

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE RAI CHATTOPADHYAY

W.P.A. 7733 of 2020

ARINDAM SARMA

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner	: Mr. Mokaram Hossain, Adv. : Mr. S. Gayen, Adv. : Mr. Sandipan Maity, Adv. : Md. Naimul Islam, Adv.
For the Opposite party	: Mr. Prosenjit Mukherjee, Adv. : Ms. Madhurima Sarkar, Adv.
Hearing concluded on	: 1 st April, 2024
Judgement on	: 1 st April, 2024

Rai Chattopadhyay, J.:

1. The writ petitioner is the brother of the deceased Assistant Teacher of the respondent/School, who has filed this writ petition for a direction upon the respondent authority to consider his representation dated 3.2.2020.
2. The matter relates to compassionate appointment of the petitioner as the brother and sole surviving legal heir of the deceased School Teacher.
3. The petitioner strongly relies on the Notification No. 251-Emp. dated 3.12.2013 to state that he being the brother of the deceased should be

considered within the definition as prescribed under Scheme 3 thereof, of “dependent family member”.

4. Learned advocate appearing for the petitioner submits that the deceased person having no other surviving legal heir in the eye of law, and the petitioner being the sole surviving legal heir shall be entitled for appointment on compassionate basis, after the School Teacher has died-in-harness.
5. There is a strong objection in this case on behalf of the respondent on the basis of the provisions of the West Bengal Madrasah School Service Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the posts of Teacher and non-teaching Staff) Rules, 2010.
6. It is submitted that there would be certain criteria before considering candidature of a family member other than the spouse of the deceased, in terms of the said Rules.
7. It is submitted further that a family member of a person within the purview of the said Rules would normally be the spouse, son or daughter. That any other family member, to be considered as the legal heir of the deceased person eligible for consideration, has to be financially indigent and responsible for looking after and maintenance of the other family members of the deceased.
8. In the present case, the respondents have contended that so far as the petitioner is concerned, who is not the “spouse, son or daughter” of the deceased person, none of the other eligibility criterion under the said

Rules of 2010, is fulfilled in his case. Accordingly, the respondents have contended that he cannot be treated as an eligible person for appointment on compassionate ground in place of the deceased School Teacher.

- 9.** The relevant provisions of the Rule of 2010, vide Rule 32(2) thereof, has provided for the criteria required for appointment on compassionate ground.
- 10.** It has stated that upon death-in-harness of a teacher, before the date of his superannuation, leaves his family in extreme financial hardship for which the family is unable to secure two square meals and other essential necessities for surviving of the members of the deceased family. Thus, in that event, a family member may be appointed on compassionate ground to a suitable post. The rule has acknowledged in the said provision the “spouse, son or daughter” of the deceased person, to be the “family members”, as prescribed therein.
- 11.** Under the Rule 32(3) of 2010 Rules, certain other conditions have been provided including as to when some other “family member” excepting “spouse, son and daughter”, can be appointed in place of the deceased teaching or non-teaching staff. The same has provided that the intending incumbent should have been a dependent of the deceased person. The same has also provided for the spouse of the deceased to grant “no objection” for appointment of such other dependent member.
- 12.** Admittedly, the petitioner is neither the “spouse, son, or daughter” of the deceased school teacher. The deceased person having no spouse, the

provision as made under Rule 32(3) of the 2010 Rules, for the spouse to issue a 'no objection' certificate, in case of appointment of any other dependent member of the family of the deceased, would not be applicable in case of the present petitioner. The deceased person having no successor after death, excepting his brother, that is the present petitioner, the requirement of the petitioner to undertake due maintenance of other family members of the said deceased, shall also not be applicable in his case.

Therefore, in case of the present petitioner, only two questions would be required for the petitioner to satisfy the Court about, that is, his dependency upon the deceased school teacher during his lifetime and his indigent condition after death of the said person. Obviously, the respondent has denied existence of any such conditions in case of the present petitioner.

It is pertinent to note that neither of these conditions have been satisfied with sufficient piece of evidence, by the petitioner in this case. On the contrary, the petitioner is also unable to rebut the claim made on behalf of the respondent regarding his being in occupation and earning therefrom.

- 13.** It is also noticeable that financial hardship or indigency which is the other necessary criteria for such a person to be eligible for appointment on compassionate ground in place of the deceased person, has also not been substantiated by providing sufficient and satisfactory material, as to the same.

- 14.** The Court is also not unmindful to the fact that the notification as has been relied on by the writ petitioner i.e., dated 3.12.2013, is applicable in case of the “Government Employees” for appointment on compassionate ground and would not be applicable, in case of a school teacher.
- 15.** Instead, the rules as mentioned above, that is, Rules of 2010, would be guiding in case a compassionate appointment is to be granted due to untimely death of a teacher while in service, who during his lifetime and in service life was guided by the said Rules of 2010. In view of the fact, the Court finds that the notification dated 03.12.2013, would not be applicable in case of the petitioner. The Court also finds that the petitioner would not be eligible in terms of the provision made in the said Rules of 2010 for appointment on compassionate ground, as a dependent family member of the deceased school teacher.
- 16.** For the reasons as stated above, the petitioner’s prayer are liable to be rejected.
- 17.** Hence, on the premise as above, the WPA No. 7733 of 2020 is dismissed.
- 18.** Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(RAI CHATTOPADHYAY, J.)