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03.01.2025
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 11478 of 2024

Priyanka Barik

Vs.

The State of West Bengal & Ors.

Mr. Sudipta Dasgupta
Ms. Shalini Ghosh

...for the Petitioner.

Mr. Biswabrata Basu Mallick, Ld. A.G.P.,
Mr. Biman Halder

...for the State.

Mr. Gourav Das

...for the DPSC, 24 Parganas (South).

Leave is granted to the learned advocate on record for the petitioner to carry out necessary correction in the cause title of the writ petition to describe the respondent no.4 appropriately.

In compliance with the direction dated December 16, 2024, the petitioner, *Priyanka Barik* is personally present before this Court; her such appearance is dispensed with until further order.

The father of the petitioner, while serving at Panikhali Primary School, a school under Basanti (South) Circle of the DPSC, 24 Parganas (South) as an Assistant Teacher, had died on April 20, 2017.

The petitioner being the married daughter of the deceased teacher has applied for compassionate appointment.

The District Inspector of Schools (SE), District: 24 Parganas (South), the respondent no.4 herein by his order dated January 7, 2020 had rejected the said prayer of the petitioner on the ground that she being a married daughter of the deceased teacher is not entitled to such appointment.

The petitioner had assailed the said decision of the respondent no.4 in *WPA 8273 of 2020*. A Co-ordinate Bench of this Court had disposed of the said writ petition vide order dated December 10, 2020 by setting aside the said decision of the respondent no.4 and by directing fresh consideration of the prayer of the petitioner with a rider that her prayer cannot be

rejected solely on the ground that she is a married daughter of the deceased teacher.

A hearing was conducted in terms of the aforesaid direction in which the petitioner had participated. The petitioner once again had approached this Hon'ble Court *WPA 20008 of 2022* complaining delay in disposal of her prayer for compassionate appointment. The said writ petition was disposed of on September 29, 2022 by directing the respondent no.4 to communicate his decision by November 25, 2022.

The said respondent thereafter by the impugned Memo bearing No.33/Gen dated January 13, 2023 has once again rejected the prayer of the petitioner on the ground that according to G.O. No. 897-Edu(S) dated October 12, 1992, the petitioner being a married daughter is not entitled to the compassionate appointment.

Mr. Dasgupta, learned advocate for the petitioner submits that the respondent no.4, in view of the specific observation of the Co-ordinate bench of this Court that the prayer of the petitioner cannot be refused on the ground that she is the married daughter of the deceased teacher, should not have rejected the prayer of the petitioner on the selfsame ground.

He further submits that the respondent no.4 is insisting on filing income certificate of the husband of the petitioner and her father-in-law, though such documents were filed in the year 2022, but at present, the petitioner is not in a position to supply those documents as she is living with her minor son separately from her husband, away from her matrimonial home; he prays that the documents already filed may be taken into consideration without insisting upon filing of fresh documents.

Mr. Gourav Das, learned advocate for Council submits that his client, through the District Inspector of Schools (PE), 24 Parganas (South), has sent all papers relating to the prayer of the petitioner to the respondent no.4, but the petitioner is required to file documents relating to the income of her husband and father-in-law as the earlier documents were not issued by the competent authority.

Heard learned advocate(s) for the parties, perused the materials-on-record.

The Special Bench of this Court in the case of ***State of West Bengal & Ors. vs. Purnima Das & Ors.*** reported in **(2017) 4 CHN 362** had the occasion to consider the following issue:-

“Whether the policy decision of the State Government to exclude from the zone of compassionate appointment a daughter of an employee, dying-in-harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is solely dependent on the earnings of such employee, is constitutionally valid?”

The Special Bench, at **Paragraph 117** of its judgment had answered the said issue which is quoted below:-

“117. 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.”

The answer to the issue in the said decision obliterates the Government Order bearing No.897-Edn.(S)/4A-19/92 dated October 12, 1992; consequently, the order impugned is not sustainable; besides, in view of the specific observation of the Co-ordinate bench in the order dated December 10, 2020 passed in WPA 8273 of 2020 that the prayer of the petitioner cannot be rejected on the ground that she is the married daughter of the deceased teacher, the respondent no.4 should not have rejected the prayer of the petitioner on the selfsame ground again; the order impugned, for the aforesaid reason is *set aside*.

The prayer of the petitioner deserves fresh consideration; accordingly, the respondent no.4 is directed to consider the prayer of the petitioner afresh, in accordance with law.

The petitioner, with her minor son, is living separately from her husband and as she is not in good terms with her husband or in-laws, it is not expected that she would be able to produce documents relating to the income of her husband or father in law; therefore, to ascertain the income of the said persons, the respondent no.4 shall conduct necessary enquiry,

without insisting production of such document(s) by the petitioner.

The respondent no.4 shall complete his drill in this regard within a period of **six weeks** from the date of communication of this order and shall communicate his decision immediately to the petitioner.

In the event, it is found that the petitioner is otherwise eligible, the respondent no.4 shall take forward steps for her appointment as prayed for.

WPA 11478 of 2024 is disposed of with the above terms and observations without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)