

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Rai Chattopadhyay**

**W.P. No. 3729 (W) of 2020**

**Srijib Kumar Patra  
Vs.**

**The State of West Bengal & Ors.**

**For the Petitioner** : Mr. Ekramul Bari  
: Sk. Imtiaz Uddin  
: Mr. Alauddin Ahmed

**For the State** : Mr. Avishek Prasad  
: Mr. Sourodeep Singha

**Heard on** : **24/04/2025**

**Judgment on** : **24/04/2025**

**Rai Chattopadhyay, J. :-**

- 1) The instant matter relates to condonation of the period of shortfall of the number of qualifying years of service of the petitioner to render him eligible for pension, after his superannuation.
- 2) The petitioner has been inducted in service as an Assistant Teacher on compassionate ground in 'died in harness' category after death of his father. He was approved in service vide order dated March 20, 2006.
- 3) The petitioner's father has died on March 20, 1979 and on February 28, 1991, the petitioner made application for his appointment on compassionate ground. There has been rounds of litigation before this Court between the parties. The first order of the High Court is dated September 15, 1993 when the Court has directed as follows: -

***“Hearing the learned Advocate appearing for the petitioner I direct the District Inspector of Schools to record the name of the petitioner in the panel of dying in harness category and if there is any vacancy in the school for the post of clerk petitioner may be absorbed provided he has got some qualification or in the post of class IV staff provided he has agreed to such post. If the representation submitted by the petitioner is not available or traceable in the office of the District Inspector of Schools petitioner is given liberty to submit a fresh representation with better particulars, enclosing his academic certificate, if any, within 15<sup>th</sup> October, 1993. District Inspector of Schools (S.E.), Bankura is directed to consider the claim of the petitioner for absorption on compassionate ground under died in harness category at the earliest preferably by 31<sup>st</sup> December, 1993. District Inspector of Schools is directed to acknowledge the receipt of such representation within 15 days from the date of such receipt and he will communicate the result of the representation to the petitioner within 30<sup>th</sup> October, 1993.”***

- 4) On January 15, 2003 an order was passed by the District Inspector of Schools, Secondary Education, Bankura in terms of the order of the Court dated September 15, 1993, thereby recording the petitioner's name in the live register under the 'died in harness' category and directions were made that subject to availability of vacancy, the petitioner's name shall be forwarded to the school, where his father used to serve as an Assistant Teacher.
- 5) The petitioner's prayer for affording him notional benefit was relegated by this Court to the District Inspector of Schools, Secondary Education, Bankura, vide order dated September 26, 2012 in WP No. 7623(W) of 2012. The matter was further transmitted to the Commissioner of School Education and finally by dint of the order impugned dated February 22, 2019, the Commissioner of School Education has turned down the petitioner's prayer for according notional benefit to him for the period from when his application for compassionate appointment was filed before the authority.
- 6) Mr. Bari for the writ petitioner has submitted that there has been an inordinate delay in processing the petitioner's prayer as above, which can be attributed only to the authorities. It is submitted that in spite of there being an order of the court dated September 15, 1993, the respondent authority had not taken any steps to pursue the prayer of the petitioner and only after about 10 years on January 15, 2003, an order was passed by the District Inspector of Schools, Secondary Education, Bankura in compliance with the Court's order as above. Mr. Bari says further that the ground taken by the respondent authority in the impugned order regarding unavailability of any vacancy in the school where the father of the petitioner used to serve, is an unsustainable ground, not to support the reason why the

petitioner has not been provided with relief within a reasonable period of time. He says that the petitioner could have been duly appointed as against vacancy in any other school.

- 7) Mr. Bari has relied on a Division Bench judgment of this Court dated April 17, 2025 in WPST 210 of 2024 to submit that unexplained and inordinate delay caused by the authority in proceeding with the prayer of the appellant, was found by the Court to amount deprivation to the petitioner of his rights, particularly, that of his right to receive pension after completion of an unblemished and successful service career.
- 8) Mr. Prasad has represented the State in this case. Mr. Prasad has however raised strong objections as to the contentions and prayer of the writ petitioner. Mr. Prasad would at the outset say that the right to get appointment on compassionate ground is a very weak right and is dependent upon various ancillary factors. He says that availability of vacancy is one of the most vital factors and excepting a vacancy being available the petitioner could not have been considered for being appointed. He says further that mere petitioner's empanelment in the live register would not make him entitled to be appointed excepting fulfillment of other ancillary factors for such appointment including availability of vacancy.
- 9) So far as the argument of the petitioner regarding whether he could have been appointed, pursuant to his application to any other school excepting the school where his deceased father used to serve, Mr. Prasad has replied that the order of this Court dated September 15, 1993, having mentioned about appointment of the writ petitioner only against a vacancy of the same school and hence the respondent was duty bound to follow such order of the Court only.
- 10) Lastly, by referring to the West Bengal Recognized Non-Government Educational Institution Employees (Death-Cum-Retirement Benefit) Scheme, 1981 particularly, Clause 7(e)(4) thereof under Chapter III, Mr. Prasad has stated that even if the authorities may have power to condone the shortfall of the requisite time period to be eligible for pension, it would be only for six months and not beyond.
- 11) It is the submission of the State respondent that the respondent cannot act beyond the scope of the DCRB Scheme, 1981 as above and in support of such contention Mr. Prasad has relied on an order of this Court in the Appeal No. FMA 178 of 2024 dated January 10, 2025. He has sought for an order of dismissal of the present writ petition.

- 12)** Since after being approved in service on March 21, 2006, the petitioner has worked in the said school till 2012. Therefore, there is a shortfall of about four years, from the minimum qualifying service period to be eligible for pension which is, ten years of approved service.
- 13)** Admittedly, as per the relevant rules that is, DCRB Scheme, 1981, there is no provision for such condonation of the essential minimum period of approved service, which a Government servant has to render, to be eligible for grant of pension.
- 14)** According to the respondent authority, the delay in considering the petitioner's prayer in the light of the Court's order dated September 15, 1993 has happened due to non-availability of vacancy in the school concerned.
- 15)** Needless is to mention that, even if the Court for the time being shifts from considering whether or not the right of the petitioner to be appointed on compassionate ground, should be considered as his indefeasible right, however, it is undeniable that petitioner's appointment should always be subject to availability of vacancy. Whether vacancy should be available immediately after the petitioner having made an application for appointment on compassionate ground, is beyond control of the respondent authority. In such view of the fact, the Court finds that the delay which has occurred for appointment of the writ petitioner with effect from February 11, 2006 cannot be attributed to the respondent authority. The authority had to comply with the procedural formalities and appointment before a vacancy having arisen, is an impractical and impossible proposition.
- 16)** According to Mr. Bari, the writ petitioner could have been appointed in any school without waiting for a vacancy to arise in the school where his father used to work. In this regard however, the submissions made by Mr. Prasad appears to be convincing, that in the order dated September 15, 1993 the Court has directed for appointment of the writ petitioner in the same school or otherwise the same would have been beyond purview of the Court's order, as above.
- 17)** Considering the facts and circumstances as above, this Court is of considered opinion that in absence of any specific rules in DCRB Scheme, 1981 and in view of the fact of no apparent negligence or delay on part of the respondent authorities in appointing the writ petitioner on March 21, 2006, there would not be any sufficient or cogent ground for which the period of shortfall of the service of the

petitioner from the minimum qualifying service period to be eligible for pension, can be condoned.

- 18)** Therefore, finding no merit in the present case, the instant writ petition being no. WP 3729(W) of 2020 is dismissed.

**(Rai Chattopadhyay, J.)**