

(2001) 05 CAL CK 0049
In the Calcutta High Court
Case No : Writ Petition No. 8714 (W) of 1997

Lakshmi Narayan Sarangi and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Constitution of India, 1950 — Article 166(2)
Rules Regulating the Recruitment and Leave of Teachers in Primary Schools in West Bengal, 1991 — Rule 14
West Bengal Primary Education Act, 1973 — Section 106, 106(1), 106(3), 60(1)

Citation : (2001) 2 CALLT 341 : (2001) 3 CHN 487

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Advocate : Mr. Jyotirmay Bhattacharya, Mr. Sanjoy Roy Chowdhury and Mr. Subhendu Bandhopadhyay, for the Appellant; Mr. Ashok Maity, for the Respondent

Final Decision : Allowed

Judgement

P.K. Samanta, J.—Short but important question involved in this writ petition is related to the interpretation of Rule 14(b) of the Rules regulating the recruitment and leave of Teachers in Primary Schools in West Bengal thereafter referred to as Rule. 1991).

2. The said Rules 1991 were framed by the State Government in exercise of power conferred under sub section (1) of section 106 of the West Bengal Primary Education Act, 1973 for the purposes of prescribing conditions for appointment of teachers and other staffs in primary schools and for other allied matters as mentioned in Clause (k) of sub-section (1) of section 60 of the said Act. Therefore, the aforesaid Rules, 1991 have the force of law as the same were framed in due observance of the procedures prescribed u/s 106 of the said Act.

3. The Rule 14(b) of the said Rules, 1991 which is the particular rule for the present purpose reads as under:-

Rule 14(b) :- The council may appoint Primary Teachers with the approval of the Director on compassionate ground in the following cases wherein the opinion of the council, the cases deserve compassionate consideration.

.....

(b). When a Primary Teacher is declared permanently incapacitated by the competent medical board set up according to the procedure laid down in the Government order and he has been allowed to retire at least two years before he attains the age of superannuation and his family is in extreme economic hardship after such retirement. (1) the unemployed wife, or (2) the unemployed son, or (3) the unemployed unmarried daughter, of the incapacitated and prematurely retired Primary Teacher possessing the required as laid down in sub rules (a) and (b) of rule 6, educational qualifications/and found eligible to teach, may make within two years from the date of such retirement, a prayer in writing to the council for appointment as Primary Teacher on compassionate ground:

Provided that only one member of the family of the incapacitated and prematurely retired Primary Teacher possessing the required educational qualifications and found eligible to teach, may be appointed on compassionate ground.

4. The only Government order issued in this regard as referred to by Mr. Asoke Maity, learned Advocate for the respondent council is the Memo No. 176-Edn(p)/4A-9/88 dated Calcutta the 22nd April, 1988 which reads as under :-

"In supersession of the G.O. No. 1176-Edn(P) dated 23.8.79 and also all other previous Government Orders on the subject mentioned above, the undersigned is directed by order of the Governor to say that the Governor is pleased to order that the benefit of employment on compassionate ground be extended to a ward of a Primary School teacher who is permanently disabled or incapacitated for continuing in service subject to the following terms and conditions :-

- (i) The ward shall possess the requisite qualifications for such appointment;
- (ii) The benefit shall be restricted to those Primary School teachers who have not attained the age of sixty years : and
- (iii) The benefit shall not be claimed as a matter of right.

2. The term "Ward" shall mean a son/unmarried daughter/the widow/ the husband of a primary school teacher.

3. The Governor is further pleased to decide that with a view to ensuring prompt disposal of the cases of employment on compassionate ground as aforesaid and also with a view to preventing misuse of the privilege granted in para I, the following procedures should be follows :-

(a) The teacher so disabled or incapacitated should apply in the enclosed proforma to the President of the District School Board concerned in the case of

rural areas and to the District Inspector of Schools (P.E) concerned in the case of urban areas with a certificate from a registered Medical Practitioner indicating therein the nature of ailment that has made the teacher permanently disabled or incapacitated for continuing in service.

(b) On receipt of any such application the President of the District School Board or the District Inspector of Schools (P.E) as the case may be shall refer the case for a report to an Enquiry Committee comprising the members indicated below:

Enquiry Committee for Rural areas

- (i) A member of the District School Board.
- (ii) A member of the Panchayat Samity concerned; and
- (iii) A representative of the District Inspector of Schools (P.E.).

Enquiry Committee for urban areas

- (i) A member of the urban advisory committee concerned;
- (ii) A Commissioner/councilor of the Municipality / Corporation concerned; and
- (iii) A representative of the District Inspector of Schools (P.E.).

(c) The Enquiry Committee will enquire into the genuineness or otherwise of the case and also the financial condition of the family of the applicant and submit a report thereon to the President of the District School Board or the District Inspector of School (P.E.), as the case may be preferably within a period of three months. If the report of the Enquiry Committee testifies to the genuineness of the case, the President of the District School Board or the District Inspector of Schools Primary Education, as the case may be shall send the case to the Chief Medical Officer of Health of the concerned district for a report in terms of the Directorate of Health Services. West Bengal's Order No. HPA/G-505-79/ 103p dated 27.2.80 in case of Calcutta and Howrah Corporation areas, however, the District Inspector of Schools (P.E.) concerned should send the case to the permanent Medical Board at the Calcutta Medical College for a report in terms of the aforesaid Memo, of the Directors of Health Services. W.B.

(d) On receipt of the report from the Chief Medical Officer of Health or the permanent Medical Board, as the case may be, the application along with the report will be forwarded by the President. District School Board concerned or the District Inspector of Schools, Primary Education, as the case may be with their views to the Director of School Education, West Bengal, for according approval to the retirement of the applicant on ground of being permanently disabled or incapacitated for continuing in service. In case a decision is taken to allow the applicant to retire on the aforesaid ground the Director of School Education. West Bengal, on the basis of the reports referred to above, may also approve the proposal for appointment of a ward of the applicant on compassionate ground and in that case the appointment order will be issued by the appointing authority

concerned on receipt of such approval from the D.S.E.

4. All cases of appointment on the basis of his order will be treated as of the exempted category.

5. All concerned may be informed accordingly.

5. In this case the question therefore arises for consideration whether a ward of a Primary School teacher as mentioned in Rule 14(b) of said Rules 1991 would upon proof of all conditions as prescribed thereunder be entitled to a compassionate appointment, where such primary teacher was declared permanently disabled to continue in his service and consequently allowed to retire from his service within two years from the date of his normal superannuation even though such an application was made at least two years before he attained the age of superannuation.

6. The facts which are relevant for the answer of the aforesaid question and are not disputed are as under:-

7. The writ petitioner being a Head Teacher of the Primary School could not function as such since after 17.6.1996 because of his physical incapacity and therefore made an application for being declared permanently incapacitated to continue in his service in the prescribed form and manner on 15.7.1996 along with a prayer for a compassionate appointment in favour of his daughter. The date of birth of the said teacher was on 7.8.1938 and therefore he was due to retire on 6.8.1998 and consequently completed 58 years of his age on 6.8.1996. Thus, he made the above application for premature retirement and for a consequent compassionate appointment at least 21 days and two years before he attained the age of superannuation. In this case the respondents did not dispute the fact of extreme economic hardship faced by the family of the said teacher since after discontinuation of his service as above. By following the prescribed procedure as per the aforesaid Government Order dated 22.4.1988 the said teacher was examined by the Medical Board on 28.2.1997 who found him to be permanently incapacitated to continue in his service. The Director of Health forwarded the said finding to the respondent Council on 19.3.1997. The respondent Council by the impugned order dated 3.4.1997 held that since the said teacher was declared permanently disabled by the Medical Board on 20.2.97 i.e., within two years before his superannuation so in view of said Rule 14(b) of the Rules, 1991 his daughter would not be entitled to a compassionate appointment.

8. Mr. Asoke Maity, learned Advocate for the respondent Council put much stress on the language of Rule 14(b) and contended that a compassionate appointment will ensue only in the event of a teacher being allowed to retire at least two years before he attains the age of superannuation. Alternatively Mr. Maity, placed his reliance upon paragraph 3(c) of the aforesaid Government Order dated 22.4.1988 and contended that since on such an application an enquiry by a committee comprising of the members as mentioned thereunder is a must and a

time limit of three months has been provided for making an enquiry thereto by the said Enquiry Committee and for submission of a report thereof, so unless an application for premature retirement on such ground is made at least two years three months before attaining the age of superannuation, the benefit of a compassionate appointment in favour of a ward as per Rule 14(b) of the said Rules, 1991 will not be available.

9. Upon reading of the aforesaid Rules and the procedures as laid down by the said Government Order it is clear that once the genuineness of the case is found by the Enquiry Committee and the permanent disablement is established by the medical report, then there is no scope for denial of premature retirement of the applicant and consequent approval of the proposal for appointment of a ward of the applicant on compassionate ground. Therefore, the genuineness of the case both in respect of permanent disablement of the applicant to continue in his service and the extreme financial hardships faced by the family of the applicants are the relevant consideration for a compassionate appointment. There cannot be consideration of any other matter such as the time consumed for making such considerations. The basic object underlying the provisions of 14(b) of the said Rules of 1991 is to allow the applicant to retire on the ground of his permanent disablement to continue in his service and to provide a compassionate appointment to his ward if he is so permanently disabled at least two years before he attains the age of superannuation. It is not the purpose of the said provision that even if an applicant is permanently disabled at least two years before he attains the age of superannuation then also the authority may not allow him to retire or may allow him to retire anytime thereafter within two years of his retirement. Because such meaning would be devoid of concept of purpose.

10. Again the aforesaid Government Order dated 22.4.1988 was by way of executive direction. Even assuming that such executive direction was issued in terms of Article 166(2) of the Constitution of India then also the same laid down the manner in which the application for premature retirement is to be considered. The said procedures therefore do not have the force of law as that of the Rules, 1991 which has the character of a legislation as the same was placed before the State Legislature pursuant to the provisions of sub-section (3) of section 106 of the said Act, 1973. The said executive direction was therefore supplemental in nature in relation to the mode and manner in which the said application for premature retirement is required to be considered. The same cannot have the effect of supplanting the period of two years by two years and three months in the said Rules of 1991. That apart the Rule 14(b) of the said Rules of 1991 is a substantive rule which specified the right to make an application two years before attainment of the age of superannuation and is in the nature of a beneficial legislation. The benefit of such legislation cannot be taken away by any executive direction which is procedural in nature.

11. In the views as aforesaid and in the facts and circumstances of this case I set aside the impugned order dated 3.4.1997 passed by the Chairman, Ad-hoc

Committee, Midnapore District Primary School Council so far as it related to the benefit under 14(b) of the said Rules of 1991. I accordingly hold that the petitioner is entitled to the benefit of Rule 14(b) of the said Rules of 1991 on the basis of his application dated 16.7.1996 and consequently the benefit of a compassionate appointment in favour of his ward as classified in the said Rule. Such compassionate appointment in favour of his ward shall be made by the respondent Council by treating the said ward in the panel of such candidates as on 15.7.1996. The writ petition is thus allowed.

If urgent xerox certified copy of this order is applied for by the parties, the same should be given expeditiously.

12. Petition allowed