

**Ajoy Kumar Basu Vs. the State of West Bengal and ors.**

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**Court :** Kolkata

**Decided On :** Jun-13-2002

**Reported in :** (2003)1CALLT144(HC),[2002]255ITR407(Cal)

**Judge :** Pratap Kumar Ray, J.

**Acts :** [Constitution of India](#) - Articles 14, 21 and 226; ;Recruitment and Leave Rules, 1991 - Rules 6 and 14(1); ;West Bengal Primary Education Act, 1973 - Section 106

**Appeal No. :** C.O. No. 6347(W) of 1996

**Appellant :** Ajoy Kumar Basu

**Respondent :** The State of West Bengal and ors.

**Advocate for Pet/Ap. :** S. Bhattacharya, Adv.

**Disposition :** Application dismissed

**Judgement :**

**P.K. Ray, J.**

1. Heard the learned advocate appearing for the parties. In the writ application, the petitioner prayed for the following reliefs:--

'(a) A writ in the nature of Mandamus directing the respondent No. 3 to issue appointment letter to the petitioner on compassionate ground which would be approved by the respondent No. 2 forthwith.

(b) A writ in the nature of Certiorari calling upon the respondents to produce all original records connected with the same so that the conscionable justice may be done.'

2. It is the case in the writ application that the petitioner's mother was working as School teacher in primary school under the District Primary School Council, Malda breathed her last on 19th May, 1993 leaving behind his father, himself and another brother. It is an admitted fact in the writ application that the petitioner's father was working in the post of clerk-cum-typist under the Executive Engineer, PWD, Malda on the basic pay of Rs. 1795/- at the relevant time. Petitioner's application praying appointment on compassionate ground since was kept pending, the petitioner moved the matter in the writ Court in C.O. No. (number not stated) wherein Altamas Kabir, J. by the order dated 21.9.94 directed the concerned District Primary School Council to take steps on the issue in question. In pursuance thereof the District Primary School Council forwarded the matter to the Director of School Education, West Bengal. At this juncture the petitioner came against in this writ Court in C.O. No. 8441(W) of 1995 when the same was disposed of by the order dated 31st July, 1995 passed by G.R. Bhattacharya, J. (as His Lordship then was) directing the Director of School Education, West Bengal to consider the matter in accordance with law. In pursuance of such, the present impugned decision was reached by the Director of School Education, West Bengal on 10th April, 1996. This writ application is being opposed by the learned advocate for the District Primary School Council though no affidavit-in-opposition has been filed. On a bare reading of the impugned decision it appears that the petitioner's prayer was rejected only on the ground that the petitioner's father was working under the State of West Bengal and accordingly there was no extreme economic hardship in the family. The impugned order the concerned Officer relied upon Government Order No. 457-Edn(P) dated 12th October, 1987, which provides that for providing a job under die-in-harness category condition precedent would be that the family was in distress and in immediate need of assistance. A Rule regulating the Recruitment

and Leave of Teachers in Primary Schools in West Bengal was framed in terms of Section 106 of the West Bengal Primary Education Act, 1973. In terms of the said Recruitment and Leave Rules applicable to the primary teachers the appointment under died-in-harness category has been incorporated under Rule 14(1)(a), which provides as follows:

'14. Appointment on compassionate ground.--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 case deserve compassionate consideration :-

(a) when a teacher dies in harness before the date of his superannuation leaving a family which, in the opinion of the Council shall be in extreme economic hardship.

(1) the unemployed widowed wife, or (2) the unemployed son, or (3) the unemployed unmarried daughter, of the deceased primary teacher possessing required educational qualifications as laid down in Sub-rules (a) and (b) of Rule 6 and found eligible to teach, may make within two years from the date of such death a prayer in writing to the council for appointment as primary teacher on compassionate ground, provided that only one member of a deceased primary teacher's family may be appointed on compassionate consideration;'.

3. This rule was notified on 22nd November, 1991. As soon as a rule came into effect earlier, Government Circular No. 457/Edn. (P) dated 12th October, 1987 became automatically ineffective. Hence, reliance of such Government Order by the Director of School Education, West Bengal was not justified. However, taking into account of the provision of the new rule it appears that only in the case of extreme economic hardship in terms of Rule 14(a) of Recruitment and Leave Rule, the cases for appointment under die-in-harness category would be considered. Since the petitioner's father was already working in a post under the State of West Bengal, accordingly it was not a case in which after untimely death of the petitioner's mother the family had fallen to extreme economic hardship.

4. In that view of the matter, the impugned decision passed by the Director of School Education, West Bengal rejecting the prayer of the petitioner on that

ground that the petitioner's father working at the material time under the State of West Bengal and thereby there was no need of the family, in my view is not an illegal decision, which can be interfered with by this Court by judicial review of the order.

5. However, the petitioner has urged another point in support of his case that other candidates identically placed like the petitioner whose names have been stated in paragraph 8 were given appointment. The petitioner accordingly submits that the petitioner was discriminated in the matter of treatment identically. Providing job to the other candidates, who are identically situated like the petitioner, namely, the situation where one of the parents in service, ipso facto cannot be ground to seek a job under die-in-harness category. It is a settled legal position now that identical treatment for identical cases is not a principle as would be viewed in the negative angle but it has a positive concept where in person concerned seeking relief on application of the said principle must prove his legal right first and thereafter the question of discrimination would be considered. Reliance may be placed to the judgment passed in the case of Gurusaran Singh v. N.D. Municipal Committee, reported in : [1996]1SCR1154 as well as the decision passed in the Apex Court in the case of Urmila Debi v. State of Bihar, reported in 1999 SCC (Labour and Service) 642. In both the aforesaid two cases the Apex Court held that the principle of identical treatment of identical cases is nothing but a species in terms of Article 14 of the Constitution and the concept is a positive concept wherein unless and until the parties satisfies legal right to obtain an order, cannot bank upon simply on the illegalities as made by the other authorities by providing relief to some other persons. Having regard to such settled legal position the petitioner accordingly is not entitled to get any relief herein even if the authorities concerned provided job illegally to some other candidates, who are identically placed like the petitioner. Since the petitioner has no legal right to claim job under compassionate ground in terms of Rule 14(1)(a) of the Recruitment and Leave Rules applicable to the Primary school teachers wherein a condition precedent for providing job under die-in-harness category has been stipulated as only in case of extreme economic hardship of the family and when the petitioner's father is working in a post under State of West Bengal, accordingly by no stretch of imagination it can be said that the family is in extreme hardship.

6. In that view of the matter, I am not inclined to interfere with the impugned decision.

The writ application accordingly stands dismissed with a cost of 100 gms., which to be paid by the petitioner to the District Primary School Council within one month.

Let urgent xerox certified copy of this order, it applied for, be given to the learned advocates appearing for the parties expeditiously.

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