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Ct. No. 04

Akd

F.M.A. 506 of 2021

With

CAN 1 of 2020

Smt. Lakshmi Maiti & Anr.

Vs.

The State of West Bengal & Ors.

Mr. T. P. Halder,

Mr. Jasobanta Rakshit.

... for the appellants.

Mr. Supriya Chattopadhyay,

Ms. Idi Dutta.

... for the State.

Ms. Debjani Sengupta,

Ms. Koyel Bag,

Mr. Abhijit Banerjee.

**... for the Vidyasagar
University.**

The object and purpose underline the incorporation of schemes and/or provisions relating to compassionate appointment is to tide over the dependent from immediate financial crisis faced due to untimely death of an employee in service.

The Framers of the Constitution realized such situation and conceptualized the concept of compassionate appointment. There are various schemes in vogue pertaining to compassionate appointment. Some of the schemes put a barrier or a cap for considering an application for compassionate appointment, which is well accepted and recognized by various Courts of the country. It is not an alternative mode of appointment, but is based on humanitarian and need based aspect, as it has a direct impact on the other eligible candidates, who may be found suitable in the event a recruitment process is initiated as per Rules applicable thereto.

The time has come that the object and purpose of such schemes relating to the compassionate appointment should not be misused nor whittled

down taking hyper-technical plea to achieve the intention of easing the burden on Government exchequer. The authorities must be sensitized, who is competent to take a decision on an application made by the dependent to be considered for appointment under the compassionate ground, that any unreasonable delay in disposing of the said application has a larger impact on the family and their development and growth, which they could have achieved if the employee remains alive.

The situation which the family faced because of the untimely death can never be foreseen nor can be predicted with precision and such immediate crisis is required to be addressed with the sense of humanness and within the framework of Rules applicable thereto.

The present case has projected the insensitivity of the authority in rejecting the claim on a technical ground; more particularly that the higher education department of the Government of West Bengal do not have any scheme relating to the compassionate appointment in Government aided colleges. There is no other ground assigned except the one indicated hereinabove and, therefore, it was not open to the State or the University to take a new point based on the merit before the Writ Court, but must travel on the peripheral of the grounds taken by the authority unless the facts emerged subsequent thereto and strikes at the root of the decision.

However, the Single Bench dismissed the writ petition, as the appellant no. 2 cannot be said to be a dependent of the deceased employee, as she was given in marriage four years preceding the death. In other words, it is held that in absence of any convincing material produced by the appellants that the appellant no. 2 was dependent upon the income

of the father, the application for consideration of appointment on compassionate ground deserves to be dismissed.

None of the Counsels appearing before us has raised any dispute on the entitlement of a married daughter to be considered on compassionate ground. However, the University has taken an exception to such appointment taking shelter under Statute 162 of the First Statute of Vidyasagar University promulgated in the year 1983 that all appointments to the post referred in Statute 160 shall be made by the Governing Body in accordance with such Rules as may be framed for the purpose by the State Government.

According to the University, such being the position and the fact that the Government has not framed any scheme for appointment on compassionate ground, the case of the petitioners is liable to be fail and, in fact, failed because of the decision of the competent authority of the State Government and, therefore, no interference is required in the instant appeal.

However, the State took a stand that apart from four recognized universities other universities established within the State of West Bengal do not have any provision pertaining to the appointment on compassionate ground and, in fact, the Government is in the process of taking a decision whether the aforesaid right can be created in relation to the other universities.

The genesis of Vidyasagar University is traced from the Vidyasagar University Act, 1981.

Section 56(2) of the said Act confers power to frame the Rules or Statutes governing not only the universities set up under the said Act, but also the colleges affiliated to such university. In exercise of

such power the First Statute, 1983 was promulgated on 18th February, 1982. From the notification issued by the Government, it appears that apart from the other constituents one of the constituents for framing the First Statute was a nominee of the State Government and, therefore, it cannot be said to be an internal or a private document concerning affairs of the colleges but the role of the State Government is intricately imbibed therein. Even the authority while rejecting an application for compassionate appointment has not disputed the fact that in all Government aided colleges the role of Finance Department is vital and important and cannot be overlooked. Precisely for such reason the Statute 162 was introduced, which manifests that the appointments to all the post referred in Statute 160 shall be made by the Governing Body in accordance with the Rules that may be framed by the State Government.

Chapter II of the First Statute is dedicated to the terms of employment and the conditions of service of non-teaching employees of the colleges other than the Government colleges affiliated to the University.

Statute 158 makes the position clear that the First Statute shall equally apply to the colleges other than the Government colleges affiliated to the University in relation to the employment and the conditions of service of non-teaching employees of the colleges. In order to eradicate any ambiguity Statute 159 in unequivocal terms indicates that the statute shall apply to the non-teaching employees of the colleges affiliated to the University.

Statute 160 deals with the categories of employees, which is not relevant for the present purpose, as the deceased employee has not been found by the authority to be beyond the ambit

thereof.

Statute 163 contains specific provisions on compassionate appointment and the modalities and mechanism required to be adhered to for such purpose.

It cannot be said from a bare reading of the aforesaid provisions that the First Statute is not applicable to the colleges affiliated to the Vidyasagar University but all the provisions contained therein has with full force and rigor apply to the colleges affiliated to the said University. The First Statute having promulgated in exercise of statutory power conferred therein cannot be said to be a mere executive document but has a statutory flavor and recognition. The statutory document cannot be surpassed nor can be overridden in exercise of administrative fiat.

The stand of the Director of Public Instructions, Government of West Bengal, that the higher education Department has no scheme relating to compassionate appointment is not acceptable nor can be concurred, as the First Statute being a statutory document has a binding force and, therefore, the decision must have been taken within the precinct thereof. The Act duly enacted in exercise of power conferred upon the Constitution by the State has to be respected and implemented with full force. The administrative authority cannot surpass nor can act in contradiction therewith, as every action taken in violation of the statutory provision is susceptible to be interfered with by the Writ Court in exercise of power under Article 226 of the Constitution of India.

Upon assimilation of various provisions of the First Statute, we have no hesitation in our mind that the moment a college is affiliated with a University

the provisions contained in the First Statute have its full force and apply with rigor and the authorities cannot travel beyond the boundaries thereof.

The stand of the University appears to be contrary to the mandate and the purpose for which the First Statute was enacted and, therefore, is not acceptable to us.

Since we have already held that the authority had acted beyond the scope of First Statute or in other words, had not implemented the conditions contained therein, the decision is unsustainable; yet we intend to make observations on the findings recorded by the Single Bench on the basis of the stand of the State Government and University.

As indicated above, the point which has not been taken by the authority at the time of taking decision shall not be allowed to be agitated at the Bar for the first time unless such point emerged subsequently and have a direct or greater impact on the decision. There is no finding of the authority on the merit or demerit of the application including the entitlement of the appellant no. 2 being dependent or not and, therefore, such finding made in the impugned order cannot be sustained.

With the above observations, the impugned order is set aside.

The Director of Public Instructions, Government of West Bengal, respondent no. 2 herein, is directed to reconsider the application on other aspects than one, which has been taken in the impugned order and if the appellant no. 2 is found otherwise eligible in terms of the Statute 163 and the relevant laws applicable thereto, shall dispose of the same by recording proper reasons.

The entire exercise shall be completed within three weeks from the date of the communication of

this order after affording an opportunity of hearing to all the interested persons.

It goes without saying that the findings returned hereinabove are restricted to the point taken by the respondent no. 2 in his order dated 23rd November, 2015 and shall not be construed to have any persuasive effect or impact on the other points if emerged in course of the said hearing.

The instant appeal and connected application are disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)