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| Item-<br>61. | 17-01-2024 | MAT 1664 of 2023<br>CAN 1 of 2023                            |
| sg           | Ct. 8      | Bitasoke Mahata<br>Versus<br>The State of West Bengal & Ors. |

Mr. Shuvro Prokash Lahiri, Adv.  
Ms. Tithi Majumder, Adv.  
Mr. Rajesh Naskar, Adv.  
...for the appellant  
Mr. Supriyo Chattopadhyay, Id. AGP  
Mr. Sabyasachi Mondal, Adv.  
...for the State

1. The appeal is arising out of an order dated 26<sup>th</sup> July, 2023 in a writ petition filed by the son of an Assistant Teacher of a High School, who died in harness, for a direction upon the respondents to appoint him on compassionate ground after setting aside the order of the District Inspector of Schools (S.E.), Bankura dated 14<sup>th</sup> November, 2009.
2. We may not have to go into the details of the matter as the fate of the petitioner is required to be decided on the basis of the interpretation of “financial hardship” mentioned in the explanation to the West Bengal School Service Commission (Selection of Persons For Appointment To The Post of Non-Teaching Staff) Rules, 2009. Schedule V prepared on the basis of the Rules 20 and 21 contains a definition of ‘financial hardship’ in explanation to Rule 1 and it reads as follows:

*“The expression “financial Hardship”, in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family, shall mean an amount of income less than the initial gross salary of Group-D staff of the State Government at the*

*material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been alive, whichever is earlier at the material point of time, shall be taken into account;*

*Provided that if the family of the deceased teacher exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the initial stage at the material point of time."*

3. On a plain reading of the said Rule, it appears that for computation of income of the family Provident Fund, Gratuity and 40% of the Family Pension of the first seven year shall be excluded. We are not referring to other portion of the said Rule as they are not relevant for the present purpose. The question arises whether "dearness allowance and medical allowance can be treated as part of income of such family". The Rule has clearly stated that if a family member has an income earned from "any other source" other than provident fund, gratuity and 40% of the family pension, that could be taken into consideration in addition to 60% of the family pension earned by the members of the deceased family in determining the financial hardship. This Rule has not been amended. Unlike the Government of West Bengal Labour Department Circular No. 251-Emp dated 3<sup>rd</sup>

December, 2013, the total family pension per month does not include the basic pension, dearness allowance and medical allowance. The said scheme is beneficial in nature and the Court should not ordinarily read into the Rules something which was never intended or expressly provided. The rule has to be read plainly without importing any word and in case of any ambiguity an interpretation favouring the applicant should be accepted keeping in mind the object of the said Rule.

4. On such consideration, we set aside the order passed by the District Inspector of Schools (S.E.), Bankura dated 14<sup>th</sup> November, 2009 and consequently the order impugned in the appeal dated 26<sup>th</sup> July, 2023.
5. We direct the District Inspector of Schools (S.E.), Bankura to consider the case of the petitioner for compassionate appointment after taking into consideration all other relevant facts within a period of four weeks from the date of communication of this order by either of the parties after giving an opportunity of hearing to the appellant.
6. In the event the appellant is found to be eligible, immediate steps should be taken for his appointment to a post commensurate with his qualification.
7. With the aforesaid directions, the appeal and the application are accordingly disposed of
8. Urgent photost certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**