

Court No. 8
(266211)

FMA 1315 of 2022

26.09.2024
(AD 26)
(S. Banerjee)

Salimuddin Sk.
Vs.
State of West Bengal & Ors.

Mr. Asim Banerjee
...for the appellant

Mr. Tapan Mukherjee, Sr. Advocate
Mr. Arindam Ghosh
...for the State

Mr. Subir Sanyal
Mr. Sakti Pada Jana
Mr. Subhajyoti Das
Ms. Sudipta Pramanik
...for the respondent/writ petitioner

A stale claim is sought to be resurrected taking recourse to a writ under Article 226 of the Constitution of India.

The writ petition was filed challenging the vires of Rule 22 of the West Bengal Primary School Teachers Recruitment Rules, 2001 ('the Rules', for short) which provides for premature retirement of a teacher. It is sought to be contended that the said Rules offends the core ethos of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India and, therefore, should be struck down.

The Single Bench did not find that Rule 22 offends any of the provisions as mentioned above and held the said provision intra vires to the Constitution.

In service jurisprudence, while making an Act or a Rule, an opportunity is often given to the employee to seek for premature retirement, which cannot be said to encroach upon any of the fundamental rights guaranteed under Articles 14, 16, 19(1)(g) and 21 of the Constitution of India. It is a voluntary act of the employee if he intends to cease his employment prematurely and if the authorities have decided to accede to such prayer and incorporate the aforesaid concept into a statutory provision, it cannot be said to be ultra vires.

We thus do not find any incongruity and/or illegality in the judgement of the Trial Court upholding the vires of Rule 22 of the said Rules.

Reverting the facts of the instant case, the petitioner is persistently claiming the appointment on compassionate ground as his father, being a head teacher, during his lifetime, suffered a serious illness which, according to the petitioner, brings incapacitation to discharge the solemn duties attached to his service. Undeniably an application under Rule 14(2) of the said Rules was filed before the authority so that the Medical

Board may be constituted and in the event the Medical Board is of the opinion that such disease has incapacitated the petitioner to discharge his duties, the further course of action can be taken. According to the petitioner the authorities after receiving the said letter, did not constitute the Medical Board and kept the same in suspended animation. The records would further reveal that subsequently an application seeking premature retirement was submitted by the father of the appellant which, according to the appellant, was under coercion. The reliance is placed upon a complaint lodged with the Inspector in Charge of Purbasthali, Burdwan on 28.06.2006 raising the aforesaid grievance against the authorities. It is sought to be contended that keeping the application for declaration as to the capacity of the father of the petitioner to discharge the duties on account of illness, the subsequent application for premature retirement was secured under coercion and, therefore, no credence should be given in this regard.

We find from Rule 22 of the said Rules of 2001 that if any prayer is made by the teacher seeking early retirement, it is imperative on the council to satisfy itself taking into account all aspects that such prayer is justified and after seeking an approval from the Director, the said teacher shall be allowed to retire before completion of the age of retirement. It is

categorically indicated in the said Rules that in the event the teacher is permitted to retire prematurely, no member of the family of such retired teacher shall be allowed any employment.

There is a distinction between the provisions contained in Rule 14(2) and 22 of the said Rules of 2001. The earlier provision is relatable to a declaration as to permanent incapacitation necessitated by the medical conditions, whereas the latter provision relates to an application filed by the teacher seeking premature retirement. The concept of compassionate appointment is not imbibed when a person retires after discharging the duties and attained a particular age. The concept of compassionate appointment is to give succor to a family who sustained the sudden jerk because of the untimely death of the bread earner. Such concept is also extended in a case when a sole bread earner becomes medically incapacitated or physically incapacitated permanently to discharge his duties up to the age of retirement.

Even if the case of the appellant is accepted for the sake of argument that an application was filed by the father seeking declaration that he is permanently incapacitated to discharge his duties, subsequently an application seeking premature retirement was filed which received sanction from the competent authority.

Had it been a case that the subsequent application was issued under coercion, the father during his lifetime ought to have taken steps by approaching the appropriate forum and not to sit idle by lodging a complaint before the police authorities. The Single Bench did not find any semblance of truth in the stand of the petitioner, being the son, claiming through the father and proceeded to reject the contentions so raised before it. The appellant being a son, is claiming a right emanating from his father and, therefore, cannot get away with the acts and the things done by the father during his lifetime. The appellant does not have any independent right but a right flowing from the statutory provision through his father and, therefore, the moment the Single Bench did not accept the stand taken by the appellant, we do not find any error in such finding warranting interference in the instant appeal.

The appeal is thus dismissed. However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied, be supplied within three days from the date of application.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)