

(2008) 11 CAL CK 0024

Calcutta High Court

Case No: M.A.T. No. 2393 of 2005

Subimal Kanti Pramanik

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Nov. 11, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: Dhillon Sarkar, for the Appellant; P.S. Deb Burman and Mr. Kamalesh Jha for the Nadia District Primary School Council, Mr. Sandip Srimani and Mr. Samiran Giri for the State, Mr. Debabrata Karan for the State, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates appearing for the parties.

- Challenging the judgment and order dated 5th May, 2005 passed by the learned trial Judge, this appeal has been preferred.
- The writ petitioner-appellant moved the writ application seeking appointment under died-in-harness category being a compassionate appointment in the post of primary school teacher.
- The case made out by the petitioner that his father died-in-harness on 14th December, 1982 when he was admittedly a minor of 12 years age and after attaining majority, his mother applied for a job in favour of the petitioner, who in the meantime passed the School Final Examination, a minimum academic qualification required for the said service. The authority did not consider the same. It appears from the record that the writ petitioner earlier moved the writ Court when direction was given to consider his application in accordance with law. The same was rejected.

Assailing the decision, the writ application was moved which now stands dismissed, against which this appeal.

5. Before considering the appeal on merit, the appointment on compassionate ground, its nature, character and conceptual contour are required to be dealt with. The compassionate appointment is not an another source of appointment but it is an appointment exclusively for the purpose of rendering social justice to a family who due to death of bread earner became helpless financially to sustain the livelihood. The concept of providing job under died-in-harness category rule in the true sense is per se violative of Article 14 of the Constitution of India as well as the basic structure of the Constitution of India. It is per se discretionary appointment on the part of the employer to provide a job to the dependent of the employee who died-in-harness more particularly in the Governmental Organisation where the equality clause under Article 14 mandates that all eligible candidates for the post should be considered and appointment should be made accordingly on merit. Despite such, it appears that the Apex Court considered the issue in the angle of some exceptional clause with a rider that if and only if the financial condition is not sufficient to provide bread to the family after the death of the bread earner of the family, the appointment issue should be considered strictly in accordance with the rules and regulations as has been framed to that effect by the authority concerned. It has also been decided by the Apex Court in several judgments that the time limit is a great factor and appointment is required to be given immediately to the family.

6. Having regard to the conceptual factor of providing job under died-in-harness category, now we have to consider the relevant provisions applicable in this field.

7. It is an admitted fact that the petitioner prayed for an appointment in the post of primary school teacher claiming such consideration of application on the ground of untimely death of his father on 14th December, 1982. So, we have to consider relevant rules and regulations as existing as on 14th December, 1982 applicable for the post of primary school teacher under died-in-harness category. Though the West Bengal Primary Education Act, 1973 came into effect before 1982, but as no rule was framed under the new provision, the existing rule framed and constituted u/s 66 of Bengal (Rural) Primary Education Act 1930 was allowed to be continued by issuing a notification to that effect. The said rule by amendment with effect from 11th September, 1980 introduced Rule 3D. The relevant notification to that effect reads such:

"3D Notwithstanding anything contained in rule 3, rule 3A or rule 313, but subject to the provisions of rule 3C, a ward of a primary teacher who dies in harness may be appointed, with the approval of the Director of Public Instruction, West Bengal, as an assistant teacher/school mother against regular vacancy irrespective of whether the available vacancy is to be reserved for trained or untrained candidates, provided that he/she fulfils the minimum qualifications for such appointment".

8. Thereafter, this rule continued read with the circular letters as subsequently issued directing mode of application, time limit of filing such application etc. as well as availability of the post of a secondary school teacher to a dependent of deceased primary school teacher vis-a-vis availability of the post of a primary school teacher to a dependent of deceased secondary school teacher under died-in-harness category by Circular letter No. 457-Edn.(P)/4A-60/83 dated 12th October, 1987. The said 1987 circular got further change so far as time limit of filing the application specifying a time limit by Notification No. 4-SE(Pry)/4A-17/94 dated 2nd January, 1995 issued by the Joint Secretary, Government of West Bengal, School Education Department, Primary Branch. Those circular letters of 12th October, 1987 and 2nd January, 15 read such:

" No. 457-Edn. (P) / 4A-60 / 83 12.10.87.

..... It has been stipulated in the Government Order No. 1008 (P) dated the 14.09.77 read with Government Order No. 101-Edn (P) dated 28.02.80 that if a primary school teacher died in harness, a ward of the teacher concerned may be given appointment as a primary school teacher on compassionate ground provided the ward possesses the requisite qualification for such appointment. But the ambit of the aforesaid Government orders is so restricted that the ward of a primary school teacher who dies in harness cannot be appointed as a teacher or a non-teaching employee on compassionate ground in a Junior High/Secondary/Higher Secondary School even if he/she possesses the requisite qualification for such appointment. Moreover there is no Government order as such for providing employment to the ward of a Junior High/Secondary/Higher Secondary School teacher or of a non-teaching employee attached to a Junior/ Secondary/ Higher Secondary school who died in harness, although there is scope for providing such appointment in terms of the Memo No. 1484 (16)-G.A. dated 28.08.81 issued by the Director of School Education, West Bengal. But in no case the ward of a Junior High/Secondary/Higher Secondary School teacher or of a non-teaching employee attached to any of such institutions can be appointed a primary school teacher even if he/she possesses the requisite qualification for such compassionate ground of the wards of the teacher/non-teaching employees working in recognised non-Government Primary/Junior High/Secondary/Higher Secondary Schools and other educational institutions under the Directorate of School Education has been engaging the attention of the State Government in the Education Department for some time past.

2. The undersigned is now directed, by order of the Governor, to say that the Governor has been pleased to order, in supersession of all previous orders in this regard that the appointment on compassionate ground of the wards of teachers and non-teaching employees of all recognised non-Government educational institutions under the Directorate of School Education who dies in harness be brought under a single umbrella and be given employment from the date of issue of

this order in the manner prescribed below:

(i) If a Primary school teacher dies in harness, the ward of the teacher concerned should be considered for employment in the first instance in any primary school in the district in which the deceased teacher last served. Similarly, if a teacher or a non-teaching employee of a Junior High/Secondary/Higher Secondary School or other educational institutions under the Directorate of School Education dies in harness, the ward of teacher or of the non-teaching employee concerned should be considered for employment in the first instance in any Junior High/Secondary/Higher Secondary School etc. in the District in which the deceased teacher or the deceased non-teaching employee last served.

(ii) If the ward of a primary school teacher who dies in harness does not possess the requisite qualification for appointment as a primary school teacher or if the ward of a primary school teacher who dies in harness possesses the requisite qualification for appointment as a teacher in a junior High/Secondary/Higher Secondary School etc. and opts for being appointed as such, the name of the ward in either case should be forwarded by the concerned District Inspector of Schools (P.E.)/District School Board, as the case may be, to the District Inspector of Schools (Secondary Education) concerned for providing him/her with employment on compassionate ground commensurate with his/her qualification and in that case the name should be placed just below the last name in the roster maintained for such cases by the District Inspector of Schools (S.E.). Similarly, if the ward of a Junior High/Secondary/Higher Secondary School teacher or of a teacher of such other educational institutions under the School Education Directorate or a non-teaching employee attached to a Junior High/Secondary/Higher Secondary School or other educational institution under the Directorate of school education who dies in harness does not possess the requisite qualification for appointment as a teacher any of the said institution; but possesses the qualification for appointment as a primary school teacher and opts for being appointed as such, the name of the ward should be forwarded by the District Inspector of Schools (S.E.) concerned to the concerned District Inspector of Schools (P.E.)/District School Board, as the case may be, for providing him/her with employment on compassionate ground and in that case the name should be placed just below the last name in the roster maintained for such cases by the District Inspector of Schools (Primary Education) /District School Board concerned.

3. Each District Inspector of Schools (Primary Education)/District School Board shall maintain a roster showing the names of wards of primary school teachers who die in harness and each District Inspector of Schools (Secondary Education) shall maintain a similar roster showing the names of wards of the Junior High/Secondary/Higher Secondary School teachers and of the non-teaching employees attached to the Junior High/Secondary/Higher Secondary Schools etc. who die in harness.

4. The claim for employment on compassionate ground of the wards of Primary/Junior High/ Secondary/Higher Secondary School teachers and that of the wards of the non-teaching employees attached to such educational institutions as aforesaid shall be restricted to 10% of the total vacancies occurring in a particular year in a district as of the exempted category.

5. The term "Ward" shall mean a son/s dependent daughter/the widow/the husband of the deceased teacher or of the deceased non-teaching employee. The ward shall apply for appointment on compassionate ground to the authority concerned immediately after the death of the teacher or of the non-teaching employee concerned.

6. The appointment authority after satisfying itself that the ward fulfils all the prescribed conditions and also that the family is in distress and in immediate need of assistance may issue necessary appointment orders only with the prior approval of the Director of School Education, West Bengal.

7. In all cases where it is proposed to relax the conditions mentioned in paras five and six above the appointing authority shall refer the matter to the Government in the Education Department through the Director of School Education, West Bengal and the final decision in the matter will rest with the Government.

8. All concerned may be informed accordingly.

Sd/- A.C. Chakraborty

Deputy Secretary."

"No. 4-SE(Pry.) 2.1.1995.

.....The undersigned is directed to refer to para 5 of this Deptt. Order in Memo No. 457-Edn (P) dated 12.10.87 which inter alia stipulates as follows:-

"The Ward shall apply for appointment on compassionate ground to the authority concerned immediately after the death of the teacher or of the non-teaching employee concerned".

2. As the aforesaid Government Order dated 12.10.87 did not prescribe any time-limit upto which an application for such appointment on compassionate ground should be entertained by the District Authority, it was becoming difficult for the concerned authorities to carry out the instructions properly.

3. Besides, absence of categorical instructions regarding superannuation/retirement linking up such appointments on compassionate ground was also causing difficulty in carrying out the existing instructions on the subject.

4. Accordingly, after careful consideration of the matter, the undersigned is directed by order of the Governor to say that the Governor is pleased to decide, in terms of para 7 of the said G.O. No. 457-Edn(P) dated 12.10.87 that-

- i) Application praying for an employment by a ward of a teacher who died in harness should be submitted to the District Primary School Council/ District Inspector of Schools (PE)/D.I. of Schools (Secondary Edn.) within two years from the date of death of the concerned teacher.
- ii) Applications received after expiry of the aforesaid time-limit should not be considered except under very special circumstances involving serious illness or physical inability of the applicant to submit such application on time but even in such cases, the application should be submitted within a period of 4 (four) years from the date of expiry of the concerned teacher.
- iii) The ward of the deceased teacher must possess the requisite minimum educational and other qualifications on the date on which he/she submits an application praying for such appointment.
- iv) No application praying for such appointment on compassionate ground should be entertained from a ward of a deceased teacher who expired after attaining the prescribed age of superannuation at sixty years.
- v) Cases decided in the past need not be reopened.
- vi) All concerned may be informed accordingly.

Sd/-

Joint Secretary"

9. On a bare reading of the aforesaid rule and circulars it appears that though under Rule 3D provision made providing job under died-in-harness category, but it was contoured with the condition that the concerned ward of primary school teacher, who died-in-harness, should fulfil the minimum qualification such appointment. Admittedly, the writ petitioner did not fulfil such as he did not pass School Final Examination at the material time, which was the minimum eligibility qualification of appointment. The minimum qualification prescribed under the Recruitment Rules of 1940 as framed and constituted in terms of the said Bengal (Rural) Primary Education Act, 1930 as school final pass for Assistant Teacher of Primary School. Rule 2 (b) is the relevant provision which reads such:

"2. (1) The minimum qualifications for appointment of a teacher in a primary school maintained by a [Primary School Council or the District School Board, as the case may be] shall be the following namely:

(b) Assistant Teacher - School Final pass. Training shall be treated as an additional qualification and a trained teacher shall be entitled to the A category scale of pay."

This Rule 2 was originally framed vide Notification No. 1493 - Edn. dated 25th July, 1940 and subsequently it was re-substituted after earlier substitution by Notification No. 975-Edn. (P) IOR-1/71 dated 26th October, 1971.

The minimum age prescribed for appointment under the said Rule 2 (2) (ii) as 18 years which reads such:

2. No person shall be appointed to any post in primary school maintained by the [Primary School Council or the District School Board, as the case may be].

.....

(ii) if he is under the age of 18 years."

10. Hence, it is an admitted fact that the petitioner did not attain the minimum age of 18 years and also did not qualify with the minimum academic qualification school final pass in the year 1982. As such, under Rule 3D there was no scope to provide any appointment under compassionate ground. The learned advocate for the appellant/writ petitioner has submitted before us the judgment delivered by Amitava Lala, J. (as His Lordship then was) in the case *Khadeja Bibi & Ors. v. State of West Bengal & Ors.*, reported in 2000 (2) CLJ 108 to contend that time-limit of two years as prescribed by the circular letter of 1995 is not mandatory and application could be considered even after expiry of two years from the date of death. It has been further contended by the learned advocate for the appellant that by the circular letter of 2nd January, 1995 for the first time the two years" period has been, prescribed and under Rule 3D aforesaid there is no prescription of time- limit within which any application should be filed. It has been further contended that under special circumstances the time-limit of four years is prescribed from the date of death in terms of the circular letter of 1995. On the basis of such circular letter of 1995 and Rule 3D aforesaid it is contended that as there was no time-limit fixed earlier in the year 1982 for filing any application, on attaining major in the year 1988 the petitioner was eligible to file application. As such, the application was required to be considered in that angle which, however, has been rejected by the authority concerned. It is true that under Rule 3D there is no specific time-limit by which any application could be filed but the said Rule 3D practically provides an immediate action of appointment on fulfilling minimum qualification for such appointment which naturally means that the application should be filed promptly irrespective of any limitation of time prescribed by the rule making authority. The Apex Court considered the time factor issue qua maintainability of the application and the consideration thereof in the case [State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir](#), wherein the Court discussed in details relying upon the earlier judgment the said issue in paragraph 15 which reads such:

"15. In *Sushma Gosain v. Union of India* it was observed that in the claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress".

11. In the said case there was a long delay of filing application and the Court considered the same as fatal to provide job under compassionate ground. The compassionate appointment is not an another source of appointment but it is an exception of the requirement of making appointments on open invitation of application on merit with a basic intention on the death of the employee concerned to provide means of livelihood to the family so that the family may get over sudden financial crisis. Reliance may be placed to the judgment passed in the case [Punjab National Bank and Others Vs. Ashwini Kumar Taneja](#), . The issue has been considered again by the Apex Court in the case putting the riders for giving appointment in Syed Khadim Hossain v. State of Bihar, reported in (2006) 9 SCC 195. Hence, even in the angle of time factor it is a settled law that compassionate appointment under died-in-harness category since its object is to mitigate economic sufferings of the family due to sudden financial crisis, the application and the appointment thereof should be made immediately and promptly and not belatedly. The filing of a belated application presupposes the fact that a family has already crossed the financial crisis wave due to sudden demise or bread earner somehow and some way which may be the charity of relatives or may be alternative financial assistance from any corner. In that angle accordingly the petitioner was not eligible to have consideration of his case. As already discussed that compassionate appointment, in fact, on breach of Articles 14 and 16 of the Constitution of India and the Apex Court accordingly decided the issue by holding that strict adherence to the rules and regulations should be made to provide appointment under died-in-harness category. Reliance may be placed to the judgment passed in the case [State of Haryana and Others Vs. Rani Devi and Another](#), which has been relied upon in the case Sajad Ahmed Mir (supra) in paragraph 12 at page 771.

12. Having regard to the aforesaid findings and observations, we are of the view that the rejection of the writ application by the learned trial Judge cannot be said as non-application of law in the proper way for challenging it in appeal. The learned trial Judge discussed the issue on different reasonings. We are not inclined to interfere with the findings of the learned trial Judge.

13. Before parting with the matter, we are of the view that the judgment delivered by Amitava Lala, J. (as His Lordship then was) as referred to cannot be said as a good proposition of law in view of the judgment of the Apex Court passed in the case Sajad Ahmed Mir (supra) and our findings and observations, namely, that after lapse of so many years the financial crisis wave somehow has reduced its intensity and as such there would be no scope of providing appointment under compassionate ground which is otherwise being an exceptional clause but in breach of Articles 14 and 16 of the Constitution of India.

14. The appeal accordingly stands dismissed on the aforesaid findings and observations.

Let xerox certified copy of this order, if applied for, be given to the learned advocates appearing for the parties expeditiously.

Manik Mohan Sarkar, J.

15. I agree.