

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7036 of 2019

Arunava Jana & Anr.
v.
The State of West Bengal & Ors.

Mr. Ujjal Ray
Mr. Atreya Chakraborty
... For the petitioners

Mr. Supriyo Chattopadhyay, AGP
Ms. Iti Dutta
... For the State

1. The mother of the petitioner no.1 and the wife of the petitioner no. 2 was working as Assistant Teacher of a school who died in harness on 23rd August, 2016. The son of the deceased teacher applied for appointment on compassionate ground on 4th July, 2018.

2. The application of the petitioner no.1 stood rejected by the District Inspector of Schools (Secondary Education), Howrah vide communicating memo dated 14th August, 2018 with the observation that the family income of the petitioners is more than the gross salary of a Group-D staff of the State Government at the material point of time.

3. The gross salary of the Group-D staff of the Government at the material point of time was Rs.12,510/- per month. For the purpose of calculating the family income of the petitioners, the District

Inspector of Schools (Secondary Education), Howrah taken into consideration the dearness allowance, the interim relief and the medical allowance and arrived at a finding that the said amount is more than the monthly salary of Group-D staff of the State Government. The petitioners are aggrieved by the same.

4. Reliance has been placed upon Rule 20 of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 which lays down the manner of selection on compassionate ground.

5. The provision lays down that for ascertaining financial hardship in relation to income of a deceased teacher or non-teaching staff consisting up to five members in the family shall mean an amount of income less than the initial gross salary of Group-D staff of the State Government at the material point of time. For computation of income of such family, income of any amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of 67 years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into account.

6. The petitioners also refers to the order passed by the Hon'ble Division Bench on 17th January, 2024 in MAT 1664 of 2023 with CAN 1 of 2023 (Bitasoke Mahata v. The State of West Bengal & Ors.)

and the order dated 26th July, 2024 arising out of the contempt proceeding in the aforesaid matter, being CPAN 864 of 2024 in MAT 1664 of 2023 (Bitasoke Mahata v. Pijush Kanti Bera, District Inspector of Schools (S.E.), Bankura).

7. Reliance has been placed on paragraph 3 of the order dated 17th January, 2024 wherein the Court was of the opinion that dearness allowance and medical allowance cannot be treated as part of the income of family for calculating the family income for determining financial hardship.

8. In the contempt proceeding, the Court clearly took into consideration the submission of the learned Additional Government Pleader that dearness relief and medical allowance have been clearly excluded. The Court held that once the aforesaid two components have been excluded for calculating the family income, the District Inspector of Schools had no authority to deny the claim of the petitioner by taking into consideration the aforesaid two components.

9. It has been submitted that if the family income of the petitioners is calculated by excluding the component of dearness allowance, interim relief and medical allowance, then the monthly income of the family will be less than the salary of a Group-D staff of the State Government at the relevant point of time.

10. Prayer has been made to direct the District Inspector of Schools to re-calculate the family income of

the petitioners for the purpose of providing compassionate appointment.

11. As it appears that the Hon'ble Division Bench of this Court has held that dearness allowance and medical allowance cannot be included for ascertaining family income of the family for the purpose of providing compassionate appointment, accordingly, the calculation of family income of the petitioners by including the dearness allowance, interim relief and medical allowance and arriving at the impugned conclusion that the income of the family is more than the salary of a Group-D staff of the State Government does not appear to be proper.

12. The impugned order of the District Inspector of Schools (Secondary Education), Howrah dated 14th August, 2018, accordingly, stands set aside.

13. The District Inspector of Schools (Secondary Education), Howrah is directed to re-calculate the family income of the petitioners strictly in accordance with law and in line with the order passed in the matter of Bitasoke Mahata (supra).

14. Steps shall be taken at the earliest but positively within a period of six weeks from the date of communication of this order.

15. A final order shall be passed and communicated to the petitioners immediately thereafter.

16. The writ petition stands disposed of.

17. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

18. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Amrita Sinha, J.)