
(2020) 02 CAL CK 0063

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5243 Of 2018

Amirul Islam

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Recruitment And Leave Of Teachers In Primary Schools In West Bengal, 1991 — Rule 14(b)

Citation : (2020) 02 CAL CK 0063

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Md. Yusuf Ali, Supriyo Chattopadhyay, Iti Dutta, Shamim Ul Bari

Final Decision : Disposed Of

Judgement

Tapabrata Chakraborty, J

1. A procrastinated legal battle pertaining to grant of compassionate appointment in terms of the Rules regulating the Recruitment and Leave of

Teachers in Primary Schools in West Bengal, 1991 (in short, the 1991 Rules) culminated in an order dated 8th February, 2018 passed by the

respondent no.2 rejecting the petitioner's claim. The said order is under challenge in the present writ petition.

2. Shorn of redundant details, the facts are that the petitioner's father, namely, Md Ersad Ali (in short, Ersad) while working in the post of an

assistant teacher in a primary school under the Malda District Primary School Council (in short, the said Council) submitted an application to the

respondent no.4 on 8th August, 1998 praying for premature retirement on medical ground and for grant of compassionate appointment in favour of the

petitioner. At the said juncture Ersad's age was 57 years 02 months and 22

days. As the said representation was not being considered, he preferred a writ petition being A.S.T. 2607 of 1998 which was disposed of by an order dated 24th December, 1998. Pursuant to the said order Ersad was medically examined and declared unfit on 15th January, 2000 and the respondent no.4 by a memo dated 28th February, 2000 intimated the Sub Inspector of Schools that the petitioner would be deemed to have been allowed to retire from service with effect from 15th January, 2000. In the said memo it was also stated that excess payments, if any already made be recovered from the terminal benefits. As thereafter the claim towards grant of compassionate appointment was not being attended to, Ersad again preferred a writ petition being W.P.No. 19640 (W) of 1999 which was disposed of by an order dated 25th June, 2003. In the said order it was inter alia observed that "Although the declaration was ultimately made either on 10.12.99 or 5.01.2000, but the process of declaration of permanent incapacitation was initiated prior to attaining the age of 58 years. In such case, it can be construed by this Court that the process was initiated after 58 years to debar the petitioner from getting any benefit in connection with such declaration". Pursuant to the said order the petitioner's claim was considered and the respondent no.4 issued a memo dated 19th September, 2003 observing inter alia that Ersad was not unfit at least two years before he attained the age of superannuation. However, by the said memo all relevant records relating to the petitioner's claim were sent to the respondent no.2 for appropriate orders but since no final decision was taken thereafter by the respondent no.2 another writ petition being W.P. No. 16928 (W) of 2004 was preferred. The same was disposed of by an order dated 24th November, 2005. As directed by the Court, the respondent no.2 considered the petitioner's claim and rejected the same by an order dated 24th May, 2007. The said order was again challenged by the petitioner in a writ petition being W.P. No. 13074 (W) of 2012 which was disposed of by an order 11th January, 2012 setting aside the order of the respondent no.2 dated 24th May, 2007 and directing the respondent no.4 to forward the medical report with recommendation to the respondent no.2 to enable him to take a decision for approval. The respondent no.4 thereafter issued a memo dated 6th May, 2013 stating that the family suffers from financial distress. As thereafter no order was passed by the respondent no.2, the

petitioner again preferred a writ petition being W.P. No. 14149 (W) of 2017 and by an order dated 19th May, 2017 the issue was again relegated to

the respondent no.2 for consideration. The respondent no.2 thereafter passed the order dated 8th February, 2018 rejecting the petitioner's claim.

3. Mr. Md Ali, learned advocate appearing for the petitioner contends that Ersad applied within the prescribed age for premature retirement as well as

for compassionate appointment of his son being the petitioner herein. Belated medical examination should not stand in the way towards consideration

of the petitioner's application for compassionate appointment especially when Ersad was ultimately declared unfit and was allowed to retire

prematurely. The delay towards grant of declaration as permanently incapacitated is attributable to the respondents and they cannot take advantage of

their own wrong and refuse to grant compassionate appointment to the petitioner. In support of such contention reliance has been placed upon an

unreported decision in the case of Anil Chandra Majhi vs- State of West Bengal (F.M.A. No. 178 of 1999) dated 20th April, 2001.

4. He submits that the argument advanced on behalf of the respondents that declaration of permanent incapacitation after the employee crossed 58

years of age would debar his dependant son from compassionate appointment was considered and not accepted by the Court, as would be explicit

from the orders dated 25th June, 2003 and 11th January, 2012 passed in W.P. No. 19640 (W) of 1999 and in W.P. 13074 (W) of 2008 respectively. No

appeal was preferred against the said orders and as such the respondent no.2 by the order dated 8th February, 2018 could not have rejected the

petitioner's claim reiterating the same ground.

5. Ms. Dutta, learned advocate appearing for the State contends that being a government officer, the Commissioner of School Education, West Bengal

was bound to follow strictly the recruitment rules existing at the material point of time. The petitioner's father was declared unfit in lieu of

permanent incapacitation declared by the Medical Board constituted for the purpose. He was an existing teacher upto 15th January, 2000 and he drew

the monthly salary on regular basis even after he crossed 58 years of age. Therefore, as per rule 14(b) of the 1991 Rules, the petitioner cannot be

given appointment to the post of primary school teacher on compassionate ground in permanently incapacitation category. The right towards

consideration for compassionate appointment accrues only when an incumbent is declared medically unfit prior to attainment of 58 years of age. The

petitioner herein was declared medically unfit after he had crossed the age of 58 years. Furthermore, in the 1991 Rules, there is no provision for

accepting the premature retirement of the teacher from his date of application. The judgment delivered in the case of Anil Chandra Majhi (Supra) is

distinguishable on facts and has no manner of application in the present case.

6. The issue which arises for consideration is as to whether declaration of permanent incapacitation after an employee crosses 58 years of age though

applied for by the employee prior to attainment of 58 years of age would debar his dependant son from compassionate appointment.

7. Indisputably the petitioner's claim is required to be considered in terms of Rule 14 (b) of the said Rules, 1991 inasmuch as Ersad was declared

permanently incapacitated during subsistence of the of the 1991 Rules. Any subsequent amended circulars/statutory Rules, which have not been made

to operate retrospectively, can apply [See the judgments delivered in the case of Abhishek Kumar vs- State of Haryana and Ors., reported in 2007

(2) Supreme 519 and in the case of Sayra Banu & Anr vs- The State of West Bengal & Ors, reported in 2012 (3) CHN 636].

8. The 1999 Rules do not provide that an employee is required to apply seeking declaration towards permanent incapacitation on any particular date.

Nowhere in the 1999 Rules has it been provided that such application has to be made at least few months before attainment of 58 years. There is no

dispute that Ersad applied on 8th August, 1998, i.e., about nine months prior to attainment of 58 years. Such application was thus made within a

reasonable time before attainment of 58 years. However, Ersad was called for medical examination for the first time on 27th March, 1999, i.e., more

than eight months after receipt of the application. The petitioner was not responsible for such delay and for such inaction on the part of the

respondents the petitioner cannot be made to suffer.

9. Pursuant to the order dated 24th November, 2005 passed in the writ petition being W.P. No. 16928 (W) of 2004, the respondent no.2 considered the

petitioner's claim and rejected the same by an order dated 24th May, 2007. The operative part of the said order runs as follows:

“Since the petitioner did cross 58 years of age on 15.1.2000, thereby his

prayer cannot be considered under Rule 14(b) of the Notification No.768

Edn (P) dated 22.11.1991. Hence the decision of the D.P.S.C., Malda communicated under Memo No.82/DPSC/Law dated 19.9.2003 appears to me

a correct decision and an interference into the said decision only will hamper the natural Justice.â??

10. The said order passed by the respondent no.2 was set aside by an order 11th January, 2012 passed in writ petition being W.P. No. 13074 (W) of

2012. The operative part of the said order runs as follows:

â??Admittedly, the Medical Board did not declare the deceased employee unfit but advised to continue on medicine but after several examinations

ultimately found the deceased employee unfit to continue in service. It is obvious that the Medical Board was not of the firm view at the time of first

examination that the deceased employee was fit to continue in service but ultimately found him unfit. Therefore, there is no justification in the stand of

the respondent authorities, as has been made in the impugned decision, for rejection of the application of the petitioner.â??

11. The respondents did not challenge the said order. The respondent no.2 thereafter passed an order dated 8th February, 2018 rejecting the

petitionerâ??s claim on the self-same ground as stated in the earlier order dated 24th May, 2007. The operative part of the said order 8th February,

2018 runs as follows:

â??Considering the above facts and circumstances it is well settled that the petitionerâ??s father was an existing teacher upto 15.01.2000 when he

crossed 58 years of age, and he was declared unfit in lieu of permanently incapacitation by the Medical Board constituted for the purpose. Therefore,

as per provision of the rule 14(b) of the said recruitment rules published vide notification No.768-Edn(P) dated 22.11.1991, the petitioner cannot be

given appointment to the post of primary school teacher on compassionate ground in the permanently incapacitation category. In the said recruitment

rules, there is no provision for accepting the premature retirement of the teacher from his date of application for this purpose.â??

12. The observations made in the order dated 8th February, 2018 of the respondent no.2 are contrary to the findings as arrived at by the Court in the

order 11th January, 2012 passed in writ petition being W.P. No. 13074 (W) of 2012. The said order dated 8th February, 2018 is thus not sustainable in

law. It is well settled that any order passed by an authority in derogation to the order of the Court is a nullity [See judgment delivered in the case of

Manohar Lal (D) by Lrs. vs Ugrasen (D) by Lrs. & Ors, reported in 2010 (4) Supreme 519].

13. The petitioner fulfils the requisite qualification as provided in the 1991 Rules. His claim has neither been rejected on the ground of lack of

qualification nor on the ground that the family is not in financial distress. No such argument has been advanced on behalf of the respondents. The

respondent no.4 by an order dated 6th May, 2013 recommended and forwarded the petitioner's claim to the respondent no.2 opining that the

family of the employee was suffering from financial hardship and that it had no income from landed property. The fact that the petitioner has survived

the onslaught of the vagaries of life due to premature retirement of his father, who was the earning member, cannot act to his prejudice while

consideration of his claim for compassionate appointment.

14. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Equity regards as done, which should have been

done. It would be the bounden duty of this Court to put an end to the protracted long agony of the petitioner, who had suffered the distraught pain and

was kept in animated tenterhooks in anticipation of an employment and faced stone walled response from an apathetic administration.

15. Once the Court holds that the respondents have acted unreasonably, the Court itself can grant the relief and need not direct the petitioner to

approach the authorities for reconsideration [See the judgment delivered in the case of Government of India & Ors. versus B. Anil Kumar & Ors.,

reported in 2010 (4) Supreme 77].

16. Accordingly, the impugned order dated 8th February, 2018 passed by the respondent no.2 is set aside and the respondents are directed to grant

compassionate appointment to the petitioner in the post of an assistant teacher in any primary school under the Malda District Primary School Council,

within a period of six weeks from the date of communication of the order.

17. With the above observations and directions, the writ petition is disposed of.

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

19. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the

necessary formalities in this regard.