

WPA 9987 of 2018

Mukul Islam
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. Sk. Imtiaz Uddin,

... for the Petitioner.

Mr. Pinaki Bhattacharyya
...for the DPSC North 24 Pgs

(1) The subject matter of the instant writ petition is whether the writ petitioner is eligible for grant of compassionate appointment or not and the order of the Commissioner of School Education /respondent No.2, dated **March 21, 2018**, is under challenge in this case.

(2) Two sets of propositions govern the field. One as pronounced by the Division Bench of this Court in the case of **Sajal Kumar Mondal vs State of West Bengal reported in 1999 LAB.I.C 3405**. The other as propounded by another Division Bench of this Court, on a slightly different fact situation, in the case of **Gopal Mondal vs State of West Bengal & Others reported in (2012) 2 CHN 705**. **Gopal Mondal's case (supra)** has been relied on by Mr.Bari appearing for the petitioner.

(3) Necessary facts may be stated here in a nutshell. The petitioner's father, an Assistant Teacher, had died in harness while in service, on **November 21, 2003**. He left behind his wife, two sons and a daughter as survivors and legal heirs. The first son, that is the writ petitioner, has applied for grant of appointment on compassionate ground in died-in-harness category, in place of his deceased father, vide his application dated **May 04, 2004**. The said application of the petitioner travelled from the office of the Sub-Inspector of Schools to the office of the Chairman, District Primary School Council, North 24 Paraganas on **December 15, 2015** after being recommended for appointment by the S.I. of schools. There it remained stranded till this Court intervened vide its order dated **January 19, 2018** (in WP No. 23732 (w) of 2017) by directing that the proposal of appointment of the petitioner on compassionate ground, should be forwarded to the Commissioner of School Education/respondent No.2, for taking decision regarding according approval to compassionate appointment of the petitioner. The resultant order is that dated

March 21, 2018, which is impugned in the present writ petition.

(4) The findings of the respondent No.2/Commissioner of School Education in the said impugned order dated **March 21, 2018**, may be summarised in the following manner:-

- That any appointment on compassionate ground in the primary schools in favour of a ward of the deceased school teacher/employee is governed by Rule 14 of the West Bengal Primary School Teachers' Recruitment Rules, 2001.
- Chapter III, Part No. 14 of the said Rules of 2001 the following has been provided:-

"The Council may appoint primary teachers, with the approval of the Director of School Education, West Bengal or his authorized officer, on compassionate ground in the following cases where, in the opinion of the council, the cases deserve compassionate consideration (1) when a teacher dies in harness before the date of his superannuation i.e. at the age of 60 years, leaving a family which, in the opinion of the council, is in extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the following members of the deceased teacher's family, viz. the

(a) widowed wife, or

(b) widower, or

(c) son, or

(d) unmarried daughter, or

(e) divorcee dependent daughter-divorced before the date of death of the teacher, possessing required educational qualifications 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 death, a prayer in writing to the Council for appointment as primary teacher on compassionate ground, provided that only one member of a deceased primary teacher's family may be appointed on compassionate ground."

- The writ petitioner had not attained minimum age of 18 years for entry into service at the time of death of his father.
- The writ petitioner even did not attained the age of 18 years within two years from the date of death of his father.
- Therefore, in case of the writ petitioner, the minimum requirement as per Rule 14 of the Recruitment Rules, 2001 as quoted above have not been fulfilled.
- Relaxation as prayed for, shall not be in accordance with law in view of Special Bench judgment of this Court in WP No. 4364W of 2011 **(Piyali Saha Vs. State of West Bengal and Others)** dated September 25, 2012.

- For the reasons as above, the prayer for compassionate appointment of the writ petitioner was rejected by the Commissioner, School Education Department, Government of West Bengal, in his order dated March 21, 2018.

(5) Therefore, the point for consideration in this writ petition is that if by relaxing the prescribed qualifying age for an applicant, as per the said rules, the petitioner can be considered for grant of compassionate appointment, as prayed for.

(6) As stated earlier, this Court has settled the law in this regard in the case of **Sajal Kumar Mondal (supra)**. The Court while interpreting the rule 14 of the said Rules has held that when at the time of the death of the father of the applicant, the applicant has been a minor — “*he had no legal right to be appointed on compassionate ground in terms of Rule 14 of the Leave and Recruitment Rules 1991*”.

(7) In the case of **Gopal Mondal (supra)**, the Court has taken a different view than the earlier case, of course on a slightly different fact situation.

There, the minor son of the deceased had applied for compassionate appointment and during the period when such application was being processed with by the authorities, the incumbent turned 18 years of age and has become a major.

(8) In such factual background, the Court has allowed the appeal of the incumbent holding that:

“12. Ordinarily speaking, the Hon'ble Single Judge was absolutely correct in His Lordship's approach on the strength of the decision in Sajal Kumar Mondal's case (supra) as otherwise the provisions of Rule 14 of the said Rules which has been interpreted in the Order, if it has given its plain meaning, without any amplified interpretation. That way the appellant would have hardly any case in appeal. But as we have said although we would not do anything i.e. different from the statute as it is necessarily forbidden. But in the event, if we look at it in a different way perhaps, it would not foreclose forever the Kumar Mondal's case (supra) right of the appellant who has a case before us as we have perceived from our appreciation of the entire issue.

15. *Thereafter, as we have found from the papers which are otherwise unimpeachable as they are; documents of Office of the respondent No. 3 and respondent No. 5 that on 3.5.2006 the respondent No. 5 (The Chairman, the District Primary School Council, Paschim Medinipur) had processed the application before the respondent No. 3 (D.I.O.S.). All these exercise took place when the appellant was major. Obviously, the rigors of the said Division Bench which has been referred to by the Hon'ble Single Judge*

would have no application as at the relevant point of time when the fulcrum effect of the application was reaching its fusion at that point of time the appellant was very much a major.”

(9) After death of his father on **November 21, 2003**, while in service, the petitioner has applied for grant of compassionate appointment by dint of his application dated **May 04, 2004**. Admittedly, on the date of death of his father as well as on the date of making application for grant of compassionate appointment, the petitioner has been a minor, having not reached the prescribed age of 18 years. Therefore, on the date of his father's death as well as his making an application for grant of compassionate appointment, the petitioner, was not eligible as per the said rules to apply for grant of compassionate appointment, in case of a deceased employee.

(10) However, as per ratio in the said judgment of **Gopal Mondal (supra)**, the application of him, once having been processed by the respondent authority and the petitioner when attains 18 years of age during such processing period and pending finalisation of his application, simply going by the rule book does not serve the ultimate end of justice. The Court therefore had

directed that the application of the petitioner should be taken to its logical conclusion.

(11) In the present case, the petitioner's application dated **May 04, 2004**, was sent from the office of the Sub-Inspector of Schools to the office of the Chairman, District Primary School Council which was forwarded to the CSE on December 15, 2015. Hence, the said respondents have already processed the application of the petitioner, without rejecting it at the outset, due to want of eligibility requirements of the petitioner, if any. This process has continued for a prolonged period and ultimately has culminated into the impugned order dated March 21, 2018. In the meantime, however the petitioner has become major and has reached the eligibility criteria as prescribed under the said rules. Therefore, for the said reason and in the light of the ratio decided in the judgement of **Gopal Mondal (supra)**, the petitioner cannot be considered as ineligible, in terms of the said rules to apply for grant of compassionate appointment. For the same reason, the ground cited by the respondent No. 2/ Commissioner of School Education that the application of the petitioner has been filed beyond the period of 2

years from the death of his father, is also not accepted since such a ground would only have been maintainable, had the petitioner's prayer been rejected at the outset and very first instance.

(12) Hence, having once processed with the application of the petitioner for grant of compassionate appointment, the two grounds as stated above, in the impugned order dated March 21, 2018, by the respondent No. 2/Commissioner of School Education, West Bengal, tantamount to be irrational and unreasonable, not in conformity with the law and not maintainable. The said finding prompts the Court to set aside the said impugned order dated March 21, 2018.

(13) Hence, the present writ petition is allowed with the following directions:

(i) the impugned order dated March 21, 2018 of the respondent No.2/Commissioner of School Education is hereby set aside;

(ii) the application of the petitioner dated **May 04, 2014** and **June 17, 2004** is found to be maintainable, not being either time barred or age barred.

(iii) let the respondent No. 2/ Commissioner of School Education pass an order in terms of the recommendation of the fact finding authority, that is, the District Primary School Council, North 24 Paraganas, by granting appointment to the petitioner on compassionate ground. Let necessary order in this regard be passed, within a period of 4 weeks from the date of communication of copy of this order.

(14) Since no affidavit-in-opposition has been called for in the case, the allegations in the writ petition are deemed to have been denied by the respondents.

(15) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)