

Court No.
06.02.2023

(Item No. 22)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 5902 of 2018

Bandana Dalui
VS
The State of West Bengal & Ors.

Mr. Debabrata Acharyya
Mr. Sital Samnata
.... For the petitioner
Mr. Himadri Sikhar Chakraborty
Mr. K. M. Hossain
.... For the State

The petitioner claimed to be the wife of the deceased employee, namely, **Sunil Kumar Dalui**, who was working as **Laboratory Attendant, Botany** at **Vidyanagar College, South 24 Parganas**. The husband of the petitioner died on September 24, 2015 while in employment. On October 1, 2015 the petitioner applied for a **Compassionate Appointment** for herself for survival of the family of the deceased comprising of the petitioner and a minor child, **Annexure P-8** to the writ petition. Admittedly the relevant College was an aided but not a Government College.

The claim of the petitioner for compassionate appointment was rejected by the impugned order dated **January 9, 2018** passed by respondent No. 2. **Annexure P-10** at **page 30** to the writ petition.

The petitioner had challenged the said impugned decision of the respondent No. 2 rejecting the compassionate appointment claimed by the petitioner through the instant writ petition.

Pursuant to the direction made by the Court respondent Nos. 1 & 2 had filed its affidavit-in-opposition to which the writ petitioner had also filed its affidavit-in-reply. The writ petitioner had also filed supplementary affidavit affirmed on February 13, 2019.

Mr. Debabrata Acharyya, learned advocate appearing for the petitioner submitted that, the Calcutta University under which the relevant College belongs to is governed by its **First Statute** which, inter alia, provided for compassionate appointment. Drawing attention to a proviso to **6(a)** of the said **First Statute** he submitted that, the provisions under the said First Statute duly recognized the compassionate appointment in the facts under which the petitioner applied for. He submitted that, the impugned order dated **January 9, 2018** was also cryptic, non-speaking order which cannot sustain in the eye of law. The said impugned order even does not disclose the reason for not granting compassionate appointment as claimed by the petitioner.

Mr. Himadri Sikhar Chakraborty, learned State counsel appearing for respondent Nos. 1 and 2 referring to **Annexure P-11** at **page 6** to the supplementary affidavit affirmed by the petitioner on February 13, 2019, which was a communication dated **August 22, 2014** issued by the office of the respondent No. 2 to the Director of Public Instruction

submitted that, the proposal for compassionate appointment of deceased family members of non-Government Colleges should not be referred either from the Directorate office to department or from College to Directorate office until a policy in this regard was adopted by the Government. Relying upon this, he submitted that, there was no policy prevailing for granting compassionate appointment to the family members of an employee of a non-Government College. He submitted that, in absence of any such policy no compassionate appointment can ever be granted to anybody and as such the case of the petitioner was lawfully and rightly rejected by the State authority.

Learned counsel further relied a document being **Annexure-A** at **page 11** to his client's affidavit-in-opposition affirmed on March 14, 2019, which also spoke in the same tune that in absence of any policy for compassionate appointment for the deceased family members of an employee of a non-Government aided institutions, no such compassionate appointment could be granted.

In reply, Mr. Acharyya relied upon an order passed by a co-ordinate bench dated **February 24, 2017** passed in **W.P. 25755 (W) of 2015** in the matter of : **Partha Polley Vs. The State of West Bengal & Ors**, and submitted on the basis of the said order of the co-ordinate bench that, the matter

may be remanded back before the respondent No. 2 for a fresh consideration as the order of rejection passed by the respondent No. 2 at **page 30** to the writ petition being a very cryptic and devoid of any reason.

Relying upon a notification placed before this Court issued by the Director of Public Instruction, West Bengal dated **July 20, 2017**, learned counsel for the petitioner submitted that, in view of the said order dated **February 24, 2017** as referred to above, the State authority considered and found that, compassionate appointment was provided for in the First Statute of the Calcutta University and as such directed for granting such an appointment. A copy of the said official communication dated **July 20, 2017** is kept on record.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the out set, the provision of which attention of this Court was drawn to from the First Statute of Calcutta University by the leaned counsel for the petitioner is quoted below:

PROMOTION

“6.(a) Whenever a permanent vacancy occurs in any of the posts referred to in Sub-Clause (i) of Clause (a) of Statute 3, 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 3. In the matter of such promotion, efficiency, seniority including

academic qualifications, character tolls 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 provision 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 authorised by the Director of Health Services.”

On a true and proper construction and meaningful reading of the provision quoted above it appears to this Court that, the provision as referred to by the learned counsel for the petitioner from the First Statute of Calcutta University relates to promotion and the proviso made it clear that, the provision relating to recruitment of non-teaching employees of an affiliated Colleges as laid down in the foregoing statutes shall not apply in case where, on

compassionate appointment, a wife, a 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 qualification. He/she shall have precedence over others in the matter of appointment or placement, as the case may be. This Court is of the firm view that, such provision of the First Statute of Calcutta University did not and does not speak for causing any compassionate appointment even in absence of a relevant scheme framed by the State prevailing on the issue for granting compassionate appointment. This provision had got nothing to do with the appointment on compassionate ground but it dealt with the provisions for promotion of an employee and how the compassionate appointee shall be treated in case of such promotion. This provision would render no assistance to the writ petitioner.

On a close scrutiny of the impugned order it is true that, the same is very cryptic in nature but it had recorded its own reason as to its inability to consider the case of the petitioner in view of a Government order bearing **G.O. No. 690-Edn(CS) dated August 22, 2014**. The said Government order dated August 22, 2014 is disclosed by the petitioner through its supplementary affidavit as **Annexure P-11**, at **page 6** thereto. The said Government order specifically spelt out that proposals for compassionate

appointment of deceased family members of **non-Government Colleges** should not be referred either from Directorate Office to department or from the College to Directorate office **until a policy in this regard is adopted by Government**, this clearly demonstrated the reasons for not allowing the claim of the petitioner for compassionate appointment by the respondent No. 2 while passing his impugned order dated January 9, 2018.

In so far as, the order of the co-ordinate bench dated **February 24, 2017** passed in **W.P. 25755 (W) of 2015** was concerned the same merely directed the State authority to consider the issue afresh on remand since the order of the authority rejecting the claim for compassionate appointment was very cryptic and the Court thought it fit that the case of the petitioner should be dealt with in detail. Following the said direction the State authority allowed the compassionate appointment on the basis of the sole ground that the Calcutta University First Statute, 1979 had a provision for compassionate appointment.

Be that as it may, this Court has already dealt with the relevant provisions of the First Statute of the Calcutta University as referred to by the learned counsel appearing for the petitioner hereinabove and in view of that, this Court thinks it fit that, the said

Government decision dated July 20, 2017 would have no impact in the facts of this case.

Inasmuch as, it is equally trite that the principal object behind granting compassionate appointment is to support the family of the deceased for its immediate survival in financial distress which has been caused due to sudden and untimely death of the deceased employee. In the facts of this case, the deceased father of the petitioner had died on September 24, 2015 and since 2015 the claim of the petitioner seeking compassionate appointment was pending and ultimately was considered by the said impugned order dated October 10, 2015. Today, we are in 2023. There is no question of imminent survival of the family of the deceased employee by providing a compassionate appointment. The family of the deceased had already survived so long. The compassionate appointment even if is granted it takes effect on and from the date of such grant of appointment and not with any retrospective effect.

The **Relevant Date** for appointment on compassionate ground shall be the date when the applications for the same shall be considered. It is trite that compassionate appointment is not a matter of right neither it is a mode for generating alternative employment. It is a beneficial State policy and the State is not obliged or bound to grant compassionate appointment particularly when no such policy for

such appointment was prevailing at the Relevant Date for consideration of the case of the petitioner.

There was no infirmity in the impugned order dated August 12, 2016 passed by the respondent No. 2. The same stands affirmed.

In view of the foregoing discussion and reasons this Court is of the firm view that this writ petition is totally devoid of any merit.

Resultantly, this writ petition being **WPA 5902 of 2018** stands dismissed.

There shall, however, be no order as to costs.

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

(Aniruddha Roy, J.)