

12.08.2021
SL No. 77
Court No. 24
(P.M.)

WPA 5567 of 2019

**Smt. Ritu Harijan
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Sakti Pada Jana,
Ms. Ujani Pal (Samanta)
... for the petitioner

Mr. Supriya Chattopadhyay,
Ms. Tapati Samanta
... for the State

The petitioner prays for compassionate appointment under the died-in-harness category. The father of the petitioner died in harness on 25th August, 2010. As the prayer of the petitioner was not considered by the respondents, the petitioner approached this Court by filing a writ petition being W.P. No. 28867(W) of 2017. The Court, by order dated 15th December, 2017, directed the Falakata College to send the petitioner's application for giving appointment on compassionate ground to the Director of Public Instruction, West Bengal and further directed the Director of Public Instruction to take a decision in respect of the petitioner's claim in accordance with law.

The Director of Public Instruction considered the case of the petitioner and has rejected the same by passing a reasoned order on 12th December, 2018 which is under challenge in the instant writ petition.

The reason for rejecting the petitioner's prayer is that since there is no existing scheme of 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 a Government aided college and also that G.O. No. 690 Edn (CS) dated 22.08.2014 debars the Directorate from forwarding any proposal of compassionate appointment to the Department of Higher Education until a policy in this regard is adopted by the Government.

The petitioner has relied upon a reasoned order passed by the Director of Public Instruction on 2nd March, 2021 in respect of one Rakesh Kameth. In the case of Rakesh Kameth the employee concerned died in harness on 9th June, 2010. The prayer of Rakesh Kameth stood allowed by the Director of Public Instruction by holding that the concerned college was affiliated by the North Bengal University at the time of death of the petitioner's father.

Under North Bengal University Statute there is an existing provision for providing appointment on compassionate ground in the died in harness category. When the cause of action arose that is when the father of Rakesh Kameth expired on 9th June, 2010 the college where the employee was serving was affiliated to the North Bengal University and the provisions of the statute of the North Bengal University will be applicable. Relying upon the said principle the prayer of Rakesh Kameth stood allowed.

In the instant case the father of the petitioner expired on 25th August, 2010. The college where he was serving was affiliated to the North Bengal University where the provision for providing appointment on compassionate ground under the died-in-harness category is available.

There is no reason as to why the prayer of the petitioner be disallowed on the ground of absence of a scheme whereas the case of Rakesh Kameth under the same affiliating university has been allowed by the Director of Public Instruction. The father of Rakesh Kameth expired on 9th June, 2010 and the father of the petitioner expired on 25th August, 2010.

It is settled law that in these type of cases, the matter has to be taken into consideration in accordance with the law which was existing on the date of the death of the employee.

Admittedly when the employee expired there was a provision under the North Bengal University for providing appointment on compassionate ground. The Director of Public Instruction ought to have taken into consideration the relevant law on the date the employee expired.

In view of the above, the reasoned order passed by the Director of Public Instruction on 12th December, 2018 cannot be said to be a valid one. The same is accordingly set aside.

The Director of Public Instruction is directed to reconsider the case of the petitioner, strictly in accordance

with law, which was available on the date the employee concerned expired. A reasoned order shall be passed by the Director of Public Instruction at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order. In the event there is nothing adverse in respect of the petitioner then necessary steps shall be taken for providing appointment to him keeping in mind that the petitioner is knocking the doors of justice from quite some time past. As the matter relates to compassionate appointment and immediate assistance is required, unnecessary delay shall be avoided under any circumstances.

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.**)