

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

Before:

THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

W.P.A. 28275 OF 2024

Sk. Monikul Hossain

VS.

The State of West Bengal & Ors.

For the Petitioner : Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Sampriiti Saha
Ms. Swati Dey

For the State : Mr. Biswabrata Basu Mallick
Mr. Biman Halder

For the WBCSSC : Mr. Sunit Kumar Roy

For the DPSC,
PurbaBardhaman : Mr. Saibal Acharyya
Mr. Tanweer Jamil Mandal

Heard on: 26.02.2025

Judgment on: 26.02.2025

SAUGATA BHATTACHARYYA, J:

1. Matter is heard *in extenso* in presence of learned advocates representing the petitioner, State respondents, District

Primary School Council, Purba Bardhaman and West Bengal Central School Service Commission.

2. In the writ petition subject matter of challenge is memo dated 5th February, 2024 issued by the Assistant Secretary, West Bengal Regional School Service Commission, Eastern Region, Purba Bardhaman, being respondent no. 4 whereby prayer of the petitioner for appointment on compassionate ground due to death of his father has been spurned. The reason which has been assigned in the impugned memo dated 5th February, 2024 is attainment of age of sixty years by father of the petitioner on 1st January, 2021 when father died. It is recorded in the impugned memo that date of birth of father of the petitioner was 2nd January, 1961 and father died on 1st January, 2021. Therefore, on the date of death of father of the petitioner he completed sixty years. On applying Schedule V of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-teaching Staff) Rules, 2009 (hereinafter referred to as "said Rules"), respondent no. 4 decided since father of the petitioner attained sixty years on the date of his death petitioner is not entitled to get benefit of appointment on compassionate ground.

3. Mr. Firdous Samim, learned advocate representing the petitioner submits that since date of birth of father of the petitioner was 2nd January, 1961 it is to be considered that father of the

petitioner on 1st January, 2021 did not complete sixty years and father would have completed sixty years had he been alive on 2nd January, 2021. According to the petitioner, there was one day short on the date of death of father of the petitioner of sixty years which makes the petitioner entitled to be considered for appointment on compassionate ground.

4. Another limb of submission which has been advanced on behalf of the petitioner is based on Rules 18 and 20 of the West Bengal Primary School Teachers Recruitment Rules, 2016. By placing proviso to Rule 18 it is submitted that date of superannuation of father of the petitioner was 31st January, 2021 which should come in favour of the petitioner while taking decision on his entitlement to be appointed on compassionate ground. In addition thereto, it is further submitted that in terms of 3rd proviso to Rule 20 of the said Rules of 2016 financial hardship of family of deceased teacher and definition of family are to be taken into consideration in terms of Schedule V of the said Rules of 2009.

5. In the present case, respondent no. 4 has refused the prayer of the petitioner solely on the ground that on the date of attaining sixty years that is 1st January, 2021 father of the petitioner died, which is incorrect since even Court proceeds on the premise that an employee if dies on the last date of sixty years as contemplated under Clause 1 of Schedule V of the said Rules of 2009, as in the

present case father of the petitioner died on the last date of attaining sixty years of age; according to the petitioner, notwithstanding date of superannuation of father the petitioner should have been adjudged as an eligible candidate for appointment on compassionate ground.

6. The prayer of the petitioner is opposed by the learned advocates representing the State respondents and West Bengal Central School Service Commission.

7. It is submitted on behalf of the respondents that after death of father of the petitioner application for appointment on compassionate ground was made by the petitioner opting to be appointed in secondary school.

8. Therefore, it is not the said Rules of 2016 but Rules of 2009 specially Schedule V is applicable while adjudging eligibility of the petitioner to be appointed on compassionate ground.

9. Much emphasize has been laid on Clause 1 of Schedule V of the said Rules of 2009 in order to agitate before this Court that by merely getting benefit of proviso to Rule 18 date of superannuation of father of petitioner was fixed on 31st January, 2021. However, father of the petitioner attained sixty years on 1st January, 2021 which makes the petitioner disentitled in the matter of granting appointment on compassionate ground. According to the respondent authorities, date of birth of father of the petitioner was

2nd January, 1961 and he completed sixty years of age on 1st January, 2021. Therefore, petitioner is not entitled to be considered for appointment on compassionate ground.

10. Having considered the submissions made on behalf of the parties and on conjoint reading of said Rules of 2016 as well as Rules of 2009, it appears that after death of father of the petitioner he applied for appointment on compassionate ground in a secondary school. Therefore, the contention of respondent authorities is that while deciding eligibility of the petitioner to be appointed on compassionate ground said Rules of 2009 specially Schedule V is required to be pressed into service and same is accepted.

11. Fact remains, considering the date of birth of father of the petitioner that is 2nd January, 1961, he completed sixty years on 1st January, 2021 and he died on 1st January, 2021. Had father of the petitioner died on 2nd January, 2021 then son would have been adjudged being not eligible to be considered for appointment on compassionate ground. But in the present case, since father died on the last date when he attained 60th year it cannot be concluded that the father completed sixty years.

12. Now this Court is required to consider Clause 1 under Schedule V of the said Rules of 2009. It is provided under Clause 1 that when a teacher or non-teaching staff dies in harness before

the date of his superannuation that is the age of sixty years in that event only one of the family members of the deceased teacher /non-teaching staff is entitled to be considered for appointment on compassionate ground provided other conditions are fulfilled.

13. In the present case at my hand, it appears that father of the petitioner was scheduled to retire on 31st January, 2021 but unfortunately he died on 1st January, 2021 that is the date when his age was 60 years. In other words, he died on 1st January, 2021 when his age was 59 years 11 months and 29 days. If the father would have died on 2nd January, 2021 it could have been concluded that father completed sixty years of age.

14. Upon hearing learned advocates representing the parties, nothing is forthcoming from where it can be concluded that there is express statutory bar in considering application of the petitioner seeking appointment on compassionate ground if father of the petitioner died on the last date just before completing sixty years of age.

15. In view of aforesaid discussion, memo dated 5th February, 2024 issued by the respondent no. 4 whereby prayer of the petitioner seeking appointment on compassionate ground was rejected, is set aside.

16. The District Inspector of Schools (SE), Purba Bardhaman, being respondent no. 8 vide memo dated 4th January, 2024

recommended the case of the petitioner for appointment on compassionate ground. Therefore, concerned authorities of the West Bengal Regional School Service Commission, Eastern Region including respondent no. 4 are directed to send recommendation to the West Bengal Board of Secondary Education for appointment of the petitioner on compassionate ground, if he is found otherwise eligible by three (3) weeks from the date of communication of this order. The concerned District Inspector of Schools is directed to forward all necessary records relating to prayer of the petitioner for appointment on compassionate ground to the respondent no. 4 by seven days from the date of communication of this order.

17. Writ petition stands allowed and disposed of.

18. There shall be, however, no order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(SAUGATA BHATTACHARYYA, J.)