

26.6.2023

ap

41

WPA 6527 of 2023

Souvik Sasmal

Vs.

State of West Bengal & Ors.

Mr. Kanailal Samanta

... For the petitioner.

Ms. Debjani Sengupta

Ms. Shahina Haque

Mr. Abhijit Chatterjee

Ms. Koyel Bag

Ms. Jonaki Khan

... For Vidyasagar University.

Mr. Tapas Kr. Mandal

... For the State.

It appears that the father of the petitioner died in harness on January 03, 2019 while holding the post of Laboratory Attendant at Sabang Sajani Kanta Mahavidyalaya, Paschim Medinipur.

The petitioner approached this Court by filing a writ petition, WP 10046 (W) of 2019, seeking compassionate appointment. The said writ petition was disposed of on October 01, 2019, by a Coordinate Bench of this Court with the following directions:

“... Upon hearing the learned advocates appearing for the respective parties and upon considering the materials on record, this Court directs the governing body of the said college to consider the representation submitted by the petitioner on 6th February, 2019 and in the event the petitioner’s claim deserves acceptance, the governing body of

the said college shall take a decision to forward the petitioner's name to the respondent no. 2 within a period of six weeks from the date of communication of this order.

Upon receipt of such decision from the college authorities, the respondent no. 2 shall take a final decision towards grant of compassionate appointment in favour of the petitioner, taking into consideration the memo dated 9th January, 2017 issued by the Deputy Director of Public Instruction and upon granting an opportunity of hearing to the petitioner and communicate the same to the petitioner within a period of four weeks thereafter.

With the above observations and directions, the writ petition is disposed of."

Thereafter, on July 24, 2020, the College issued a letter of appointment to the petitioner appointing him as a Laboratory Attendant. It was mentioned in the appointment letter that his appointment/pay would be fixed upon receiving the instruction from the Director of Public Instruction, West Bengal. The petitioner submits that after his appointment, he made a representation before the Director of Public Instruction, West Bengal claiming regular pay scale against his appointment.

In this writ petition, the petitioner prayed for consideration of his representation dated January 13, 2023.

The State and the University jointly submit before this Court that the college has acted in violation of the order passed in the earlier writ petition. The college could not have issued appointment letter in favour of the petitioner without the approval from the State. Before issuing the letter of appointment, the college should have forwarded all the documents to the Director of Public Instruction, West Bengal seeking his approval for appointing the petitioner on compassionate ground, and only thereafter the college could have issued the appointment letter.

The State further submits that the order dated October 01, 2019, has been carried to an appeal by the State, but till date no order has been passed on the said appeal.

The University further submits though Statutes of the University provide for compassionate appointment, there is no scheme framed by the University.

Though I am of the view that absence of any scheme does not negate a statutory right, I find substance in the submission advanced by the State and the University. The college could not have appointed the petitioner without the approval of the Director of Public Instruction, West Bengal.

The petitioner, admittedly, is working as a Laboratory Attendant on *ad hoc* basis with a meager salary.

Having regard to the nature of controversy in this case, I am of the view that the compassionate appointment of the petitioner should be considered by the Director of Public Instruction, West Bengal.

Accordingly, I dispose of the writ petition with a direction upon the college to forward all the necessary documents to the Director of Public Instruction, West Bengal within a period of one month from the date of communication of this order.

Upon receiving such documents, the Director of Public Instruction, West Bengal shall consider the case of the petitioner for compassionate appointment within a period of one month. In arriving at his decision, the Director of Public Instruction, West Bengal shall hear the college as well as the petitioner. The reasoned order should be communicated to the petitioner within seven days thereafter.

I, however, make it clear that it has been clarified by a number of decisions of this Court that Statute 163 of the Vidyasagar University First Statutes, 1983 provides for compassionate appointment.

The Director of Public Instruction, West Bengal, shall decide the case of the petitioner in the light of that legal proposition.

With the aforesaid observations, **WPA 6527 of 2023** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)