

23.07.2021
SL No. 3
Court No. 24
(P.M.)

WPA 2658 of 2019

**Tapati Sen
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Shyamal Kumar Das,
Ms. Smita Pal
... for the petitioner

Mr. Naren Ghosh Dastidar,
Mr. Bipin Ghosh
... for the State

The petitioner prays for compassionate appointment. Her father was an employee of Dinabandhu Mahavidyalaya who died in harness on 4th May, 2004. The petitioner made an application praying for providing appointment on compassionate ground in the died-in-harness category. The college authority upon considering the financial status of the petitioner permitted her to join as a temporary employee of the college on 1st August, 2004. The petitioner is in service till date.

The college authority forwarded all the documents in connection with the appointment of the petitioner to the Director of Public Instruction by a communicating letter dated 14/27.09.2004 and followed the same by giving reminders.

The case of the petitioner was not considered by the Director of Public Instruction. The petitioner approached

this Court by filing a writ petition being W.P. No. 4871 (W) of 2017 which was disposed of by this Court by order dated 18th June, 2018 whereby the Court directed the Director of Public Instruction to take a decision in the matter. The Director of Public Instruction by an order dated 2nd November, 2018 rejected the prayer of the petitioner. The same is impugned in the instant writ petition.

The ground taken by the Director of Public Instruction to reject the prayer of the petitioner primarily is that there is no existing Scheme of the Higher Education Department, Government of West Bengal under which the benefit of appointment on compassionate ground can be extended to the legal heir of a deceased non-teaching employee of any government aided college.

Reference has been made to a government order being G.O. No. 690 Edn (CS) dated 22nd August, 2014 wherein it has been directed that proposal for compassionate appointment of deceased family members of non-government college employees should not be referred either from Directorate office to department or from College to Directorate office until a policy in this regard is adopted by the Government.

The impugned order further records that the Hon'ble Court directed the claim of the petitioner to be considered in the light of the Rules/Regulations prevailing at the time of death of the petitioner's father.

It was observed that at the material point of time there was no such Scheme/Rules/Regulations lying with the department under which the benefit of appointment on compassionate ground can be extended to the legal heir of a deceased non-teaching employee of any government aided college.

The Director of Public Instruction admitted that the employer college was affiliated to the University of Calcutta on the date of death of the petitioner's father and the Calcutta University Statutes has a provision for appointment on compassionate ground, however, in absence of specific scheme or procedure in the Statutes in this regard such provision cannot be given prevalence.

The learned advocate appearing for the petitioner submits that Director of Public Instruction misinterpreted the order passed by the Hon'ble High Court. It has been submitted that the petitioner's case ought to have been considered on the basis of the Rules/Regulations of the college on the date of death of the employee. The date when the father of the petitioner died, the college was affiliated to the University of Calcutta, which admittedly has a provision for providing appointment on compassionate ground to the heir of the deceased employee.

Reliance has been placed upon an unreported order of a co-ordinate Bench of this Hon'ble Court dated 29th July, 2015 passed in W.P. No. 17159 (W) of 2015 (Manas Das Vs. The State of West Bengal & Ors.) wherein a similar issue

was decided by the Court. The Court was of the opinion that the claim for compassionate appointment needs to be considered on the basis of the Rules and Regulations which were operative on the date of death of the concerned employee.

The learned advocate representing the State respondents submits that compassionate appointment cannot be granted without a proper scheme. As there is no scheme of the Government of West Bengal and in view of the aforesaid Government Order No. 690 Edn (CS) dated 22nd August, 2014 there is no scope for granting compassionate appointment to the petitioner. Prayer has been made for rejecting the claim of the petitioner.

I have heard the submissions made on behalf of both the parties.

It is an admitted fact that the day when the father of the petitioner died-in-harness the College where the employee was working was affiliated to the University of Calcutta. The Calcutta University First Statutes has a provision for providing appointment on compassionate ground to the heir of the deceased employee. The college after considering the financial status of the petitioner provided appointment to her on temporary basis to tide over the financial crisis faced by the family on the death of the employee. The petitioner is serving the College since 1st August, 2004.

The college authority forwarded all the required documents in connection with the service of the petitioner to the Director of Public Instruction way back in September, 2004. The Director of Public Instruction simply sat tight over the matter. The college gave reminders seeking permission for approval of the service of the petitioner, which also fell on deaf ears. The petitioner continues to work as a temporary employee of the college on and from 2004 till date.

Prayer for providing appointment on compassionate ground ought to be considered at the earliest as the very purpose of providing compassionate appointment is for tiding over the financial crisis which the family faces on the death of the bread earner. The Director of Public Instruction ought not to have kept the matter pending and compelled the petitioner to approach the Court for relief. Had the authority decided the matter with promptitude, there would have been no occasion on the part of the petitioner to approach the Court and the issue of non-availability of the scheme would not have arisen.

The Court by order dated 14th June, 2018 directed the Director of Public Instruction to consider and dispose of the claim of the petitioner relying upon the principles laid down in the case of Manas Das (Supra). The Director though considered the case of the petitioner, but failed to appreciate the ratio of the order of Manas Das (supra) and misdirected himself and passed the impugned order by

holding that there is no scheme of the Government, Higher Education Department for providing compassionate appointment.

The Director of Public Instruction failed to consider that the petitioner's case ought to have been considered on the basis of the relevant Scheme/Rules/Regulations which were applicable on the date of death of the employee. As on the date of death of the employee the College was affiliated to the University of Calcutta, the provision for providing compassionate appointment ought to have been considered on the basis of the Calcutta University First Statutes. That not being done, the impugned order dated 2nd November, 2018 cannot stand in the eye of law and is liable to be set aside.

The Hon'ble Supreme Court in a catena of cases laid down that a dispute arising on a particular date ought to be decided on the basis of the scheme which was prevailing at that point of time and not on the basis of a scheme which came into existence at a latter date.

This Court in the matter of Director of Public Instruction, West Bengal & Ors. -vs- Swapna Lahiri reported in 2007 (1) CLJ (Cal) 304 held that the circular issued by the Finance Department, Government of West Bengal, cannot override the specific statutory provision regarding appointment on compassionate ground. The rights conferred by a Statute cannot be curbed or restricted or taken away by issuing any circular.

In view of the above, the order impugned dated 2nd November, 2018 is set aside. The Director of Public Instruction is directed to reconsider the prayer of the petitioner in the light of the observations made herein above and strictly in accordance with the Rules/Regulations, which were prevailing on the date the father of the petitioner expired. Such a decision shall be taken by the Director of Public Instruction at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order.

The Director of Public Instruction shall keep in mind that the petitioner is serving in the College on and from 01.08.2004 till date and shall ensure that all financial benefits, as payable, be approved in her favour in accordance with law.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)