

Item-159.	17-08-2023	MAT 537 of 2023 CAN 1 of 2023 CAN 2 of 2023
sg	Ct. 8	Bikash Kumar Versus The State of West Bengal & Ors.

Mr. Subhrangsu Panda, Adv.
 Ms. Ina Bhattacharyya, Adv.
 ...for Sidho Kanho Birsha University
 Mr. Rudranil De, Adv.
 Mr. Aiswaryya Mukherjee, Adv.
 ...for the petitioner
 Mr. Tapas Kr. Mandal, Adv.
 ... for the State

1. CAN 2 of 2023 is an application for condonation of delay.
 However, from the endorsement of the Stamp Reporter, we find that the appeal is within time. We are in agreement of the observation made by the Stamp Reporter in this regard.
 CAN 2 of 2023, stands disposed of.
2. The appeal and the stay petition are taken up together and disposed of by this common order.
3. The petitioner is the son of Lakshan Chandra Kumar, Typist-cum-Clerk in Netaji Subash Ashram Mahavidyalaya, who died in harness on 8th January, 2012 in the said Mahavidyalaya. The petitioner prayed for appointment on compassionate ground in the died-in-harness category by letter dated 2nd February, 2012. The said letter was addressed to the Teacher-in-Charge of the college. He had followed the required procedure. It seems that the authorities have forwarded the said application to the Director or Public Instructions, West Bengal on 4th April, 2014. The said application was rejected on the ground that the Higher

Education Department of the State Government has no scheme or policy regarding offering appointments on compassionate grounds in Government-Aided Colleges at present. The Labour Department circular dated 3rd December, 2013 was referred to and commented upon as not applicable to the Non-Government and/or State-Aided Colleges.

4. The writ petitioner filed a writ petition challenging the said decision. The learned Single Judge dismissed the said writ application on the ground that Sidho-Kanho-Birsha University as well as by Burdwan University, there is no statutory provision or scheme under the Universities which provides for compassionate appointment.
5. On 19th July, 2023, we directed the Directorate of Public Instructions, West Bengal to file an affidavit in relation to paragraph 6 of the stay petition and provide all details and particulars with regard to appointment, if any made in favour of the heir of the deceased employees as mentioned in the said paragraph.
6. Pursuant thereof, an affidavit has been filed. In the affidavit, it has been, inter alia, stated that there is no existence of any employee by the name of Shankar Kundu. However, in paragraph 12 of the said affidavit in dealing with paragraph 6 of the said petition, it has been stated that compassionate appointment had been extended in three cases namely, Srimanta Sutradhar, Dipak Kandu and Prasanta Kumar Sen in the Achhruram Memorial College affiliated to the Sidho-Kanho-Birsa-University prior to the notification dated 3rd December, 2013. It was further stated that at that relevant

time, there was a policy/scheme for compassionate appointment made applicable for Government aided colleges and Universities.

7. It is not being disputed that when the writ petitioner/appellant filed an application for appointment under the died-in-harness category, there was a scheme in place and it was on the basis of such scheme, three appoints were made, as admitted in paragraph 12 of the said affidavit. There was no delay or laches on the part of the appellant in applying for consideration of his case under the died-in-harness category and it ought to have been considered on the basis of the scheme existing on the date when the said application was made. Although, compassionate appointment is not a vested right but at the same time, it is a right for being considered under the scheme applicable. The object of the compassionate appointment is to enable the relative of the deceased to come out of the financial condition and hardship faced consequent upon the death of the employee.
8. The learned Counsel for the appellant has relied upon a decision of Hon'ble Supreme Court in the case of ***"The State of West Bengal versus Debabrata Tiwari & Ors."*** reported in ***2023 LiveLaw(SC) 175*** to argue that *"in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost."* Accordingly, it is submitted that at this distant point of time, the case of the petitioner could not be considered for compassionate appointment.

9. This is not a reason for which the application for compassionate appointment was denied by the Director of Public Instruction. It is well-settled law that the authority cannot supply a reason which was not mentioned in the order denying the relief. The validity of the order must be judged by the reasons mentioned in the order as held in *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.* reported in *AIR 1978 Supreme Court 851*. The only reason for denying such relief was a later circular which would not be applicable to the writ petitioner by reason of the fact that he applied immediately after the death of his father in accordance with the scheme existed at that relevant time. It is not being contended that under the scheme that was prevalent at that time, he was not the person eligible for being considered.
10. The D.I. is directed to consider the application afresh on the basis of the circular that existed and made applicable in the case of three persons mentioned in paragraph 12 of the affidavit by the Deputy Director of Public Instructions, Government of West Bengal.
11. It is needless to mention that in deciding the said application, the financial condition and other relevant details as mentioned in *Debabrata Tewari* (supra) shall be taken into consideration.
12. Further we make it clear that the delay on the part of the College authorities shall not be a ground to deny such relief as the applicant is in no way responsible for the delay caused in processing the application and also having regard to the

fact that he was eligible under the scheme when he applied and continued to remain so, till the said scheme was recalled.

13. The order of the Director of Public Instructions, West Bengal dated 24th March, 2022 is set aside.

14. The Director of Public Instructions, Government of West Bengal is directed to consider the matter afresh in line of the observations made in this order and also taking into consideration the decision of the Hon'ble Supreme Court in *Debabrata Tewari* (supra) within four weeks from date after giving a reasonable opportunity of hearing to the writ petitioner in person or represented by an advocate and shall communicate its reasoned order to the petitioner within a week thereafter.

15. The College authorities are directed to produce all relevant records before the Directorate of Public Instructions as and when they are called upon to produce such documents.

16. This order shall also be immediately communicated to the College authorities for information and doing the needful.

17. The appeal succeeds. The order under challenge is set aside. The appeal and the stay petition stand disposed of.

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

(Uday Kumar, J.)

(Soumen Sen, J.)