

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Om Narayan Rai

WPA 8341 of 2022

Rimpa Ghosh

v.

The State of West Bengal & Ors.

For the petitioner : Mr. Anjan Bhattacharya
Ms. Anita Shaw

For the Respondents : Mr. Bhaskar Prasad Vaisya, Ld. AGP
Mr. Suman Dey

Heard and Judgment on : 15-07-2025

Om Narayan Rai, J.:-

1. The petitioner is aggrieved by an order dated March 9, 2021 passed by the District Inspector of Schools (SE), Purba Bardhaman whereby the petitioner's request for appointment on compassionate grounds has been declined.

2. The petitioner's father was a teacher in 23 Dadhia Free Primary School. He died-in-harness on March 13, 2019 leaving behind the petitioner (being a married daughter), his wife and a minor son as his heirs.

3. Upon the death of the petitioner's father the petitioner applied for appointment in the said school on compassionate grounds. The mother of the petitioner supported the petitioner's case by way of another application

thereby indicating that if appointment was granted to the petitioner, the petitioner would look after the family of the deceased employee.

4. The petitioner's case for compassionate appointment was not considered by the respondents and, therefore, the petitioner approached this Court by filing a writ petition being WP 388 of 2019. The said writ petition was disposed of by an order dated August 22, 2019 thereby directing the respondent no.5 therein (i.e. the Chairman, District Primary School Council, Burdwan) to consider the petitioner's representation dated May 22, 2019 and dispose of the same upon granting an opportunity of hearing to the petitioner.

5. In deference to the said order, the Chairman, District Primary School Council, Burdwan heard the petitioner and passed an order dated September 24, 2019 thereby observing as follows: -

“AND WHEREAS, it is found from the supporting documents and papers that said Rimpa Ghosh does not get requisite qualification to get a job of a primary teacher as per Govt. Rule and she prayed before the Chairman, DPSC, Burdwan to appoint her as a Group C employee in any department.

ACCORDINGLY, considering all the facts & circumstances, the undersigned is satisfied that the said Rimpa Ghosh is eligible to get a job as a non teaching staff of a Secondary School & hence, as per GO No 559/ES/E dtd 6/7/2015 it is ordered to send the application of Rimpa Ghosh to the District Inspector of Schools (SE), Purba Bardhaman, for their necessary consideration so that she may get an appointment as a non-teaching staff (Group C) of any Secondary School.”

6. Upon such order being passed, the District Inspector of Schools (SE), Purba Bardhaman called the petitioner for a hearing and passed an order

dated March 9, 2021 thereby rejecting the petitioner's request for compassionate appointment.

7. Being aggrieved thereby, the petitioner has approached this Court by filing the instant writ petition.

8. Mr. Bhattacharya, learned advocate appearing for the petitioner submits that the order impugned is unsustainable inasmuch as the same has been passed in the teeth of the judgment of the Hon'ble Full Bench of this Court in the case of *The State of West Bengal & Ors. V. Prunima Das & Ors.* in FMA 1277 of 2015. He has also relied on the following judgments -

1) WPST 80 of 2022 (*Antara Banerjee v. The State of West Bengal & Ors.*)

2) MAT 667 of 2023 (*Chaitali Mitra v. The State of West Bengal & Ors.*)

3) WPA 15954 of 2021 (*Md. Sahonowaz Ali v. State of West Bengal & Ors.*)

9. It is submitted that in view of the aforesaid judgments a married daughter cannot be held to be disentitled to appointment on compassionate ground merely by dint of her marriage.

10. It is further submitted that the District Inspector of Schools acted contrary to the findings of the Chairman of the District Primary School Council inasmuch as the said Chairman had forwarded the case of the petitioner to the District Inspector of Schools upon being satisfied as regards the petitioner's eligibility for appointment on compassionate ground.

11. Mr. Dey, learned advocate appearing for the respondents has taken this Court through the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff Rules, 2009) and laid stress on Schedule -V thereof to contend that a deceased teacher's family would include (i) Spouse, (ii) Son and (iii) Daughter. He sought to

make a distinction between a daughter and a married daughter by submitting that upon being married, the daughter no longer remained a part of the family of the deceased teacher and that she became a part of the family of her husband.

12. Mr. Dey further submits that in the facts of the present case the petitioner had been married prior to the death of the petitioner's father and as such, she migrated from her father's family prior to the death of her father. It is further submitted by Mr. Dey that the petitioner has never claimed that she was dependent on her father either as a divorcee and/or as a widow and/or as a deserted wife.

13. Mr. Dey further submits that the petitioner herself had affirmed an affidavit before the First Class Judicial Magistrate at Durgapur on April 8, 2019 recording that the petitioner had been residing at Bhiringi Bauripara, Durgapur -13, Dist. Paschim Bardhaman and that, she also had a Voter's Card bearing EPIC No.WEP17105999 in respect of the same area.

14. In reply to the submission made by Mr. Dey, learned Advocate appearing for the State, Mr. Bhattacharya, learned Advocate for the petitioner relies on a certificate dated January 19, 2021 issued by the Savapati, Ketugram-1 Panchayat Samity Kandra, Purba Bardhaman stating that the petitioner had been dependent on her father and used to stay at her parental house most of the time to look after her father.

15. Heard the learned advocates appearing for the respective parties and considered the material on record.

16. A perusal of the order impugned passed by the District Inspector of Schools on March 9, 2021 reveals that the District Inspector of Schools has annulled the petitioner's request for compassionate appointment relying solely on the notification No.697-ES(S) dated July 9, 2009. The said notification has been relied on by the District Inspector of Schools to demonstrate as the petitioner got married in 2011 i.e. 8 years prior to the death of the petitioner's father, she would no longer remain a part of her deceased father's family. Such aspect would be clear from the following observations of the District Inspector of Schools:-

"In this instant case, the petitioner got married in 2011 i.e. 8 years prior to her father's death. Hence, her claim of compassionate appointment cannot sustain under the provision of the aforesaid notification.

The scope of employment on compassionate ground is a scheme (where a dependent family member of an employee died or medically incapacitated while in service and as published under Notification No.697-ES(S) dated 09-07-2009, when a teacher or non-teaching staff dies in harness before the date of his/her superannuation, leaving a family which is, in the opinion of the District Inspector of Schools (S.E.) in such extreme financial hardship that it fails to provide two square meals and others essentials to the surviving members of the deceased teacher's family i.e. the spouse; son and daughter of the deceased teacher of non-teaching staff who is possessing requisite educational qualification as laid down in schedule-I and remained unemployed.

In this particular case the petitioner has the qualification but she is not a family member of her parental family by virtue of her marriage and not unemployed.

Thus, the petition is not eligible for appointment on compassionate ground for premature death of her deceased father. The surviving

members of the deceased teacher are his widow, Tapati Mondal and son Debraj Mondal having required educational qualification would have prayed for compassionate appointment as records revealed that they are in extremely financial hardship but they did not and hence out of zone of consideration for compassionate appointment.

Thus, the representations as forwarded by the Chairman, D.P.S.C. Burdwan vide his letter dated 15-01-2020 and 21-07-2020 are considered and found that the petitioner being a married daughter is not eligible for appointment on compassionate ground under the provisions of aforesaid Notification.

All concerned be informed accordingly.”

17. No daughter could be refused appointment on compassionate ground based only on her marital status. The Hon’ble Full Bench of this Court has clearly ruled against the notion of rejecting requests for compassionate appointment solely on the ground of marital status of female. In such regard the following paragraphs in the case of Purnima Das (Supra) may be noticed.

“111. We are in complete agreement with the aforesaid line of decisions and are, therefore, of the clear opinion that the relevant notifications issued under the 1999 Act of for that matter the SCHEME, in the manner it has been framed, do not appear to be reasonable. The restriction on married daughters being eligible to apply and to be considered for compassionate appointment is likely and has, in fact, given rise to a legitimate grievance in the minds of married daughters, who unfortunately are not looked after by their husbands, perforce have to take shelter in their parental/maternal home, survive on the benevolence showered by their fathers/mothers (Government employees) and owing to untimely demise of the Government employee, are left high and dry along with other members of the deceased’s family who have to depend on such married daughter to feed and provide the basics to cover their body.

112. Our answer to the question formulated in paragraph 6 *supra* is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of ‘dependent’ and ineligible to even apply, is not constitutionally valid.

113. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective ‘unmarried’ before ‘daughter’, is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earning of her father/mother (Government employee) on the date of his/her death and agree to look after the other family members of the deceased, if the claim is to be considered further.”

18. The order impugned passed by the District Inspector of Schools does not reveal that the District Inspector of Schools has made any enquiry to ascertain as to whether or not the petitioner was dependent on her father prior to her father’s death. In terms of the law laid down by the Hon’ble Full Bench of this Court in Purnima Das (*supra*) it was incumbent on the District Inspector of Schools to ascertain as to whether the petitioner’s case and used for compassionate appointment was established in terms of the laid down formula notwithstanding the petitioner being married.

19. Since the District Inspector of Schools has not undertaken the exercise of ascertaining the dependence of the petitioner on her father, the arguments now advanced by Mr. Dey and Mr. Bhattacharya need not be gone into by this Court at the first instance.

20. This Court has noticed that the District Inspector of Schools has at one place held that though the petitioner has the requisite qualification but she is “not unemployed”. There is no reason assigned in support of such conclusion and no evidence shown to be considered in the order impugned, on the basis whereof the District Inspector of School has returned such a finding. In such view of the matter, the order dated March 9, 2021 passed by the District Inspector of Schools (SE), Purba Burdwan is set aside.

21. Since the petitioner has run a case that the petitioner was dependent on the petitioner’s father and the petitioner’s case for compassionate appointment has been supported by the petitioner’s mother by way of a letter, the case is remitted to the District Inspector of Schools for fresh consideration. The District Inspector of Schools shall not decline the petitioner’s request for compassionate appointment on the sole ground of the petitioner being married but shall consider the petitioner’s case in the light of the judgment passed by the Full Bench of this Court in the case of Purnima Das (Supra) and asses as to whether the petitioner was dependent on her father or not, in case, the petitioner is found to be entitled to compassionate appointment, the District Inspector of Schools shall take appropriate steps in furtherance of such entitlement.

22. It is made clear that this Court has not decided entitlement of the petitioner as regards the compassionate appointment and this order shall not be treated as mandate to the District Inspector of Schools to grant compassionate appointment to the petitioner.

23. With the above observations, WPA 8341 of 2022 stands disposed of.

24. There shall, however, be no order as to costs.
25. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)

S.R. (ARC)