

19.05.2025
SI No.17
Court No.8
(gc)

**MAT 1950 of 2024
CAN 1 of 2024
CAN 2 of 2024**

**Arindam Sarma
Vs.
The State of West Bengal & Ors.**

Mr. R.K. Jaiswal,
Mr. Nandalal Pradhan,
Mr. M. Hossain,
Mr. A. Jinnah,
Mr. Debabrata Mondal
...for the Appellant.
Mr. Shamim ul Bari,
Miss Indrani Nandi
...for the State.

Re: CAN 2 of 2024

1. This is an application for condonation of delay.
2. There is a delay of 155 days in preferring the memorandum of appeal. Sufficient cause being shown for not being able to prefer the appeal within the period of limitation. The delay of 155 days is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

**Re: MAT 1950 of 2024
CAN 1 of 2024**

4. The writ petition filed for a direction upon the respondent authorities to consider the representation of the appellant/writ petitioner

dated 03.02.2020 for compassionate appointment was dismissed by the learned Single Judge on interpretation of Rule 32(3) of the West Bengal Madrasah School Service Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the posts of Teacher and non-teaching Staff) Rules, 2010 in which the family member has been defined. Since the interpretation of the said Rules read with Rule 32(4) of the 2010 Rules require consideration in order to appreciate the locus of the present petitioner to pray for compassionate appointment, it is necessary to set out the said Rules:-

“32. (1) Quota: *Maximum (upto) 10% of the vacancies of each category barring those of HM/Superintendent may be filled up by eligible candidates on compassionate ground.*

(2) Criteria: When a staff-teaching or non-teaching,-

a) dies-in-harness before the date or superannuation, i.e, the age of 60 years leaving his/her family in such extreme financial hardship that it fails to provide two square meals and other essentials (bare necessities) to the surviving members of the deceased's family, or

b) becomes permanently incapacitated by accident or on medical ground in the opinion of the Medical Board before attaining 58 years of age and is allowed by the Director of

Madrasah Education, West Bengal, to retire on and from the date prayed for and by virtue of his/her early retirement, if the family is in such extreme financial hardship that it fails to provide two square meals and other essentials (bare necessities) to the family members of the retired staff,

a family member (spouse, son or daughter) may be appointed on compassionate ground to a post suitable to his/her qualification subject to the condition laid down hereinafter in sub-rule (3) of this Rule and following the procedures stated later on.

(3) Conditions: The dependant family member, other than the spouse of the deceased/Permanently incapacitated teacher or non-teaching staff under Rule 32(2) (a) or (b) seeking appointment on compassionate ground,-

a) shall be bound to look after and maintain the dependant member(s) of the deceased/permanently incapacitated staff, particularly the incapacitated staff and his/her spouse, if appointed.

b) He/she shall have to swear an affidavit in the prescribed format before the First Class Judicial Magistrate in this regard, the authenticated copy of which shall have to be submitted along with the application for appointment on compassionate ground.

Provided that in case of spouse, the aforesaid condition of swearing an affidavit is not required if he/she does not re-marry. In case of re-marriage after appointment on compassionate ground, the aforesaid condition shall apply. Before draw of salary after re-

marriage, he/she shall have to swear the affidavit in the prescribed format.

c) The failure to perform the duty to the dependent member (s) shall entail termination of the appointment/ service.

Note: i) The dependent, spouse/member(s) may inform the District Inspector (SE)/the authorized person about the non-performance of the duty, if so, by the person appointed on compassionate ground, who may stop the salary for the time being and hear both the parties and settle the matter by proper direction and release salary,

ii) If the spouse/dependent member (s) again report(s) (1) negligence/ dereliction of duty by the appointed person, the District Inspector of Schools (SE)/the authorized person may direct the Madrasah Authority to give certain amount of the salary to the spouse/dependent member (s)

iii) If the appointed candidate is not agreed with that, the District Inspector of Schools (SE)/the authorized person shall refer the matter to the Director of Madrasah Education, West Bengal with the proposal for termination of service. The Director of Madrasah Education, West Bengal, shall take necessary action in this regard.

(4) Limitation: Only one eligible member of the family may be appointed under the provision of the sub-rule (2) of this Rule. In case of appointment of a dependent member of the deceased/permanently incapacitated teacher or non-teaching staff other than the spouse, the decision of the incapacitated teacher/staff or the spouse of the deceased shall be final. In

case of absence of the both, the decision of the majority of the dependent members, to be recorded by Affidavit before the First Class Executive/Judicial Magistrate, shall be final.”

5. The present petitioner is the youngest brother of the deceased. He has applied for compassionate appointment. The definition of family member in Rule 32(2)(b) includes spouse, son or daughter. However, in Rule 32(3) contemplates that a dependent family member in absence of spouse of the deceased/permanently incapacitated teacher or non-teaching staff under Rule 32(2)(a) or (b) seeking appointment on compassionate ground would be required to give certain declarations as a condition precedent for considering the application of such member of the family for compassionate appointment. In Rule 32(4) of 2010 Rules which is a limitation clause, only one eligible member of the family may be appointed under the provision of the sub-rule (2) of the said Rule. However, similar provision as that of Rule 32(3), namely, the condition that “the dependant family member, other than the spouse of the deceased/Permanently incapacitated teacher or non-teaching staff under Rule 32(2) (a) or

(b) seeking appointment on compassionate ground” was inserted in second sentence of the said Rule in a summary form. However, what is important is the last sentence of the said limitation clause which shows that in case of absence of the both, the decision of the majority of the dependent members, to be recorded by affidavit before the First Class Executive/Judicial Magistrate. The said clause makes it clear that in case of appointment of a dependent member of the deceased/permanently incapacitated teacher or non-teaching staff other than the spouse, the decision of the incapacitated teacher/staff or the spouse of the deceased would be final subject to filing of an appropriate affidavit.

6. If we consider that the parents of the deceased would be considered to be treated as dependent members only and if there is disagreement between two, then the compassionate appointment cannot be given to anyone. The dependent members in Rule 32(4), in our view, shall be considered on the basis of the declaration made by the teacher at the time of his joining service and the financial condition of the family. This factual

enquiry is required to be made by the authority concerned.

7. It is submitted that the parents of the deceased have filed an affidavit giving their consent to the appointment of the youngest son who had undertaken to look after the parents in terms of the Rule 32(3) of the 2010 Rules. It appears that Notification No.251-EMP dated 31st December, 2013 of the State treated the brother of the deceased as a dependent family member.
8. We are of the view that the Notification dated 12th November, 2010 may require certain clarifications and efforts may be made to keep it at par with the Rules of the State Government employees.
9. On such consideration, we direct the Director of Madrasah Education, West Bengal to consider the said application for compassionate appointment after taking into consideration the observation made by us in this order in accordance with law within a period of 8 (eight) weeks from the date of communication of this order.
10. We make it clear that we have not gone into the merits of the matter.

11. It is needless to mention that financial hardship of the family would be considered in deciding the application of the appellant for compassionate appointment.
12. The Director of Madrasah Education, West Bengal shall be made party/respondent No.7 in the memorandum of appeal and the stay petition in course of the day.
13. Accordingly, the appeal and the application are disposed of.
14. However, there shall be no order as to costs.
15. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)