

**(2007) 12 CAL CK 0045****Calcutta High Court****Case No:** Writ Petition 18029 (W) of 2007

Namita Pramanick

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision:** Dec. 19, 2007**Citation:** 112 CWN 779**Hon'ble Judges:** Biswanath Somadder, J**Bench:** Single Bench**Advocate:** Gauri Sankar De and Mr. Rudranil De, for the Appellant; Tulsidas Maity, for the Respondent**Judgement**

Biswanath Somadder, J.

Affidavit of service filed on behalf of the petitioner be kept on record. Heard the learned advocates appearing on behalf of the parties.

2. After considering the submissions made by the learned advocates and upon perusing the writ petition I am of the opinion that the writ petition can be disposed of without calling for affidavits since there is essentially no disputed question of fact. Thus, I dispose of the writ petition with the following order:

3. The writ petitioner, it appears, is a widow of a former Assistant Teacher of a Primary School under Khalna Circle in the district of Howrah. From the writ petition it appears that the said Primary School teacher died on 7th June, 2004 at the age of 48 after being afflicted with kidney ailment following high diabetes. The widow being the writ petitioner herein, has also stated in the writ petition that during the life time of her husband a considerable amount of money was spent for his treatment and ultimately he died a premature death. They have a son, who was, at the time of her husband's death, a minor. It has been stated in paragraph 8 of the writ petition that the minor son had appeared for Madhyamik Examination in the year 2005 and was placed in the second division, but he attained majority only on 18th August, 2007, which is beyond the period of two years from the death of the

primary school teacher.

4. The writ petitioner made an appeal to the Chairman, District Primary School Council, Howrah on 12th May. 2006 for the purpose of employment on compassionate ground for her son. The same" could not be considered in view of the fact that he was still a minor at the material point of time.

5. In this backdrop, the writ petitioner resumed her study since she had not completed her Madhyamik Examination before her marriage.

6. In paragraph 9 of the writ petition it has been stated that she, even as a widow and mother of a minor son, finally succeeded in passing Madhyamik Examination from Rabindra Mukta Vidyalaya. From a copy of the mark sheet annexed to the instant writ petition, it appears that the writ petitioner passed. her Madhyamik Examination some time in June, 2006.

7. From Paragraph 10 of the writ petition, it also appears that after passing the said Madhyamik Examination she made an application before the Chairman, District Primary School Council, Howrah praying inter alia that in case her son could not be given appointment on compassionate ground, such benefit may be extended to her taking into consideration her extreme financial hardship. This application was made on 24th November, 2006.

8. In paragraph 11 of the writ petition it has been stated that at the time of making the said application there was a delay of 5 months. In other words, it means that the writ petitioner could not make the application within two years from the date of death of her husband. The Chairman of the District Primary School Council, Howrah, it appears, by a letter dated 5th June, 2007, rejected her application solely on the ground of delay in submission of the same, time having crossed two years from the date of death, as per relevant Rules. It is this letter, being a letter dated 5th June, 2007. that is impugned before this court.

9. Since the facts have been more or less enumerated hereinbefore, I feel it necessary to have a look into the relevant Rule. The relevant Rule being Rule 14 of the Primary Teachers Recruitment Rules, 2004 is set out hereinbelow:

"14. Appointment on compassionate ground. The Council may appoint primary teachers, with the approval of the Director of School Education, West Bengal or his authorized officer, on compassionate ground in the following cases where, in the opinion of the Council, the cases deserve compassionate consideration :

1. When a teacher dies in harness before the date of his superannuation i.e. at the age of 60 years, leaving a family which, in the opinion of the Council, is in extreme financial hardship that is it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the following members of the deceased teacher's family, viz. the

- (a) widowed wife, or
- (b) widower, or
- (c) son, or
- (d) unmarried daughter, or
- (e) divorcee dependent daughter-divorced before the date of death of the teacher.

possessing required educational qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach, may make within two years from the date of such death, a prayer in writing to the Council for appointment as primary teacher on compassionate ground, provided that only one member of a deceased primary teacher's family may be appointed on compassionate ground.

2. When a primary teacher applies for being declared permanently incapacitated on medical ground, to the Council for appearing before the Medical Board set up according to the procedure laid down in the Government Order, before attaining 58 years of age and discontinues to attend the school for such incapacitation, he may be allowed by the Council to retire on and from the date of submission of such application, provided that the Council is satisfied with such incapacitation and other conditions through Enquiry Committee, and Provided further that, after receiving the report from the Council, the Medical Board set up for this purpose declares him permanently incapacitated to continue in further service for a reasonable time and if his family is in extreme financial hardship after such retirement, the

- (a) wife, or
- (b) husband, or
- (c) son, or
- (d) unmarried daughter, or
- (e) the divorcee dependent

(f) daughter - divorced at least one year before submission of application for declaration of permanent incapacitation, of the incapacitated pre-maturely retired primary teacher, possessing requisite qualifications as laid down in clause (a) and (c) sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach may be appointed as primary teacher on compassionate ground on submission of prayer in writing within three months from the date of issue of certificate by the competent Medical Board. Only one member of the family of the declared permanently incapacitated teacher may be appointed.

Government orders issued from time to time for appointment on compassionate ground shall also duly be considered in making such appointment.

But if the Medical Board does not declare the teacher to be permanently incapacitated to continue in further service the Council will allow him to rejoin duty;

Provided he does not attain superannuation, in such a case the period of absence will be regularized as per existing leave rules."

10. From a plain reading of the aforesaid Rule and sub-rules it appears that this is a piece of beneficial legislation which has a social relevance.

11. The expression, "..... may make within two years from the date of such death, a prayer in writing to the Council for appointment as primary teacher on compassionate ground....." as appearing in sub-rule 1 of Rule 14 has to be read in the context of the facts that are relevant for the purpose of the Council arriving at an opinion whether a particular case deserves compassionate consideration or not.

12. In the facts of the instant case what has to be decided is whether the period of delay of a few months could cause an absolute embargo and/or fetter on the Council to grant appointment on compassionate ground in favour of the writ petitioner.

13. From the chain of events as stated above, it is clear that the widow of the deceased primary school teacher had been continuously approaching the Council for the purpose of grant of compassionate appointment, upon the death of her husband, before the expiry of the two year period as stated in the above quoted Rule. Initially, the reason for rejection of the writ petitioner's son's application for compassionate appointment was on a technical ground, that is to say, he having not attained majority, at the time of application for appointment on compassionate ground. The widow, therefore, had no option but to seek appointment for herself. For the said purpose she went on to resume her studies and completed her Madhyamik in June 2006. It was only after she completed her Madhyamik Examination in June 2006 and in view of the fact that the earlier application for appointment on compassionate ground for her son having not been entertained, solely on the ground of her son being a minor at the material point of time, did she choose to put in an application for herself. Thus, in effect, there was no real delay for seeking appointment on compassionate ground in so far as the family is concerned. The aforesaid Rule 14 postulates a "family", but not an "individual". In the instant case it was the "family" of the deceased employee which was trying for appointment on compassionate ground. The process for seeking appointment on compassionate ground by the family began within two years from the date of death of the deceased employee.

14. In view of the facts and circumstances as stated above, I am of the opinion that there is no bar in giving appointment to the writ petitioner in accordance with the provisions of law by the concerned primary school council.

15. I thus direct the respondent No. 4, being the District Primary School Council, Howrah to take appropriate steps in the matter in the light of the observations/directions given hereinabove, within a reasonable time, preferably within four months from the date of communication of this order.

16. This order is passed in the unusual facts and circumstances and shall not create any precedence whatsoever. The writ application thus stands disposed of.