

Item-
19.

19-05-2025

MAT 2045 of 2024
CAN 1 of 2025
CAN 2 of 2025

sg

Ct. 8

Sayani Halder
Vs.
The State of West Bengal & Ors.

Mr. Ratul Biswas
Mr. Kaushik Chowdhury
...for the DPSC, Howrah
Mr. Mukti Ghosh
Mr. Goutam Bose
...for the State

1. The appellant/writ petitioner is not represented even on the second call. Moreover, there is delay of 751 days in preferring the appeal. Other defects have also not yet removed.
2. However, we have heard the learned Counsel for the respondents in order to find out whether the case of the petitioner could be considered on compassionate ground.
3. The petitioner is the daughter of the head teacher, died-in-harness on 16th June, 2015. The mother of the present writ petitioner applied for compassionate appointment. However, the said application was not considered as she was not found eligible to hold the post of teacher. Moreover, the age of the petitioner for being appointed as a teacher on compassionate appointment ought to be between 18 years and 45 years. In this regard, a writ petition being W.P. 13844(W) of 2016, has been filed. The said writ petition was, however, disposed of with an observation that the writ petitioner can apply afresh for

being appointment in other category in accordance with law. Leave was granted to the petitioner to apply afresh to the appropriate authority for being appointed in any other category.

4. Thereafter, the present appellant, being the daughter of the deceased, had attained the majority and applied for compassionate appointment on 14th June, 2022. Since the said application was pending, a writ petition was filed and the said writ petition was dismissed on the ground that the application for compassionate appointment has to be applied for within two years from the date of death of the person. At that time, the petitioner was 12 years of age and she attained majority after six years i.e. in 2021.
5. In view of the judgment of the Larger Bench in *Piyali Sah vs. State of West Bengal* reported in *2012 SCC OnLine Cal 10490 : (2013) 1 CHN 18 : (2013) 138 FLR 542 : 2013 Lab IC 2647*, the writ petition is not maintainable. It appears from *Piali Saha* (supra) that the Larger Bench was constituted to answer the following questions:
 - (i) Whether an applicant seeking appointment on compassionate ground under the death-in-harness category who was a minor at the time of death of the concerned teacher or was a minor at the time of making an application within the statutory time framed of 2 years has any legal right to be considered for such appointment as a minor and
 - (ii) Whether on attaining majority a subsequent

application can be deemed to be held as a continuing process notwithstanding the fact that such application was made after the statutory period of 2 years?

6. This was answered in paragraph 19 of the said judgment which is reproduced below:

“Under those circumstances as Supreme Court has been pleased to observe in the case quoted above the aforesaid rule is a mandatory in character, we answer the aforesaid questions in the manner as follows:

The time fixed in the said Rule is a rigid, subsequent application after attaining majority is not a lawful application and the same cannot be said to be a continuing process. Now we send down the writ petition for assigning finally taking note of our decision”

7. In view thereof, there is no merit in the appeal filed by the appellant.
8. In the facts and circumstances of the case and having regard to the fact that the explanation offered for not being able to file the appeal within the period of limitation, we condone the delay of 571 days in filing the memorandum of appeal. Application for condonation of delay is disposed of.
9. With our aforesaid observations, the appeal and the stay application are accordingly, dismissed.

(Soumen Sen, J.)

(Smita Das De, J.)