

(1998) 03 CAL CK 0038**Calcutta High Court****Case No:** Writ Petition No. 29512 (W) of 1997

Monirul Islam

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: March 30, 1998**Citation:** (1998) 1 ILR (Cal) 346**Hon'ble Judges:** Bhaskar Bhattacharya, J**Bench:** Single Bench**Advocate:** Rezaul Hossain, for the Appellant; Tulsidas Maity, for the Respondent**Final Decision:** Allowed**Judgement**

Bhaskar Bhattacharya, J.

The writ Petitioner has prayed for setting aside Memo No. 67 dated January 7, 1997, issued by the Chairman, Adhoc Committee, Nadia Dist. Inspector of School whereby the prayer of the Petitioner for getting appointment on the compassionate ground has been turned down for the reason that the ward of teacher who died in harness while enjoying extension of service is not entitled to get appointment under "die-in-harness category". The Petitioner has also prayed for declaration that G.O., No. 4-SE(Pry)/4A-17/54 dated January 2, 1995 issued by Joint Secretary, School Education department, Primary Branch is not applicable to the case of the Petitioner. The aforesaid G.O. imposes prohibition upon the ward of a deceased teacher who expired after the age of superannuation at sixty years to apply under the aforesaid category.

2. There is no dispute that in the instant case the father of the Petitioner was a teacher of Jothmohesa F.P. School and died on June 29, 1991 at the age of 61 years 7 months 28 days while he was enjoying extension of service. On July 2, 1991 the Petitioner applied for appointment in "die-in-harness category". The consistent view of this Court prior to the aforesaid G.O. dated January 2, 1995 was that the ward of a teacher dying while enjoying extension of service was entitled to the benefit of "die-in-harness category".

3. In the instant case, the right to apply for the post under the aforesaid category accrued in favour of the Petitioner on June 29, 1991 and he applied on July 2, 1991 much prior to the aforesaid G.O. dated January 2, 1995. The aforesaid G.O. on the face of it is prospective in operation. Therefore, while disposing of the application of the Petitioner, the G.O. dated January 2, 1995 cannot be invoked. In this connection reference may be made to the decision of Apex Court in P. Mahendran and others Vs. State of Karnataka and others, where the Apex Court reiterated the well settled principle that once the process of selection had commenced, the same had to be completed in accordance with the law as it stood at the commencement of selection unless retrospective effect has been given to the new law.

4. Thus, in this case the G.O. dated January 2, 1995 being annexure-H to the writ application is not applicable to the case of the Petitioner and consequently Memo No. 67 dated January 7, 1997 issued by Respondent No. 4 being Annexure-E to the writ application is quashed. The Respondents Nos. 2 to 6 are directed to give benefit of "die-in-harness category" to the Petitioner if he is otherwise eligible.

5. The writ petition is allowed.