

AD-9
Ct No.11
02.05.2025
(SSS)

FMA 512 of 2021

Shree Maheswari Vidyalaya and Ors.
Vs.
Lalji Upadhyaya & Ors.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das,
Mrs. Sudipta Pramanik
....For the Appellant.

Mr. Dibyendu Chatterjee,
Ms. Satabdi Das,
Mr. Mainak Singha Barma
.....For the respondent/writ Petitioner.

Mr. Pinaki Dhole,
Mr. Avishek Prasad
.....For the State.

The present appeal has been preferred by the school, namely Maheswari Vidyalaya (HS), Kolkata (hereinafter referred to as the said school) and its functionaries challenging an order dated 19th June, 2019 passed by the learned Single Judge in the writ petition being WP 11357 (W) of 2009.

The case has a chequered history. The writ petitioner/respondent, namely Lalji Upadhyaya (hereinafter referred to as Lalji) preferred a writ petition being WP 9031(W) of 1997 seeking issuance of necessary direction upon the respondents to consider his claim for compassionate appointment in

place and stead of his father namely, Gouri Shankar Upadhyaya, who died-in-harness while working in a Group-D post in the said school on 21st October, 1996. The said writ petition was disposed of by an order dated 26th November, 1997 directing the District Inspector of Schools (SE), Kolkata (hereinafter referred to as the DI) to consider Lalji's representation and to dispose of the same by passing a speaking order. Pursuant thereto, the DI passed an order dated 12th March, 1998 observing *inter alia* that *'again it is considered on the basis of the writ application as a representation of the petitioner Sri L. Upadhaya that necessary papers are required to be submitted to this office by him in due course through the school petitioner for registering his name in Died-in-harness category if permitted under the existing rules as the school is a D.A. getting one'*. Being aggrieved by the said order, Lalji and his mother preferred a writ petition being WP 13399(W) of 1998 which was disposed of by an order dated 29th January, 2002 directing the DI to register Lalji's application in accordance with law and to deal with the same. Pursuant to the said order, the DI issued a memo dated 5th February, 2003 observing *inter alia* that Lalji's name has been enlisted in death-in-harness register and that his name would be forwarded for consideration of appointment in the

post of non-teaching staff of any DA getting school as and when opportunity would be available. The said memo was issued during pendency of a contempt application preferred alleging violation of the order dated 29th January, 2002. In the said contempt application, an order was passed thereafter on 22nd July, 2003 directing *inter alia* that as Lalji's name has been registered in the death-in-harness register, it would be open for the school authority to take a decision whether the post of clerk should be filled in or not. In response thereto, the school intimated by memo dated 6th August, 2003 that the post of clerk has already been filled up. Thereafter, the DI issued a memo on 12th January, 2004 requesting the Secretary of the school to appoint Lalji on compassionate ground in any vacancy of the school preferably in the vacancy of clerk. In the midst thereof, the school preferred an application for modification of the order dated 22nd July, 2003 in which an order was passed on 29th April, 2004 observing *inter alia* that '*in the event this application fails then the petitioner shall be deemed to have join the school in terms of the instructions given by the D.I. on and from this day*'. The modification application was thereafter dismissed by an order dated 5th October, 2005. Subsequent thereto, Lalji again preferred a writ petition being WP 11357(W) of 2009 *inter alia* praying for issuance of

necessary direction upon the respondents to implement the order of the DI dated 12th January, 2004 and to deem him to have been in service with effect from 29th April, 2004. The order passed in the said writ petition has been impugned in the present appeal.

Records reveals that in the present appeal, a coordinate bench of this Court by an order dated 22nd January, 2020 passed an interim order observing *inter alia* that though the learned Judge may have been perfectly justified in directing consideration of the claim of Lalji for appointment on compassionate ground and by also directing the concerned authorities to verify the eligibility of Lalji, the direction that Lalji shall be deemed to have been appointed from 29th April, 2004 and be paid salary on that basis, do not appear to be sound.

Mr. Jana, learned advocate appearing for the appellants argues that the school is indisputably a DA getting school and that there exists no scheme for grant of appointment to employees of DA getting school. In view thereof, the learned Single Judge ought not to have issued any direction towards grant of compassionate appointment to Lalji in the said school.

He further argues there was never any mandatory direction upon the school to grant compassionate

appointment to Lalji. The DI, as per his discretion, included the name of Lalji in the died-in-harness register and such inclusion cannot bind the school in any manner whatsoever.

He contends that in the order dated 22nd July, 2003 passed in the contempt application, the Court observed that the post of clerk in the said school is still vacant and that it would be open for the school to take a decision whether the said post should be filled up or not. As per such direction, it was duly intimated by the school that the post of clerk had already been filled up, as would be explicit from the memo dated 6th August, 2003. In view thereof, the learned Single Judge erred in law in observing that in the event Lalji is granted compassionate appointment, such appointment shall be deemed to be from 29th April, 2004 and that he should be paid salary on that basis. Such direction would seriously prejudice the school authorities more so when no right whatsoever had been earned by Lalji to claim compassionate appointment retrospectively on and from 29th April, 2024 and there could not have any direction towards payment of salary to Lalji from the said date since admittedly Lalji had never rendered service in the said post. Such arguments, as advanced, were glossed over by the learned Single

Judge and no finding was returned on the same. Such infirmity warrants interference in the appeal.

Mr. Chatterjee, learned advocate appearing for Lalji denies and disputes the contention of Mr. Jana and submits that at this stage the school cannot reinvigorate an issue that there exists no scheme for grant of appointment to employees of DA getting school. Such argument was duly advanced on behalf of the school authorities and was negated by the Court in the earlier round of litigation, as would be explicit from the order dated 29th January, 2002.

Drawing our attention to the memo dated 5th February, 2003 and the memo dated 12th January, 2004 issued by the DI, Mr. Chatterjee argues that already a decision has been taken by the competent authority for the incorporation of Lalji's name in the death-in-harness register and a consequential direction was also issued to grant him compassionate appointment. Such directions created right in favour of Lalji to be appointed on compassionate ground way back in the year 2004 but such appointment had been illegally kept in abeyance by the State and the school authorities in collusion with each other.

Mr. Dhole, learned advocate appearing for the DI has not been able to furnish any explanation as to why necessary follow up steps were not taken by the

DI on the basis of memo dated 5th February, 2003 and memo dated 12th January, 2004.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

A perusal of the impugned order reveals that the learned Single Judge first directed that the DI shall act in terms of the letter issued by him on 12th January, 2004 so that Lalji can be considered for appointment in the concerned vacant school in an appropriate vacancy. Such direction has never been assailed by the DI.

The first argument of Mr. Jana that a DA getting school does not come under the purview of any compassionate appointment scheme and that as such no direction could have been issued for grant of compassionate appointment to Lalji in the said school, is not acceptable to us inasmuch as such argument was advanced on behalf of the school authorities at the time of hearing of the contempt application on 29th January, 2002, but was negated. The said order was also not challenged by the school authorities contemporaneously.

The next argument of Mr. Jana that the Court ought not to have directed that Lalji should be deemed to have been appointed from 29th April, 2004 is also not acceptable to us, inasmuch as the

modification application preferred by the school authorities way back in the year 2004 was ultimately dismissed by an order dated 5th October, 2005 and the observations of the Court that *‘in the event this application fails then the petitioner shall be deemed to have join the school in terms of the instructions given by the D.I. on and from this day’*, have already attained finality. The instruction of the DI, as referred to in the said order is in fact the memo dated 12th January, 2004 by which the DI requested the said school to appoint Lalji on compassionate ground in any vacancy of the school. Such findings and order have also attained finality.

In view thereof, we do not find any infirmity in the order impugned warranting interference in the present appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall however be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)

