
(2011) 05 CAL CK 0050
In the Calcutta High Court
Case No : Writ Petition No. 17746 (W) of 2010

Dilip Kumar De

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 05 CAL CK 0050

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Joyanta Kr. Das and Gourav Das, for the Appellant; Partha Sarathi Bhattacharjee, Md. Moniruzzaman and Raju Bhattacharjee, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner herein is the husband of an approved Assistant Teacher in Work Education and Physical Education Group in Khadimpur Girls High School, Balurghat, District Dakshin Dinajpur who died in harness on 13th December, 2005. After the death of his wife, he applied for his appointment on compassionate ground on 12th January, 2006. The Petitioner herein passed Madhyamik Pariksha under West Bengal Board of Secondary Education in 1982. As such he prayed for his appointment in any suitable post commensurate with his educational qualification in any High School.

2. His application for appointment on compassionate ground was rejected by the concerned District Inspector of Schools (S.E.), Dakshin Dinajpur, by referring to G.O. No. 697-ES dated 9th July, 2009 which prescribed the upper age limit of the ward seeking appointment on compassionate ground as 45 years within two weeks from the date of death of the concerned teacher. Since the Petitioner crossed the upper age limit, the Petitioner's prayer for appointment on compassionate ground was rejected by the concerned District Inspector of Schools.

3. The said decision of the District Inspector of Schools (S.E.), Dakshin Dinajpur, which is contained in annexure "P-10" at page 42 of this writ petition is under

challenge in this writ petition at the instance of the Petitioner.

4. Heard the learned Counsel for the parties. Considered the materials on record, including the order impugned.

5. Let me now consider as to how far the said District Inspector of Schools was justified in passing the impugned order in the facts of the instant case.

6. I have already recorded above that the wife of the Petitioner who was an Assistant Teacher in a High School died in harness on 13th December, 2005. The Petitioner prayed for appointment on compassionate ground. The Petitioner's prayer for appointment on compassionate ground, in my view, is required to be considered as per the law which was prevalent as on the date of death of his wife. Since his wife died on 13th December, 2005, the Petitioner's prayer for appointment ought not to have been considered in the light of the Government Order dated 9th July, 2009 by relying on which the concerned District Inspector of Schools rejected the Petitioner's prayer for appointment on compassionate ground. In fact, the said Government order was not even in existence as on the date of death of his wife. As such, while the Petitioner's prayer for appointment on compassionate ground was considered by him the said Government Order ought not to have been taken into consideration by the said District Inspector of Schools.

7. This Court finds that the Government Order dated 29th January, 2008 prescribing the upper age limit of the wards of the deceased seeking appointment on compassionate ground was modified by the subsequent Government Order issued by the Assistant Secretary on 25th September, 2000 under memo No. 1855 SE(S)/(4A-18/2000) whereby the upper age limit of the ward of the deceased seeking appointment on compassionate ground was fixed at 47 years. The said Government Order dated 25th September, 2000 does not provide that the relaxation which could be given in exceptional circumstances, under the earlier Government Order dated 29th January, 2008 has been curtailed. As such, this Court is of prima-facie view that in exceptional circumstances further relaxation can be given with regard to the upper age limit of a ward of the deceased Assistant Teacher seeking appointment on compassionate ground. These Government Orders were not taken into consideration by the concerned District Inspector of Schools, when he considered the Petitioner's prayer for appointment on compassionate ground. Though the District Inspector of Schools claims that he crossed the upper age limit marginally but the District Inspector of Schools did not consider as to whether relaxation can be given to him so far as the age limit is concerned, in the circumstances in which he claimed such relief.

8. Under such circumstances, this Court holds that the impugned order cannot be retained on record. The impugned order, thus, stands set aside.

9. Under such circumstances, this Court disposes of this writ petition by directing the concerned D.I. of Schools to consider the Petitioner's prayer for appointment

on compassionate ground in any post commensurate with his educational qualification in any High School and take the ultimate decision by passing a reasoned order in the light of the prevalent Rules and Circulars as on the date of death of the wife of the Petitioner positively within a period of eight weeks from the date of communication of the order.

10. Needless to mention here that a reasonable opportunity of hearing should be given to the Petitioner before taking the ultimate decision by the said D.I. of Schools in this regard. The D.I. of Schools is also directed to intimate his decision to the Petitioner as well as the school authority immediately thereafter.

11. The writ petition is, thus, disposed of.

12. Since this writ petition is disposed of at the motion stage without inviting any affidavit from any of the parties, let it be recorded that allegations made in the writ petition are not deemed to be admitted by the Respondents.

13. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.