

Item-
17. 21-04-2025

FMA 657 of 2023
CAN 1 of 2022

sg

Ct. 8

Md. Miftahul Akhter
Vs.
State of West Bengal & Ors.

Md. Yusuf Ali

... for the appellant

Mr. Santanu Kumar Mitra

Mr. Amartya Pal

...for the State

1. This appeal is arising out of an order dated 24th February, 2022 passed by the learned Single Judge in a writ petition preferred against the order passed by the Commission, School Education, West Bengal dated 13th June, 2016 wherein the request of the petitioner for appointment on compassionate ground was rejected.
2. The learned Single Judge dismissed the writ petition on the ground that the District Hospital, Malda is not competent for the medical examination that had declared the writ petitioner 'unfit' and also that the Government framed two years of time for applying for appointment. In the instant case, the writ petitioner applied on 9th February, 2015 which is much later than two years and hence, cannot be considered.
3. The learned Single Judge dismissed the writ petition on the ground that although the writ petitioner was declared unfit on 4th November, 2009, the writ petitioner made an application for appointment on compassionate ground in the year 2015 i.e. more than five years. The learned

Single Judge has also relied upon the School Education Department Notification No. 106-SE (Pry) dated 28th January, 2008 and Rule 4(2) of the amended rules which reads as follows:

“When a teacher applies to the council for being declared permanently incapacitated on medical ground before attaining 58 years of age and discontinues to attend his duty for the reason of such incapacitation, the Council may direct him for appearing before the Medical Board set up for the purpose according to the procedure laid down in the relevant rules or order of the time being in force, and after receiving the report from the Council, if the Medical Board declares him permanently incapacitated to continue in further service, he may be allowed by the council to retire on and from the date of submission in such application and by virtue of his early retirement, if his family is in such extreme financial hardship that it fails to provide two square meals and other essentials to the members of the retired teacher’s family, the – (i) spouse, (ii) son, (iii) daughter.

Of the permanently retired teacher, who is possessing required educational qualification as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach, may make within two years from the date of such retirement, a prayer in writing to the Council for appointment as primary teacher on compassionate ground:”

4. The learned Single Judge was of the view that the Hon’ble Larger Bench of this Court in the case of *Piali Saha vs. State of West Bengal* reported in (2015) 1 CHN

18, the Court cannot amend the power prescribed in the said Rule by extending it beyond the period of two years.

5. The learned Counsel appearing on behalf of the appellant has submitted that, in terms of order No. HF/O/GA/901/W-31 dated 28th April, 1998, the Governor was pleased to constitute Zonal Medical Boards consisting of five personnel for determining Medical incapacitation to continue in service. According to that order the case of the petitioner as in District Malda will come under 'C' Zone namely Zonal Medical Board, North Bengal Medical College Hospital- Darjeeling. In view of this position of law the father of the petitioner should have been referred to Zonal Medical Board, North Bengal Medical College Hospital –Darjeeling and not to Malda Medical Board.
6. It is submitted that the Medical Board of Malda was not competent to issue such unfit certificate. Moreover, pursuant to the Memo dated 12th March, 2013, the S.I. of Schools Mothabari Circle, the petitioner submitted representation for compassionate appointment on 9th February, 2015 about two years after the said Memo, which itself shows that the petitioner has no urgent need of financial assistance by way of compassionate appointment as claimed by him.
7. There is no specific denial of the application filed by the writ petitioner on 5th January, 2010 followed by a prayer for compassionate appointment of his father on 11th May, 2010. The writ petition further disclosed a

communication dated 30th August, 2011 whereby the father of the writ petitioner again requested the Chairman D.P.S.C., Malda to consider the appointment of his son in his place on compassionate appointment.

8. Considering the aforesaid factual background, we are of the opinion that the State respondents could not have rejected the medical certificate issued by the Government of West Bengal, Office of the Superintendent, District Hospital, Malda. The said report clearly mentions that as per Memo 713 dated 25th June, 2009 of Malda District Primary School Council, a Medical Board was constituted on 4th November, 2009 in which the father of the writ petitioner was examined and was found to be 'unfit' this document is not in dispute. Based on the aforesaid certificate, Malda District Primary School Council has issued a Memo No. 969(3) dated 15th July, 2010 in which the date on which he was declared unfit by the Medical Board i.e. 4th November, 2009 was duly taken note of record. The Malda District Primary School Council has accordingly requested the Sub-Inspector of Schools that the writ petitioner along with two others may be allowed to retire from office with effect from the date of application. The first application consequent upon which the recommendation dated 5th October, 2010 of the writ petitioner followed by two several requests of the father of the writ petitioner on 11th May, 2010 and 3rd August, 2021.
9. In the earlier round of litigation the Commissioner,

School Education was directed to consider the application for compassionate appointment. The Commissioner, School Education in deciding the matter for the first time, alleged that unfit cannot be treated as permanently incapacitated and the Council allowed the father of the petitioner to retire on 4th November, 2009 whereas the petitioner was applied on 9th February, 2015 which is more than two years as prescribed in the amended Rules.

10. It cannot be disputed that the Chairman, Malda District Primary Council on 15th July, 2010 has categorically stated that having regard to the fact that the father of the petitioner was declared unfit on 4th November, 2009 and Medical Board, Malda allowed to retire from service with effect from the date of application. It was nowhere stated that the writ petitioner was unfit other than by reason of physical incapacitation. Moreover, the record would disclose that the application was filed within two years from the date when the father of the writ petitioner was declared unfit.
11. Accordingly, the decision of Commissioner, School Education Department, West Bengal, is set aside. The application of the writ petitioner shall be considered in accordance with the scheme and/or rules and in the event the writ petitioner fulfils all other criterion, he should be given appointment within six weeks from the date of communication of this order.
12. The decision of the Commissioner, in this regard, shall be

communicated to the writ petitioner within three weeks from the said decision.

13. In the event the Commissioner is of the view that the writ petitioner is still ineligible or require further documents for consideration, the same shall be immediately communicate to the writ petitioner so as to enable the writ petitioner to make appropriate representation and/or provide necessary documents as the case may be. The appeal succeeds.
14. The appeal and the application are, accordingly, disposed of.
15. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J.)