

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 899 of 2022

With

CAN 2 of 2022

The State of West Bengal & Anr.

Through the Secretary, Department of Higher Education

Vs.

Partha Sarathi Manna and Others

For the Appellants : Mr. Amitava Chaudhuri

Mr. Moniruaman

Mr. N. Roy

For the Respondent No. 1 : Mr. Balai Lal Sahoo

Mr. Kaustuv Mishra

For the Respondent No. 4 : Ms. Debjani Sengupta

Ms. Shahina Haque

Ms. Koyel Bag

Mr. Abhijit Chatterjee

Heard On : 03.01.2023

Judgement Delivered On : 13.04.2023

THE COURT:- This instant appeal has been preferred against the Order and Judgment passed by the Hon'ble Single Bench on the 19th day of August, 2021 in writ petition being WPA 5112 of 2019.

By the impugned Judgment and Order the Hon'ble Single Bench was pleased to direct the Director of Public Instruction (hereinafter referred to as DPI) to take prompt steps for providing appointment to the writ petitioner on compassionate grounds in the died in harness category, in consequence of which the appellant/respondent, that is the State, has preferred this instant appeal.

The facts of the present case are that the father of the writ petitioner expired in the year 2007. Thereafter the mother of the writ petitioner submitted an application before the respondent college that is the Pingla Thana Mahavidyalaya in the year 2008 seeking appointment of the petitioner on compassionate ground under the died-in-harness category. The Director of Public Instruction (DPI), Government of West Bengal was directed by a Single Bench of this Hon'ble Court in the writ petition being WP No. 16987 (W) of 2010 to pass a reasoned order as regards to the prayer for appointment on compassionate ground.

The DPI, Government of West Bengal, after consideration of the said application turned down the prayer for appointment on compassionate ground stating that there is no existing scheme of this department as regards to compassionate appointment. The other ground for rejecting the said prayer for appointment on compassionate ground was that the family of the deceased has received considerable amount of money as death-cum-retirement benefit. Being aggrieved by the said reasons shown by the DPI, Government of West Bengal, the writ petition was filed.

The Learned Counsel appearing on behalf of the State appellants/respondents to the writ petition has submitted that while passing the impugned order, the Hon'ble Single Bench has not considered the fact that there is no existing scheme regarding compassionate appointment under the died-in-harness category. It has further been submitted that the Hon'ble Single Bench ought to have considered that the circulars of the Labour Department, Government of West Bengal, cannot be applied in respect of a Government-aided college. The Learned Counsel relying upon the aforesaid submissions prayed for allowing the instant appeal by setting aside the impugned order passed by the Hon'ble Single Bench. In support of his submissions reliance is placed on the following judicial authorities:-*(1994) 2 SCC 718; (2007) 8 SCC 148; (2019) 14 SCC 646; (2007) 2 SCC 481; (2011) 4 SCC 209; (2007) 5 SCC 77; (2007) 5 SCC 519; (2003) 2 SCC 673.*

The Learned Counsel appearing on behalf of the respondent/writ petitioner has submitted that there is provision for appointment on compassionate ground under the died-in-harness category in the First Statute of Vidyasagar University. It has further been submitted that under Clause 163 of the Vidyasagar University Statute there is provision of recruitment of non-teaching employees in the category of died-in-harness. It has further been submitted that the application for appointment on compassionate ground was filed within a reasonable period. Relying upon the aforesaid submissions, Learned Counsel has prayed for rejecting the instant appeal and affirming the order passed by the Hon'ble Single Bench. In support of the aforesaid submissions the respondent relies upon the following authorities: *(2000) 6 SCC 493, Paragraph 13; (2005) 10 SCC 289, Paragraph 6; (2008) 13 SCC 1, Paragraph 7.*

From the record it reveals that the father of the petitioner was a non-teaching staff of the Pingla Thana Mahavidyalaya, who expired on the 16th day of December 2007 being in service. The spouse of the deceased applied for recruitment of their son on the ground of compassionate appointment in February 2008. Being unable to obtain any response from the authorities the appellant was compelled to file a writ petition being WP 28816 (W) of 2008 which was disposed of by an order dated 21st of December 2009. By the said order the College was directed to forward all the papers of the writ petitioner to the DPI, who was directed to take a decision in accordance with law. Thereafter, the DPI directed the concerned College to inspect the educational

certificates and was also directed to assess the financial condition of the writ petitioner.

Being unable to obtain any fruitful result the writ petitioner once again filed a writ petition (being the second round of litigation) bearing the number WP 16987 (W) of 2010. This writ petition was disposed of whereby the College was directed to forward the prayer of the petitioner for appointment on compassionate ground along with its opinion to the DPI who was directed to come to a logical conclusion after considering all the aspects. By the said order it was also directed that if the findings of the DPI are not adverse, the DPI shall take necessary consequential steps and one post in the cadre of Group-D was directed to be kept vacant for a period of 2 weeks from the date of receipt of the communication from the DPI.

Subsequent to the aforesaid direction an Enquiry Committee was formed by the College to assess the financial status of the petitioner and the said Committee was of the unanimous opinion that there was no substantial income of the family. The said College, on the basis of the findings of the Enquiry Committee recommended the name of the petitioner to the DPI for appointment of the writ petitioner on compassionate ground.

The DPI on the 1st day of February 2019 rejected the prayer of the writ petitioner on the ground that there is no existing scheme of the department under which the benefit of compassionate appointment can be extended to the legal heirs of a deceased non-teaching employee of a Government aided college

and also further opined that the petitioner's economic condition does not justify the feasibility of his claim. Being aggrieved by the order of the DPI the petitioner preferred another writ petition (being the third round of litigation), wherein the Hon'ble Single Bench has been pleased to direct the DPI *to take prompt necessary steps for providing appointment to the petitioner on compassionate ground in the died in harness category at the earliest.*

As regards to the reason given by the DPI that there is no existence of the scheme for appointment of the petitioner on compassionate ground this Court is of the view that by a Notification passed by the Labour Department during the year 2005, appointment on compassionate ground in respect of either the spouse or the son or an unmarried daughter has been recommended who were residing along with the deceased who died-in-harness at that point of time. By the authority reported in (2000) 6 SCC 493, *In Re: Balbir Kaur and another Vs. Steel Authority of India Limited and other*, it has been held as follows:

"13. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family --- this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of

events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.”

In the instant case the employee, since deceased, expired in 2007 while the scheme of the Labour Department for appointment on compassionate ground was already in existence. In this context the judgement delivered by the Hon’ble Supreme Court in the matter of *Abhishek Kumar Vs. State of Haryana and Ors.* reported in (2006) 12 SCC 44 requires to be noticed. Through the aforementioned Judgement the Hon’ble Apex Court has opined that appointment on compassionate ground is required to be considered in terms of the rules which were in existence at the relevant point of time, that is at the time of death of the employee. Cause of action in this instant case arose on the date of death of the father of the writ petitioner.

As regards to the other ground for rejection of the application for appointment, i.e. the family of the employee, since deceased, is financially stable cannot be accepted at all. The Enquiry Committee constituted by the college itself had opined that the family of the employee, since deceased, was not in a financially stable condition goes against the view of the DPI and strengthens the grounds of the writ petitioner for being appointed on compassionate ground.

Thus both the grounds of rejection laid down by the DPI are not at all tenable. At the time of death of the father of the respondent/writ petitioner

there was a Scheme of the Labour Department of the Government of West Bengal for appointment on compassionate ground and the financial condition of the family of the deceased employee was also not stable. In this context it will not be inappropriate to mention that the writ petitioner and his mother, i.e. the spouse of the employee since deceased, have taken the initiative and have not slept over the issue. There are no laches on the part of the respondent. As regards to the consumption of time it is evident that the writ petitioner had to go through three rounds of litigation for which the writ petitioner is not at fault. It is the procedure which has taken such a long time for which the writ petitioners are not to be blamed.

From the facts of the instant case it reveals that the father of the writ petitioner expired on 16th of December 2007 and the application for compassionate appointment has been made during the month of February, 2008, that is within a few months of expiry of the employee. It also reveals that on the date of death of the father of the petitioner when the cause of action for the instant *lis* arose, Government Order No.301 EMP dated 21.08.2002 and 30 EMP dated 2nd April 2008 of the Labour Department were in existence.

These Government orders were in favour of providing appointment on compassionate ground because of the death of the employee in harness. The DPI has cited the Government order No.690 EDN (CS) dated 22nd August 2014 while rejecting the prayer of the petitioner. The aforementioned order came into effect on the 22nd of August 2014, that is after the date of death of the

father of the writ petitioner and the said order does not have any retrospective effect. Accordingly, rejection citing the aforementioned Government order is not at all tenable in law. Statute 163 (a) of the Vidyasagar University First Statutes lays down as follows:

“(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;”

Accordingly, there is provision for compassionate appointment laid down in the Vidyasagar University First Statutes, 1983. Thus, the ground of rejection of the prayer of the writ petitioner on account of non-availability of scheme is bad in law and is not at all tenable.

The DPI came to an erroneous finding as regards to the financial condition of the petitioner and has not taken into consideration the report of the Enquiry Committee. The Enquiry Committee has unanimously opined that

there is no substantial income of the said family and has recommended for considering the application of the writ petitioner.

It will not be out of place to state that the payment made on account of terminal benefits cannot be equated with the scheme of compassionate appointment. In this regard the Judgement of the Hon'ble Apex Court published in (2000) 6 SCC 493 stands quoted below:

“8. The employer being Steel Authority of India, admittedly an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer. It is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life the answer cannot however but be in the negative what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning: A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied, as it is likely to open a Pandoras Box. This is the resultant effect of our entry into the new millenium. Can the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employees family by reason of the death of the bread-earner. It is in this context this Courts observations in Dharwad Distt. PWD Literate Daily Wage Employees Assn. & Ors. v. State of Karnataka & Ors. [1990 (2) SCC 396] seem to be rather apposite. This Court upon consideration of Randhir Sigh v. Union of India, [1988 (1) SCC122] as also Surinder Singh v. Engineer-in-chief [1986 (1)

SCC 639]; and *DS Nakara v. Union of India* [1983 (1) SCC 305] observed in paragraphs 14 and 15 as below:

14. We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. Jawaharlal Nehru, the first Prime Minister of this Republic while dreaming of elevating the lot of the common man of this country once stated:

Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible; forcibly if necessary, and there seems to be little doubt that coercion will often be necessary.

These were his prophetic words about three decades back. More than a quarter of century has run out since he left us but there has yet been no percolation in adequate dose of the benefits the constitutional philosophy stands for to the lower strata of society. Tolstoy wrote:

The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did but only the words were abolished, not the thing.

Perhaps what Tolstoy wrote about abolition of slavery in a large sense applies to what we have done to the constitutional ethos. It has still remained on paper and is contained in the book. The benefits have not yet reached the common man. What Swami Vivekananda wrote in a different context may perhaps help a quicker implementation of the goal to bring about the overdue changes for transforming India in a positive way and in fulfilling the dreams of the Constitution fathers. These were the words of the Swami:

It is imperative that all this various yogas should be carried out in practice. Mere theories about them will not do any good. First we have to hear about them; then we have to think about them. We have to reason the thoughts out, impress them on our minds and meditate on them; realise them, until at last they become our whole life. No longer will religion remain a bundle of ideas or theories or an intellectual assent; it will enter into our very self. By means of an intellectual assent, we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion never changes. Religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming, not hearing or acknowledging. It is the whole souls becoming changed into what it believes. That is religion.

9. As a matter of fact the constitutional philosophy should be allowed to become a part of every mans life in this country and then only the Constitution can reach everyone and the ideals of the Constitution framers would be achieved since the people would be nearer the goal set by the Constitution - an ideal situation but a far cry presently.

13. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment

would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employees family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

15. It is upon consideration of the above noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the Provident Fund but as regards the Gratuity amount, be it noted that there is a mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death the introduction of Family Pension Scheme by which the employee is compelled to deposit the Gratuity amount, as a

matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the concerned employees but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.

16. Adverting to the Provident Fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in lump-sum and availability of this amount is the only insulating factor in such a grief stricken family. The amount is payable in one lump and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family needs some lump-sum amount but in the event of deposit of the same with the employer, the heirs of the deceased employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation could have been otherwise.

19. Mr. Bhasme further contended that family members of large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable.

The concept of social justice is the yardstick to the justice administration system or the legal justice and as Rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

The Hon'ble Apex Court has also come to the same finding in the case of *In RE :Govind Prakash Verma* reported in (2005) 10 SCC 289 wherein the Hon'ble Apex Court has held that benefits which are given on account of terminal benefits cannot be *pari materia* with the scheme of compassionate appointment. The Division Bench of the Hon'ble Apex Court has stated as follows:

"6. In our view, it was wholly irrelevant for⁵ the departmental authorities and the Learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This Statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference

drawn that he was gainfully employed somewhere as a painter he might be working in his field and might casually be getting work as a painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.”

On going through the impugned Judgement it reveals that the Hon’ble Single Bench has minutely considered each and every aspect of the instant *lis*. Accordingly, this Court does not find any infirmity in the Judgement of the Hon’ble Single Bench, which stands affirmed.

MAT 899 of 2022 with **CAN 2 of 2022** stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)

Later:-

Learned Counsel appearing on behalf of the appellant prays for stay of operation of the Judgement and Order.

The prayer for stay is considered and refused.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)