

16.03.2022

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Sl. No. 06

Ct. No. 05

WPA 4982 of 2021

[Via Video Conference]

Sumit Sengupta

-Versus-

The State of West Bengal & Ors.

Mr. Saumyen Datta

Mr. Tapas Singha Roy

..... for the petitioner

Mr. Tapas Kr. Mukherjee

Ms. Tuli Sinha

..... for the State

Mr. Rudra Prasad Matilal

..... for the respondent No. 3

The petitioner has challenged an advertisement dated 5th February, 2021 for filling up non-teaching posts in the College. The minimum age prescribed in the said advertisement is 18-40 years. According to learned counsel appearing for the petitioner, the petitioner applied for compassionate appointment after the petitioner's father died-in-harness in 1995 and has been working in the College since 1998 as a casual staff in a Group-D post. The petitioner was recommended for compassionate appointment by the College on 4th August, 2004 when the petitioner was 32 years of age. The recommendation made by the College to the Deputy Secretary, Education Directorate is on

record. The College gave certificate of the petitioner's good conduct and responsibility in 2005. A second recommendation was made by the College to the Director of Public Instruction on 10th September, 2013 when the petitioner was 41 years old. Counsel submits that the advertisement is contrary to the First Statutes of the Calcutta University to which the College is affiliated.

Learned counsel appearing for the College submits that the College did not have any objection to the petitioner's appointment but was unable to take any steps by reason of the inaction on the part of the State respondents.

Learned counsel appearing for the State relies on a Notification dated 25th August, 2017 and Sections 20 and 21 of The West Bengal Universities and Colleges (Administration and Regulations) Act, 2017 which gives overriding effect to the Act notwithstanding any other statutes. Counsel submits that by reason of the said provisions, the First Statutes of the Calcutta University will have no effect.

Upon hearing learned counsel appearing for the parties, this Court is of the view that the stand taken by the State is arbitrary and

unreasonable. The reason for this view is as follows

First, the petitioner applied within two months of the death of the petitioner's father who died-in-harness in 1995 and has been working in the said College since 1998. The State respondents failed to take any steps to respond to the two recommendations made by the College in 2004 and 2013. The petitioner was well within the age limit in 2004 and had crossed one year of the prescribed age limit in 2013. An extract of the minutes of the meeting of the Governing Body of the College held on 29th August, 2013 reiterates the name of the petitioner for compassionate appointment. The documents on the part of the College hence show that the College reiterated its recommendation for appointment of petitioner.

More important, the plea of the Notification dated 25th August, 2017 is of no weight since it is pitted against the First Statutes of the Calcutta University. The 2nd ground of Section 21 of the 2017 Act having overriding effect is also of no assistance to the State since the Act came into force on 22nd March, 2017, as per the Gazette Notification, and would hence have only prospective effect. The recommendation of the

petitioner dates back to 2004 and 2013 when the Act did not even come into force. The Act, which is subsequent in time, cannot take away a right which accrued to the petitioner before the Act came into force.

The proviso to Section 6(a) under Chapter XII of the Calcutta University First Statutes, 1979 makes it clear that recruitment of non-teaching employees shall not apply in cases where on compassionate ground, a wife, son, daughter or dependant of any employee who has died-in-harness is to be offered a job consistent with his/her qualifications. The proviso further indicates that *“he/she shall have precedence over others in the matter of appointment or placement, as the case may be.”* The First Statute of the University makes it clear that the petitioner has to be given precedence in the matter of appointment to the posts advertised by the College in February, 2021. This was evidently not done and the plea that the petitioner has crossed the prescribed age is of little help to the respondents when the petitioner’s recommendation has been pending since 2004 when the petitioner was well within the prescribed age limit.

Since it has been submitted on behalf of the College that the posts have already been filled up, the College as well as the State respondents are directed to consider the petitioner's case on a priority basis and decide on the same within a period of four weeks from date. Needless to say, the College shall proceed on the eligibility conditions as are applicable to the said post. It is also to be noted that there is no delay in filing of the present writ petition since the petition was filed in February, 2021 itself right after the impugned advertisement.

WPA 4982 of 2021 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)