

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P. No. 17947 (W) of 2019

**Mrinmoy Mahanty
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Ekramul Bari,
: Mr. Sk. Imtiaj Uddin

For the State : Mr. Susanta Pal
: Ms. Ananya Neogi

Heard on : 10/04/2025

Judgment on : 06/05/2025

Rai Chattopadhyay, J. :-

1. The issue for determination in the instant writ petition is whether deemed civil death of a person can be treated as equivalent to his natural death, to render his legal heir, eligible for being appointed on compassionate ground due to death of his predecessor while in service. An order of the Secretary, District Primary School Council, dated July 8, 2019, is under challenge in the present writ petition. Let the relevant portion thereof be quoted, as here in bellow:

“With reference to his application dated 04.06.2019, he is hereby informed that (i) There is no existing G.O. for appointment on compassionate ground in case of missing teacher (ii) As per

application it is found that civil death certificate issued by the Hon'ble court the teacher died on 30.11.2018 and family pension is effected w.e.f. 19.01.2007, so his prayer is not be treated due to death while in service and died - in - harness category on compassionate ground."

2. The facts necessary for discussion for due consideration of the present case is that the father of the petitioner has been working as an assistant teacher in the school. That, on and from January 19, 2007, he has gone missing and has not been traced since thereafter. The petitioner's prayer for appointment on compassionate ground has been filed before the chairman, Purulia District Primary School Council, vide the letters dated July 25, 2007 and January 29, 2008. Admittedly, in a civil suit, the competent court of law has declared civil death of the said person, by its judgment and order dated November 30, 2018.
3. Therefore, in the said impugned order, the respondent Authority has held that death of the father of the petitioner cannot be held to be at a time while the said person has been in service. It has held further that there is no existing government order for appointment on compassionate ground in case of a missing teacher. For the reasons as stated above, the petitioner's prayer for being appointed in died-in-harness category on compassionate ground in place of his missing father who has subsequently been declared as dead by dint of the civil court's order, has been turned down by the said respondent authority. Hence, this writ petition.
4. Mr. Bari has represented the petitioner. With reference to rule 14 of the West Bengal Primary School Teachers Recruitment Rules, 2001, the petitioner submits that in case of death in harness of the assistant teacher before the date of superannuation at his 60 years of age, the eligible family member of the said person is entitled to be appointed on compassionate ground to combat the extreme financial hardship of the family due to death of the sole earning person in family. Mr Bari has controverted the reasons

cited by the respondent authority in the impugned order, on the basis of the provisions in the Labour Department notification No. 251-Emp. Dated December 3, 2013. He says that, according to clause 13 of the said notification, cases of missing government servants should also be covered under the scheme for compassionate appointment, as promulgated by dint of the said notification. Hence, according to him, the petitioner being otherwise eligible for being appointed on compassionate ground in place of his father declared deceased, he should immediately be appointed in the said category. He seeks that the impugned order may be set aside.

5. Mr. Bari has submitted that in terms of the date of birth noted in the service book of the father of the petitioner, and considering the date from which he went missing and has been ultimately declared as dead, it transpires that on the date the person went missing, he has been serving in the respondent school. Therefore, according to the petitioner, the person may be considered as dead, being missing, on and from a date when he has been in service. On such conspectus, according to the petitioner, clause 13 in the notification No. 251-Emp. dated December 3, 2013, squarely applies in case of the present petitioner.
6. Mr. Pal for the respondent state has submitted that at the relevant point of time that is, at the time when the person went missing, there was no such rule available, to prescribe compassionate appointment for the keen of a missing teacher/government employee. Hence, in absence of the rule, the petitioners prayer for appointment on compassionate ground is not sustainable. Secondly, the said respondent has argued that the purpose of compassionate appointment that is for support of the family in the exigency of death of the sole bread earner, is not anymore fulfilled in case of the petitioner, in so far as since after missing of that person in the year 2007, much time has passed and the imminent requirement of family support by

way of appointment of another member of the family, has faded out by this time. Learned advocate has stated that the compassionate appointment being a departure from the settled Constitutional principle of equality, cannot be espoused as an inevitable right of the applicant.

7. Lastly, Mr. Pal has submitted that the notification relied upon by the petitioner No. 251-Emp. dated December 3, 2013, is not applicable in the instant case as that being the notification of the Labour Department, the government employees cannot be taken within its purview to be granted benefits there under. He seeks that the writ petition be dismissed.
8. Admittedly, the father of the petitioner has been missing with effect from January 19, 2007 and the civil court has declared the person dead, vide its order and decree dated November 30, 2018. Pursuant to the said order of the civil court, the person is deemed to be dead from the date of decree as mentioned above, being not traced for more than 7 years. There should not be considered any difference as regards the natural death and deemed death of a person for the reason of appointment of his family member on compassionate ground, since the purpose for appointing a family member in both the cases would be same, that is support of the family in case of distress, indigence and loss of earning of the family, due to death of the earning member. In that view of the matter, whatever was applicable or is applicable to a dead person naturally, therefore, by reason of the deeming fiction as provided under section 108 of the Evidence Act and the corresponding provision in Bharatiya Sakshya Adhiniyam (BSA), 2023, should have been made applicable to a person who is presume to be dead, unless proved otherwise.
9. In the present case, the prayer of the petitioner has been turned down firstly, for the reason that on the relevant date, that is, the date on which

the court has declared the person as dead by dint of its decree, the said person must be considered to have crossed the age of superannuation, in accordance with the date of birth declared in the service book of him. Therefore, he cannot be considered to have died during his service period, which is the fundamental consideration, for his family member to be appointed on compassionate ground.

10. It is not a case of simplicitor death of a government employee/teacher and the relevant date should be considered in the light of the peculiar and distinctive facts and circumstances of the case. The person went missing from January 19, 2007. The series of follow-up actions started since thereafter by way of lodging of first information report, grant of family pension to the family of the said person, investigation of police regarding if the person being alive, filing of the civil suit and so on and so forth. The same has ultimately culminated into the decree of the civil court on November 30, 2018, declaring the person as dead. The family has already lost touch and presence of the person since from the date of his being untraceable. Their suffering and indigence has started on the date when the person went missing. It is only by dint of the court's order that the said missing person is declared dead, and due to the legal fiction, his deemed death is to be equated to natural death of a person. Therefore, the court's decree virtually relates back to the date when the person went missing, irrespective of the date of the decree, in such a case. The memorandum No. 8671-F dated May 14, 1990 may also be mentioned in this regard, by dint of which provision has been made for grant of family pension etcetera, to an employee who has disappeared leaving his family, upon fulfillment of certain criteria. Court proceeding may take time for innumerable reasons. However, best interest of justice shall be sub served, by considering that the father of the petitioner has died during the course of his employment.

11. Having said so, it is found proper to address the issue if any appropriate rule is available to govern compassionate appointment of the present petitioner in case of deemed death of his father. According to the petitioner, notification No. 251-Emp. dated December 3, 2013, would be such a rule to govern compassionate appointment of the petitioner in case his father has been missing and subsequently declared dead. However, according to the respondent, the said notification is not applicable in case of the family member of a school teacher, being that published by the Labour Department and being applicable to the government employee and not the teachers. For this, it is necessary to observe relevant portion of clause 2, of the said Scheme, which is as follows:

“2) Application-

This shall apply to a dependent family member of a Government employee who –

(a) Dies while in service; or

(b) is disabled permanently or otherwise incapacitated rendering him unfit to continue in service prematurely on being declared permanently incapacitated by a Medical Board formed by the Government.”

12. Hence, accordingly, the notification No. 251-Emp. dated December 3, 2013, is applicable in case of a dependent family member of a government employee and cases of missing government servants are also included therein in terms of clause 13 of the same. The case of a school teacher has not been expressly excluded thereby. Hence, there would not be any legal impediment in applying the same, so far as the same would not be repugnant the ‘Recruitment Rules’ of primary school teachers, as promulgated in 2001. On consideration of the factual background of the instant matter, the court finds no impediment for application of the same, in case of the present petitioner. Therefore the point raised by the respondent, regarding availability of no rules/regulations/schemes to

govern the compassionate appointment of the petitioner, does not hold ground.

13. Let the other ground pleaded by the respondent challenging the prayer of the petitioner and in support of the said impugned order be dealt with the finding that, on the basis of the discussions made above, both the reasons as cited in the said impugned order can be seen to be not maintainable. That should take the court to the decision that the said impugned order dated July 8, 2019, is not maintainable and is liable to be set aside. In such event and for the reasons as discussed above, it would be prudent to relegate the prayer of the petitioner for appointment on compassionate grounds, due to deemed death of his father, declared by the decree of a civil court, to the appropriate authority, for consideration of his prayer, in accordance with the rules.

14. Let this writ petition be disposed of with the directions as follows:

i)The impugned order of the Secretary, District Primary School Council, Purulia, dated July 8, 2019 is set aside;

ii)Let the said Authority duly consider the prayer of the petitioner for appointment on compassionate ground in the light of the rules above stated, and passed a recent order, if not the prayer of the petitioner as above is immediately allowed by the same;

iii)In doing so the said Authority, shall afford opportunity of hearing to the petitioner and conclude the entire exercise as directed within a period of eight weeks from the date of communication of copy of this judgement.

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

(Rai Chattopadhyay, J.)