

23.07.2021
(S/L-20)
Ct.-24
(Susanta)

(Via Video Conference)

W.P.A. 7704 of 2021

Smt. Bebi Pal

-Vs-

The State of West Bengal & Ors.

Mr. Soumyen Datta,
Mr. Debsoumya Basak,
Mr. Sunit Kumar Roy,
Mr. Viswajit Dasgupta,
..... For the Petitioner.

Mr. Gangadhar Das,
Mr. Swarvanu Saha,
... For the Respondent no.3.

Affidavit-of-service filed in Court is taken
record.

None appears on behalf of the State
respondents despite service.

The petitioner prays for compassionate
appointment. Her husband was an employee of
Samsi College who died-in-harness on 7th
February, 2014. The petitioner immediately
applied for being appointed on compassionate
ground in the college under the died-in-harness
category. The petitioner gave reminder to the
college for providing appointment to her. The
case of the petitioner not being considered she
was compelled to approach this Court by filing a
writ petition being W.P. 25330(W) of 2016 (Smt.

Bebi Pal Vs. State of West Bengal & Ors.). The Court by an order dated 21st November, 2016 directed the respondent authorities to consider the case of the petitioner within a specified time.

The Directorate of Public Instruction considered the case of the petitioner and rejected her claim. The petitioner challenged the said order of rejection by filing a further writ petition being W.P. 28056(W) of 2017. This Court by an order dated 4th June, 2018 set aside the order passed by the Directorate of Public Instruction and directed to reconsider the case of the petitioner.

The prayer of the petitioner was once again rejected by the impugned order dated 6th June, 2019 which is impugned in the present writ petition.

The Directorate of Public Instruction observed that there is no existing scheme of the Higher Education 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. Reliance has been placed on G.O. 690 Edn (CS) dated 22nd August, 2014 which directs that the proposals for compassionate appointment of deceased family members of non-Government college employees should not be

referred either from Directorate Office to department or from the college to the Directorate Office until a policy in this regard is adopted by the Government.

The impugned order further mentioned that the family has received a considerable amount of money as death-cum-retirement benefit, enough to maintain a decent standard of living and accordingly compassionate appointment ought not to be allowed in the case of the petitioner.

The Directorate of Public Instruction, however, recorded in the order that the Court directed that the claim of the petitioner ought to be considered in the light of the rules/regulations prevailing at the time of death of the petitioner's husband (wrongly recorded in the impugned order as petitioner's father) and particularly with reference to whether or not her claim is covered by the scheme under the statutes of North Bengal University. Directorate of Public Instruction admitted that the college where the husband of the petitioner was affiliated was governed by the Statutes of North Bengal University on the date of death of the petitioner's husband and the North Bengal University statutes has a provision for appointment on compassionate ground.

The learned advocate for the petitioner has relied upon the Statues of the University of North Bengal which clearly provides for compassionate appointment to the dependent of employee dying-in-harness and the same has also been admitted by the Directorate of Public Instruction in the order impugned.

The learned advocate representing the Samsi College submits that the college is compassionate towards the petitioner but until and unless the Directorate of Public Instruction permits the college to provide appointment to the petitioner they are not in a position to take any step in the matter.

Upon hearing the submission made on behalf of both the parties and upon perusal of the materials on record it appears that the husband of the petitioner expired on 7th February, 2014. On the said date the employer college was affiliated to the North Bengal University. The said University has a provision for providing appointment on compassionate ground to the heir of the deceased. The college was affiliated to the West Bengal State University long thereafter.

The Court specifically observed in the order dated 4th June, 2018 passed in WP 28056(W) of 2017 that the position prior to 15th May, 2015

when the college got affiliated to the West Bengal State University has to be considered in the case of the petitioner. The Court categorically directed to consider the claim of the petitioner particularly with reference to whether or not the claim is covered by the scheme under the statutes of North Bengal University.

The Director of Public Instruction though has admitted that the date on which the husband of the petitioner expired there was a scheme of the North Bengal University for providing appointment on compassionate ground but the Director of Public Instruction thereafter misdirected himself and held that as there was no scheme of the Higher Education Department accordingly the case of the petitioner cannot be considered.

The petitioner has relied upon a judgment of this Court in the matter of Director of Public Instruction, West Bengal & Ors. Vs. Swapna Lahiri reported in 2007(1) CLJ (Cal) 304 wherein the court specifically held that the circular issued by the Finance Department, Government of West Bengal cannot override the specific statutory provision regarding appointment on compassionate ground.

A co-ordinate Bench of this Hon'ble Court by order dated 29th July, 2015 passed in W.P. No.

17159 (W) of 2015 (Manas Das Vs. The State of West Bengal & Ors.) 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 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.

In the instant case the Statute which guided the service condition of the deceased employee provides for compassionate appointment. The respondent authority is precluded from relying on the Government order which came into existence later on, solely with the view to reject the claim of the petitioner. 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 Director of Public Instruction also observed that the family has received considerable amount of money as death-cum-retirement benefit, enough to maintain a decent standard of living. The entire statement is absolutely vague without

the necessary facts and figures. The actual financial condition of the petitioner has not been taken into consideration at all. It is only relying upon the financial benefit extended to the family of the deceased that the claim has been rejected. Director of Public Instruction ought to have come to a specific finding as to whether the financial condition of the petitioner is such that compassionate appointment was not necessary in the case. It is true that compassionate appointment cannot be claimed as a matter of right, but at the same time the prayer of the petitioner cannot be rejected without taking into consideration the proper figures and solely based upon surmises and conjectures.

In view of the observations made hereinabove the impugned order of the Director of Public Instruction dated 6th June, 2019 is liable to be set aside and is accordingly set aside. The matter is remanded back to the Director of Public Instruction to reconsider the prayer of the petitioner strictly in the light of the observations made hereinabove and in accordance with the rule prevailing at the time of death of the employee, at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and

communicate the same to the petitioner immediately thereafter.

W.P.A. 7704 of 2021 is thus, 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.)