

30.11.2023
SL No.21
Court No.8
(gc)

**MAT 543 of 2023
CAN 1 of 2023**

**Sk. Sanwar Hossain & Ors.
VS
University of Burdwan & Ors.**

Mr. N.C. Bihani,
Mrs. P.B. Bihani,
Mr. A. Mukherjee,
...for the Burdwan University.

1. The appellants are not represented, nor any accommodation is prayed for on behalf of the appellants even in the third call.
2. The appeal is arising out of an order dated 19th January, 2023 in which the writ petitioners have prayed for regularisation of service in the scale of pay available to the other regular Burdwan University employees. The petitioners were appointed on compassionate ground on daily wage basis in the University for the service of one year. However, this period was extended from time to time. The petitioners prayed for their service on compassionate ground should be regularized since the University after appointing them on compassionate ground cannot deny the benefits of regular employees.

3. It has been submitted on behalf of the petitioners before the learned Single Judge that the provisions of West Bengal Act XIV of 1999, namely, the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 for compassionate appointment was placed. The attention of the Court was further drawn to a notification dated 21st August, 2002 issued in exercise of the power conferred under Section 3 of the said Act which, *inter alia*, provides as follows:-

“1. Dependants of employees dying in harness: A solely dependant wife/son/daughter/near relation of an employee who dies in harness leaving his family in immediate need of assistance.

A near relation of the deceased employee may be considered for employment on compassionate ground only when the son/daughter/wife of the deceased employee cannot be considered for employment owing to minor age or other disabilities. In such a case the employment of a near relation of the employee may be considered only for providing assistance immediately

needed by the family left behind by the deceased.”

4. The contention of the petitioners is that the University being a statutory body should apply the notification dated 21st August, 2002. Moreover, it was urged that the petitioners have been working temporarily on a fixed remuneration for a considerable period of time and, therefore, their service should be regularized. It appears that such submission is based on the decision of the Hon'ble Supreme Court in ***Narendra Kumar Tiwari Vs. State of Jharkhand*** reported at **(2018) 8 SCC 238**. Mr. Biani, learned Advocate appearing for the University has submitted that the case of the petitioners for regularization was forwarded to the State and in response thereof it has been communicated that there is no order or scheme for compassionate appointment which may be applied to the University. The circulars and orders relied upon by the petitioners are applicable to the State Government employees only. The learned Counsel for the State appears to have submitted before the learned Single Judge that the appointment of the petitioner was void ab

initio and as such they are not entitled to be appointed on compassionate ground. The learned Single Judge on consideration of the provisions of Act XIV of 1999 and more particularly the definition of statutory body as defined under Section 2(11) of the said Act and Section 33 of the Burdwan University Act, 1981 arrived at a finding that the University is authorized to appoint non-teaching staff following the recruitment rules framed by it, the Act XIV of 1999, therefore, does not have any application to the University. The said Act applies to all posts, State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities in West Bengal other than posts which are required to be on the recommendation of the Public Service Commission. Moreover, the definition of statutory body as defined under the Act XIV of 1999 does not include a Government aided university. In **Narendra Kumar Tiwari** (supra), the Hon'ble Supreme Court observed that if the strict and literal effect of the decision in **Uma Devi (3)** case [(2006) 3 SCC 1] is to be

taken into consideration then no irregularly appointed employees of the State of Jharkhand could ever be regularized since the State came into existence only on 15th November, 2000. The said judgment does not apply to the petitioners because of the fact that the petitioners did not complete 10 years of service on the cut-off date of 10th April, 2006 inasmuch as in absence of any scheme, the University cannot be asked to consider the case for appointment on compassionate ground. Further, the petitioners were appointed in the year 2011 and 2012. The petitioners were also not represented to any substantive posts. They have been appointed temporarily at a fixed remuneration for a fixed time.

5. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.
6. The appeal fails.
7. Accordingly, the appeal and the application stand dismissed.
8. However, there shall be no order as to costs.

9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)