

(2010) 03 CAL CK 0019

In the Calcutta High Court

Case No : M.A.T. No. 1086 of 2009 and C.A.N. No. 9359 of 2009

Syed Iftikar Ali

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Citation : (2011) 2 CHN 17

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Ekramul Bari and Tanuja Basak, for the Appellant; Shanti Das and Amar Mitra for State and Sk. Kamal Uddin, for the Respondent

Judgement

1. This stay application has been filed in connection with the appeal preferred from the order dated 17th August, 2009 whereby and where under a learned Judge of this Court finally disposed of the writ petition by directing the District Inspector of Schools (Primary) as well as the Director of School Education, West Bengal to consider the prayer for compassionate appointment of the widow of the deceased teacher at an early date.

2. The learned Advocate of the Petitioner submits that the proposal for appointment of the son of the deceased teacher viz., the Appellant herein on compassionate ground was forwarded by the Chairman, Hooghly District Primary School Council to the Director of School Education, West Bengal on 5th November, 2007 for according necessary approval.

3. The Director of School Education, West Bengal, however, refused to approve the aforesaid proposal for appointment of the Appellant herein since the said Appellant attained 18 years of age after six years from the date of death of the teacher concerned. The aforesaid fact has also been specifically mentioned in the office memorandum issued by the Chairman, Hooghly District Primary School Council under memo dated 11th June, 2009. The relevant portion of the aforesaid office memo is set out hereunder:

Petitioner No. 1 is the son and Petitioner No. 2 is the widow of Syed Enam Ali since deceased, who was an Assistant Teacher of Aniya Junior Basic Primary School, P.S. Chanditala under Chanditala North Circle, who died-in-harness on 24-7-1996. After the death of the said teacher Petitioner No. 2 made application for her compassionate appointment in any post but subsequently she surrendered her claim in favour of Petitioner No. 1 due to her ill health. The proposal for appointment of Petitioner No. 1 on compassionate ground was forwarded to the Director of School Education, West Bengal, on 05-11-07, for approval. The Director of School Education, West Bengal vide his memo. No. 54-SC/P dated 15.01.2009, gave an order stating that proposal for appointment of Syed Iftikar Ali, S/O late- Enam Ali cannot be approved since the candidate reached 18 years of age after 6 years (approx.), from the date of teacher's death.

In view of the facts stated above, the prayer of the Petitioner cannot be considered.

4. There is no dispute that the widow of the deceased teacher applied for compassionate appointment within the prescribed time limit Pending disposal of the said application by the concerned authorities, the said widow surrendered her claim in favour of her son due to her ill health and requested the concerned authority to give appointment to her said son on compassionate ground.

5. There is also no dispute that the Chairman, Hooghly District Primary School Council sent the proposal to the Director of School Education, West Bengal for appointment of the son of the deceased teacher viz., the Appellant herein on compassionate ground. The Director of School Education, West Bengal refused to approve the said proposal only on the ground that the said son of the deceased teacher attained 18 years of age after lapse of six years.

6. Mr. Bari, learned Counsel referred to and relied on the decision of the Hon'ble Supreme Court in the case of Syed Khadim Hussain v. State of Bihar and Ors. reported in 2006 (9) SCC 195, wherein the Hon'ble Supreme Court considered the identical issue as hereunder:

As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the Government service. In our opinion, this is a fit case where the Appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the Appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the Respondent authorities to consider the application of the Appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs.

7. Considering the aforesaid decision of the Hon'ble Supreme Court, we are also of the opinion that in the present case, the Director of School Education, West

Bengal should not have rejected the proposal for appointment of the Appellant herein on the ground that the said Appellant reached 18 years of age after six years from the date of death of the teacher concerned without appreciating the fact that the Chairman, Hooghly District Primary School Council sent the proposal for appointment of the Appellant on compassionate ground in view of the special fact that the widow of the deceased teacher claimed appointment on compassionate ground within the time limit and pending consideration of such claim the said widow surrendered her claim in favour of the Appellant herein due to her ill health. Furthermore, the authorities concerned failed to consider the claim of the widow of the deceased teacher for appointment on compassionate ground even though appropriate application/representation was submitted by the said widow within the prescribed time limit.

8. Let it also be on record that apart from the aforesaid ground, no other reason was furnished by the Director of School Education, West Bengal for rejecting the proposal of the Chairman, District Primary School Council for appointment of the Appellant on compassionate ground.

9. For the aforementioned reasons, we modify the order under appeal passed by the learned Single Judge by directing the Director of School Education, West Bengal to approve the proposal of the Chairman, Hooghly District Primary School Council dated 5th November, 2007 for appointment of the Appellant on compassionate ground at an early date but positively within a period of two months from the date of communication of this order.

10. With the aforesaid modification, this application stands disposed of.

11. In view of the aforesaid order, no purpose will be served in keeping the appeal pending.

12. Therefore, by consent of the parties the appeal is treated as on day's list and disposed of accordingly.

13. In the facts of the present case, there will be no order as to costs.

14. Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.