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**(1998) 12 CAL CK 0005**  
**In the Calcutta High Court**

**Case No :** Constitutional Writ Jurisdiction W.P. No. 15645 (W) of 1998

Susanta Paine

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 18-12-1998

**Acts Referred:**

Constitution of India, 1950 — Article 21, 226

**Citation :** (1999) 1 CALLT 350

**Hon'ble Judges :** Mahemmad Habeeb Shams Ansari, J

**Bench :** Single Bench

**Advocate :** Mr. P.K. Khanna, S.K. Oli Mahammad, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

M.H.S. Ansari, J.—The instant writ application is filed seeking the substantive relief as under;

"a) A writ in the nature of Mandamus directing the respondents authorities to approve the case of the petitioner for the appointment and to give appointment to the petitioner as primary teacher on compassionate ground under the District Primary School Council, Mldnapore."

2. It is the case of the petitioner that his father died on 29.4.81 leaving behind him his widow, two minor sons Including the petitioner and one daughter in extreme helpless state and distress condition. The petitioner was then mere child of 6 to 7 years. The petitioner's father was at that time in service as an Assistant Primary Teacher of Gumal Sitla Primary Schools within the District of Mldnapore.

3. The petitioner alter having obtained the qualification of Madhyamik pass made an application before the Chairman, Adhoc Committee, Midnapore praying for appointment as an assistant teacher in a primary school on compassionate ground being annexure "A" to the writ application dated 1.10.93. The petitioner was Informed by a letter being Memo. No. 3167 dated 17.8.94 that as per the letter being 1409 SC dated 21.7.84 of the Director of School Education,

respondent No. 3 the prayer of the petitioner for appointment on compassionate ground has been rejected for the reason that the application was made after the lapse of 13 years. The petitioner thereupon filed a writ application being C.O. No. 16394(W) of 1995 which was disposed of by an order dated 23.4.96 granting liberty to the petitioner to make further application to the concerned authorities which was directed to dispose of the same within 8 weeks from communication of that order. No copy of the order passed in writ application No. 16394(W) of 1995 has been placed on record by the petitioner but in the writ application, it is stated that the direction was to the effect that the authority will not take into account the previous rejection order as well as its grounds for such rejection.

4. The petitioner states that in pursuance of the said direction, an application was made on 4.5.96 and by a letter being Memo. No. 1487/LA dated 25.6.96, the petitioner was called for hearing in the chamber of the Chairman, Adhoc Committee and after having heard the petitioner the matter was disposed of by him by an order communicated to the petitioner on 26.9.96, being annexure "G" to the application.

5. In paragraph 14 of the petition, it is stated that having got no response from the Director of School Education, a further writ application was moved by the petitioner being W.P. No. 1143(W) of 1997. which was disposed of on 17.9.97 with a direction to the authority concerned to dispose of the representation within 8 weeks from the communication of such representation. It is also stated that the petitioner was directed to make fresh application/representation to the Director of School Education. The grievance of the petitioner is that in spite of such application dated. 8.11.97, no steps have been taken by the concerned authority in connection with the prayer of the petitioner.

6. In paragraph 15 of the writ application, it is stated that on enquiries made by the petitioner from the office of the council, he has come to know on 4.1.98 that the representation was rejected by the Director of School Education (Primary). The petitioner has thereupon filed the present writ application.

7. It is the contention of the petitioner as reiterated before court by his learned advocate that the previous order of the Director of School Education dated 21.7.94 which was communicated by the Chairman, Adhoc Committee was quashed by this court and, therefore, the petitioner is entitled to be given appointment on compassionate ground.

8. As to the ground of delay in submission of the application for appointment on compassionate ground, it is the contention of the petitioner that the High Court in its previous order was pleased to condone the delay and granted liberty to the petitioner to make fresh application.

9. It is further submitted that the action of the respondent authorities in not issuing appointment letter in favour of the petitioner as an assistant teacher, the said action is Illegal, arbitrary and violative of principles of Article 21 of the Constitution.

10. The learned advocate on behalf of the respondent council drew the attention of the court to the order dated 4.7.96 passed by the Chairman, Adhoc Committee, Midnapore District Primary School Council (annexure "G"), wherein it has been observed as under:

"It appears from record that his father died on 29.4.81 and as he died in service on 29.4.81 there was a scope to consider the case of appointment of ward of the petitioner's father on compassionate ground. But no case for appointment of ward in place of said deceased teacher was received by the erstwhile District School Board, Midnapore now converted to District Primary School Council, Midnapore, under the provisions of the new act namely the West Bengal Primary Education Act, 1973, within the stipulated period for submission of such claim for absorption of ward who died in harness, i.e., within two years from the date of death of the teacher. It reveals that the petitioner was not qualified at the relevant point of time and he was minor at that time, his date of birth being 26.12.74. He passed Madhyamik Examination in the year 1992 i.e., long after the death of his father on 29.4.81. The petitioner being adult and qualified in the year 1992 applied before the council to consider his case of appointment as teacher in place of his father who died in harness on 29.4.81. Although there was no scope of the council to consider his case as the claim was not placed before the council within the stipulated period of two years from the date of death of the deceased teacher, his case was recommended sympathetically to the Director of School Education, West Bengal for approval as without any approval of the Director, the council cannot appoint any teacher on compassionate ground in place of his deceased father in terms of Rule 3D as notified by the Government Notification No, 713-Edn (P) dated 11.9.80. But the Director by his office memo. No. 1409-Sc/P dated 21.7.94 did not approve his case on the ground that the teacher died on 29.4.81 and his proposal for appointment of ward cannot be considered after lapse of more than 13 years from the date of death of the teacher and accordingly, the council communicated the decision of the approving authority by this Office Memo. No. 3169 dated 17.8.94."

11. In his said order, the Chairman has observed that the council cannot appoint any teacher and when the approving authority has disapproved the case of the ward, the council can only transit the case of the petitioner to the approving authority for reconsideration of the case and thereby disposed of the representation.

12. It was further submitted by the learned Advocate for the respondent council that the petitioner is not eligible in law for being afforded appointment on compassionate ground after undue lapse of time and delay.

13. It must be stated here that appointments in the died-in-harness category, a circular letter issued by the Secretary to the Govt. of West Bengal being No. 1008-Edn (P) dated 14.9.97 states that the Governor is pleased to order that when Primary School Teacher dies-in -harness, one ward of the teacher may be given appointment to the post of a primary school teacher against a suitable

vacancy provided the ward fulfils the qualification for such appointment.

14. In continuation of the said G.O. No. 1008-Edn (P) dated 14.9.97, the time limit for submission of application for providing employment to the wards dying in harness in primary schools was prescribed as two years from the date of death of the teacher concerned. It was specifically stated therein that the application receipt after expiry of the aforesaid time limit need not be considered.

15. Subsequently, by another G.O. No 457-Edn(P) 4A-50/83 dated 2.10.97 fresh directions were Issued in supersession of all previous orders with regard to the appointment on compassionate ground of the wards of teachers and non-teaching employees of all recognised Non-Government Educational Institutions who die-in-harness". Elaborate procedure has been prescribed therein for consideration of the cases for appointment on compassionate grounds.

16. From the narration of facts, it is apparent that the petitioner's father died on 29.4.81 while in service. The petitioner was then a minor age about 6/7 years. He made the application on 1.10.93 after attaining the age of majority and after qualifying himself by" passing Madhyamlk Examination. There was a lapse of 13 years from the date of death of the petitioner's father and the petitioner making the application after attaining the age of majority.

17. Pursuant to the directions of this court referred to supra, the matter was considered by the competent authorities and rejected on the ground of delay.

18. The only question for consideration in the present application is whether the relief as prayed for can be granted to the petitioner after lapse of over 13 years when the application was made from the date of death of the erstwhile employee.

19. The aspect as to the belated claims of the heirs of deceased ex-employees was considered by the Supreme Court in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, After referring to the judgments of the Supreme Court in the case of Umesh Kumar Nagpalv. State of Haryana, reported in Umesh Kumar Nagpal Vs. State of Haryana and Others, and Jagdish Prasad Vs. State of Bihar and Another, . the Supreme court held as under;

"It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, it Intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this court in Jogdish Prosod case. It has been also Indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

20. In that case, the Supreme Court set aside the judgments of the High Court which were subject matter of appeal before it, whereby the High Court had

proceeded on the footing that compassionate appointment to achieve its purpose cannot be restrained within the time frame of three years and if assistance to the members of the deceased employee is required to be given, the family member must necessarily attain majority and then become eligible to apply for getting appointment. The Supreme Court observed that the decision of the High Court cannot be sustained.

In the light of the above authoritative pronouncement of the Supreme Court, the present writ application is liable to be dismissed and is accordingly dismissed, however, without any order as to costs.

21. Application dismissed