consideration.

However, this circular dated 1st March, 2016 has no manner of application since the mother of the petitioner was a primary teacher and appointment under compassionate ground in connection with death of a primary teacher can be considered based on the provisions as contained in the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009.

On perusal of the said Rules, this Court fails to find any provision which provides that the right of a candidate who was minor on the

date of death of his mother/ father can be preserved till he attains majority.

In view of aforesaid discussion, this Court refuses to interfere with the present writ petition on being found that the petitioner was minor at the time of his mother's death.

Accordingly, the writ petition stands dismissed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)