

WPA 5891 of 2023
Shrimati Binapani Murmu
Vs.
The State of West Bengal & Ors.

Mr. R. N. Mahato,
Mr. P. B. Mahato,
Mr. Dilip Kumar Sadhu,
Mr. Aritra Sankar Roy

...For the Petitioner

Mr. Tapas Kr. Dey

...For the State

Ms. Debjani Sengupta,
Mr. Abhijit Chatterjee,
Ms. Shahina Haque,
Ms. Koyel Bag,
Ms. Jonaki Khan

...For Vidyasagar University

The following facts are not disputed by the parties before this Court. The writ petitioner's husband was an Assistant Professor of Sanskrit at Mahishadal Raj College, Midnapore (East) affiliated to Vidyasagar University. The husband of the petitioner joined his service on July 28, 2014 and unfortunately, he died in harness on November 4, 2018 after rendering about four years and three months of total service. It is also distressing to note that at the time of his death, the husband of the petitioner was only 35 years old and the petitioner herself was 20 years old with a six-year-old daughter. The petitioner by a letter dated January 27, 2021, requested the Principal of the said college to appoint her to a Group "C" post considering her higher secondary qualification. The said

application was rejected by the Principal of the college primarily on two grounds. Firstly, in the absence of any scheme for compassionate appointment, the case of the petitioner could not be considered. Secondly, the belatedly application of the petitioner, approximately after about two years and two months after the husband's death indicated the lack of financial need for the family.

The said order dated November 9, 2021, was challenged by the writ petitioner by filing a writ petition (WPA 430/2022).

This Court, by an order dated June 15, 2022, set aside the said order dated November 7, 2021, and directed the Director of Public Instruction, Government of West Bengal to consider the case of the petitioner for compassionate appointment after hearing her.

In compliance with the said order dated June 15, 2022, the Director of School Education, Government of West Bengal passed an order dated January 2, 2023, rejecting the case of the petitioner for compassionate appointment.

The Director of Public Instruction in the said order impugned dated January 2, 2023, inter alia, held that the Vidyasagar University First Statute, 1983 does not envisage the mode of compassionate appointment/recruitment of ministerial or lower subordinate staff in dying in harness category except a stray reference in the proviso to Statute 163 1 (a). The said authority was of the further view that the Higher

Education Department of the State had not issued any order or circular outlining a scheme for compassionate appointment in a Government aided college. The said authority concluded that the claim for compassionate appointment can only be considered within the scheme framed by the employer for such employment and compassionate appointment cannot be made in the absence of rules and regulations issued by the government or public authority.

Mr. Mahato, learned advocate appearing for the petitioner assails the said order dated November 11, 2021 issued by the Director of Public Instruction, Government of West Bengal on the ground that the first proviso to Statute 163 of the Vidyasagar University First Statutes, 1983 provides for compassionate appointment and therefore, it is immaterial that there is no scheme for compassionate appointment. The right of the petitioner is derived from the Statutes of the university.

He further submits that a Division Bench of this Court has granted a compassionate appointment to a family member of a deceased employee of a college affiliated with the Vidyasagar University based on an examination of the Vidyasagar University First Statutes, 1983. Therefore, the relevant order of the Director of Public Instruction cannot be sustained.

Ms. Debjani Sengupta, learned advocate appearing for the university reiterates the stand of the Director of Public Instruction that since there is no scheme in place

for compassionate appointment, the case of the petitioner cannot be considered. Ms. Sengupta submits that in absence of any scheme, the authority cannot evaluate the factors such as the financial condition of the family or delay in making the application when considering the case for compassionate appointment. Therefore in the absence of any scheme framed by the appropriate authority, the relevant college affiliated with the university cannot be directed to appoint on compassionate grounds in the exercise of writ jurisdiction of this Court.

Mr. Tapas Kr. Dey, learned advocate appearing for the State also aligns himself with Ms. Sengupta. He also submits that without any scheme, the case of the petitioner cannot be considered. Mr. Dey has placed reliance upon a judgment reported at AIR ONLINE 2023 SC 174 (State of West Bengal Vs. Debabrata Tiwari) in which the Supreme Court reversed a judgment passed by a Division Bench of this Court holding, inter alia, that absence of any policy or scheme precludes the consideration of a compassionate appointment. According to Mr. Dey, the application for compassionate appointment must be considered in light of the policy existing on the date of filing.

After hearing all the parties, I am of the view that the Director of Public Instruction has failed to exercise its jurisdiction in considering the case of the petitioner. The petitioner deserves an appointment on compassionate

grounds.

To address the initial issue of absence on policy or scheme, it has to be noticed in the first place that the Vidyasagar University First Statutes, 1983 acknowledges the right to compassionate appointment. Chapter XI of the said statutes deals with the terms of employment and conditions of service of non-teaching employees of colleges other than the government colleges affiliated with the university.

Statute 160 reads :

Statute 160

For the purposes of these Statutes, the employees concerned are classified as follows:

a) Ministerial staff comprising the posts of

i. Office Superintendent, Cashier, Accountant, Head Clerk, Senior Assistant and Senior

Clerk and such other posts as may be approved by the State Government

ii. Assistant, Clerk, Library Assistant, Laboratory Assistant, Store Clerk, Store-Keeper,

Caretaker, Stenographer, Record Keeper, Collection Clerk and such other posts as may be approved by the State Government

b) Lower Subordinate Staff comprising the posts of

i. Driver, Laboratory Attendant, Skilled Bearer, Electrician, Mechanic and Carpenter ; and

ii. Unskilled Bearer, Messenger Peon, Darwan, Night Guard Sweeper and such other posts as may be sanctioned by the State Government from time to time

Statute 162 provides as follows :

Statute 162

Appointments to all the posts referred to 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.

Statute 163 is quoted below :-

Recruitment and Promotion

Statute 163

a) Whenever a permanent vacancy occurs in any of the posts referred to in sub-clause (i) of clause

(a) of Statute 160, such vacancy shall in the first instance be filled up by promotion from amongst the employees holding any of the posts referred to in sub-clause (ii) of clause (a) of Statute 160. In the matter of such promotion, efficiency, seniority including academic qualifications, character rolls and attendance shall have to be taken into consideration. In case no suitable candidate for such promotion is available, such permanent vacancy shall be filled up by direct recruitment in accordance with the procedure laid down for the purpose ;

Provided that the provisions relating to recruitment of non- teaching employees of affiliated colleges as laid down in the foregoing Statutes shall not apply in cases where, on compassionate ground, a wife, son, daughter, or dependant of any employee — both teaching and non-teaching dying in harness is to be offered a job consistent with his/her qualifications. He/she shall have precedence over others in the matter of appointment or placement, as the case may be;

Provided further that the provision mentioned above shall also be applied in case of a college employee who is disabled permanently or otherwise incapacitated rendering him unfit to continue in service, provided this fact of disablement is certified by a medical officer authorized by the Director of Health Services.

b) Wherever a permanent vacancy occurs in any of the posts referred to in sub-Clause (ii) of clause

(a) of Statute 160, in the matter of filling up of such vacancy, the procedure as laid down in these Statutes for direct recruitment shall be followed.

c) In the case of filling up of vacancies in the posts referred to in sub-clause (ii) of clause (a) of Statute 160,

efficient and experienced members of the lower subordinate staff having the requisite qualifications shall get preference over others.

Explanation

A dependant of an employee shall mean husband, wife, son, unmarried or widowed daughter, unmarried or widowed sister, brother, parent provided such relation of the employee is solely dependent on him/her.

A combined reading of Statute 163 and Statute 160 makes it absolutely clear that the posts mentioned in Clause a (ii) of Statute 162 have to be filled through direct recruitment while the posts mentioned in Clause a (I) of Statute 162, must initially be filled up by way of promotion from the feeder posts mentioned in Clause a (ii).

If the said posts cannot be filled up by way of promotion due to lack of suitable candidates, they may be filled up by way of direct recruitment in accordance with the prescribed procedure. The first proviso carves out an exception to the aforesaid mode of recruitment for filling up the posts mentioned in Statute 160. It stipulates that the posts mentioned in Statute 160 may be filled up by granting compassionate appointment to the wife, son, daughter or dependent of an employee consistent with his/her qualification. The said family member should have precedence over others in matters of appointment or placement. In other words, the proviso obliges the authority to offer a compassionate appointment in deserving cases without adhering to the regular

recruitment rules for the posts mentioned in Statute 160. In my reading, the proviso entails of the substantial statutory right to be appointed on compassionate grounds and it cannot be termed as a “stray provision” as observed by the Director of Public Instruction in the order impugned.

When the Statute recognises the right to compassionate appointment, the said right cannot be negated on the specious plea that there is no scheme in place to give effect to the Statute. When the Statute confers a substantial right to appointment, a scheme can only provide the procedural framework to give effect to such right. A scheme typically provides for the procedural aspects related to compassionate appointments, such as the time limit within which an applicant must approach the authority to seek a compassionate appointment, or the financial criteria to ascertain the financial need of the deceased employee’s family. The scheme may also provide for the procedure to form an enquiry committee to assess the financial need of the family. All these are only procedural aspects, only to uphold the recognised statutory right to compassionate appointment.

It is unreasonable to suggest that the authorities will not frame a scheme to give effect to the statutorily recognised right and deny the said right on the ground that there is no scheme in place. The respondents were obliged to frame a scheme to implement such right.

Therefore, I am of the view that the petitioner’s case

should be considered solely on the basis of whether there is an ongoing financial crisis in the family that justifies a compassionate appointment. It is an admitted position that the petitioner's husband died in harness, without the wife receiving any pension. The petitioner or her daughter has not been provided with any family pension as on date since her husband did not have the qualifying service to receive the pension. The petitioner, now a thirty three – year-old widow with a school-going minor daughter, is devoid of any reasonable financial support, such as pension or retirement benefits for herself and her daughter. This crucial aspect has completely been glossed over by the Director of Public Instruction in the order impugned.

I have already held that the petitioner's right to be appointed on compassionate ground stems from the first proviso of Statute 163 of the Vidyasagar University First Statutes, 1983.

In that view of the matter, this writ petition stands allowed. The college shall cause an enquiry to ascertain whether there is existing financial crisis in the family of the petitioner within two weeks from date. If the enquiry report justifies a compassionate appointment, the respondent-college shall recommend compassionate appointment of the petitioner in a position commensurate with her educational qualification and forward all relevant documents to the Director of Public Instructions within one month thereafter. The Director of Public Instructions

shall consider the case of appointment of the petitioner and communicate the decision to the college and the petitioner within two weeks from the date of receiving the documents.

Furthermore, I must observe that despite several consistent orders passed by this Court, the State has been persistently denied the rightful claims for compassionate appointment citing the absence of a scheme.

Such practices should not be allowed to continue indefinitely. Therefore, I also direct the Executive Council of Vidyasagar University to frame a scheme within a period of six months from the date of communication of this order to facilitate the implementation of the first proviso of Statute 163 of the Vidyasagar University First Statutes, 1983. After framing the scheme, the university shall submit it to the Higher Education Department, Government of West Bengal for approval. The Higher Education Department of the State shall approve the scheme with the required modifications, if any, within one month thereafter. Once the scheme is approved by the State, it should be promptly circulated to the university and the colleges affiliated with the university.

Accordingly, **WPA 5891 of 2023** is allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)

LATER

After delivering the judgment, Mr. Tapas Kr. Dey, learned advocate appearing for the State prays for stay of the operation of the order. Such prayer is considered and rejected.

(Kausik Chanda, J.)