

W.P.A. 27978 of 2017

Mahua Das Paul

-vs-

The State of West Bengal & Ors.

Ms. Saghamitra Nandy

Mr. Anindya Bose

... for the petitioner.

Mr. Jahar Dutta

Mr. Bipin Ghosh

... for the State.

Mr. Amitava Chaudhuri

... for University.

The writ petition pertains to appointment of the petitioner on compassionate ground due to untimely death of her husband, late Arun Kumar Das in harness who was working in the post of Junior Assistant in the department of Chemistry in the University of Kalyani (hereinafter referred to as the “said University”). It appears from page 32 of the writ petition that the husband of the petitioner was brutally murdered on 3rd February, 2015 leaving behind widow, minor female child, old parents and one unmarried sister.

The petitioner is also having educational qualification of M.A. in Bengali from the said University with certificate course on basic computer usage which she obtained in 2011.

In this backdrop the petitioner preferred application dated 16th March, 2015 and subsequently on 28th January, 2016 for obtaining

appointment on compassionate ground. The prayer of the petitioner was considered by the said University and ultimately though petitioner's appointment on substantive basis was not considered by referring to Order No. 491(17)-Edn(U)/1U (B)-41/12 dated 19th May, 2014 of the Education Department, Government of West Bengal but the concerned authority of the University decided to appoint the petitioner as an office assistant/ junior assistant on daily wage basis as per the existing rate of daily wages. On receipt of such letter of the Registrar of the University dated 26th February, 2016 petitioner joined the post of office assistant/junior assistant on daily wage basis and till date she is rendering her service in the said capacity.

On behalf of the petitioner, Ms. Sanghamitra Nandy, learned advocate, submits that petitioner was appointed on daily wage basis since said memo dated 19th May, 2014, as referred to in the letter of the Registrar dated 26th February, 2016, issued by the OSD & Ex-Officio, Assistant Secretary, Higher Education Department, University Branch, says Rules and Regulation for appointment on compassionate ground which are applicable in respect of State Government employees are not automatically applicable for the employees of the State aided universities or non-Government institutions. However, during course of hearing on behalf of the petitioner notice of this Court has been brought to one University Ordinance being No.46(USC) wherein Clause (1) provides as follows:

“(1) In the event of death of a University employee while in service the Vice-Chancellor may, by relaxing the procedure for recruitment to the basic post of non-teaching employees as laid down in U.Ord.42(USC), appoint at his discretion, on compassionate ground, deceased employee’s spouse, son or daughter, as the case may be actually dependent on him against a vacancy in a basic post of non-teaching employees if such dependent candidate possesses the minimum qualifications prescribed for the post and fulfills the requirement of age.”

Upon placing reliance on Clause (1) of the said ordinance of the University being 46(USC) it has been contended that Vice-Chancellor of the said University is empowered to take decision on the claim of the petitioner on compassionate ground on substantive basis, if necessary, on relaxing the procedure for recruitment in the event of death of University employee while in service. It has also been submitted that since petitioner made applications dated 16th March, 2015 and another dated 28th January, 2016 therefore it is within the domain of the Vice-chancellor of the said University to take a decision on the claim of the petitioner for appointment on compassionate ground substantively as per Clause (1) of the said ordinance of the University being No. 46(USC).

Mr. Amitava Chaudhuri, learned advocate, appears on behalf of the said University and has defended the decision of the Registrar of the University as emanates from the letter dated 26th February, 2016. It has been submitted that in view

of said memo dated 19th May, 2014 of the OSD & Ex-Officio, Assistant Secretary, Higher Education Department, University Branch, university thought it fit not to appoint the petitioner on substantive basis and ultimately decided to appoint her on daily wage basis. It is also contended on behalf of the University that after acceptance of such appointment pursuant to letter dated 26th February, 2016 of the Registrar of the said university petitioner is estopped from claiming further benefit by way of grant of appointment on substantive basis.

Mr. Jahar Dutta, learned advocate, is representing the State respondents adopts the submission made on behalf of the said university.

This Court has heard the learned advocates representing the parties and perused the relevant documents available on record as well as the pleadings exchanged by the parties.

After untimely death of the petitioner's husband petitioner was appointed on daily wage basis vide letter of the Registrar of the University dated 26th February, 2016. It is true while appointing the petitioner on daily wage basis concerned authority of the University could not appoint her on substantive basis in view of the Memorandum dated 19th May, 2014 of the OSD & Ex-Officio, Assistant Secretary, Higher Education Department, University Branch, Government of West Bengal. However, it appears from university ordinance no. 46(USC) that a special power has

been conferred upon the Vice Chancellor of the University to take decision on claim of one of the dependent members of the family of the deceased employee who dies in harness, if necessary, upon relaxing the procedure for recruitment. The relevant provision as contained in the said ordinance of the university is quoted above.

In view of such contemplation as contained in Clause (1) of the Ordinance of the University this Court directs the Vice Chancellor of the University, being the respondent no. 4, to take a decision in terms of Clause (1) on the application of the petitioner to be made by her within fortnight from this date. If such application is made by the petitioner within the aforesaid period the respondent no. 4 shall take decision within a period of 8 weeks thereafter after granting opportunity of hearing to the petitioner or her representative and pass a reasoned order which is to be communicated to the petitioner within one week thereafter. At the time of hearing of the issue by the respondent no. 4 petitioner shall be at liberty to rely upon the relevant documents as well as the vacancy position existing as on date.

Needless to observe that such decision is to be taken by the respondent no. 4 in terms of the University ordinance being 46(USC) at page 36 of the writ petition.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)