

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

**W.P.A. No.10489 OF 2022
ASHOKE PATRA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

**W.P.A. No.13527 OF 2022
PARTHAMOY KARMAKAR
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

**W.P.A. No.16082 OF 2022
MANASH ROY
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

**W.P.A. No.16780 OF 2022
CHANCHAL SHAIKH
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

**W.P.A. No.18757 OF 2022
PRIYA HALDER
-VERSUS-
STATE OF WEST BENGAL AND OTHERS.**

For the petitioner (W.P.A. No.10489 of 2022)	:Mr. Mrinal Kanti Sardar, Adv.
For the petitioner (W.P.A. No. 13527 of 2022)	:Mr. Soumyen Datta, Adv., Mr. Tapas Singha Roy, Adv.
For the petitioner (W.P.A. No.16082 of 2022)	:Mr. Syamal Kumar Das, Adv., Ms. Krishna Yadav, Adv.
For the petitioner (W.P.A. No.16780 of 2022)	:Mr. Nitya Gopal Mukherjee, Adv., Ms. Kaushiki Chakraborty, Adv.
For the petitioner (W.P.A. No.18757 of 2022)	:Mr. Santanu Chatterjee, Adv., Mrs. Divya Chatterjee, Adv., Mr. Rajendra Kr. Nandi, Adv.
For the College (W.P.A. No.10489 of 2022)	:Mr. Abhinaba Dawn, Adv.
For the College (W.P.A. No.13527 of 2022)	:Mr. R.P. Motilal, Adv., Mr. Pashupati Sana, Adv.
For the Calcutta University	:Mr. Abhratosh Majumdar, Sr. Adv., Mr. Nilotpal Chatterjee, Adv., Mr. Chayan Gupta, Adv., Mr. Sandip Dasgupta, Adv., Mr. Saquib Siddiqui, Adv., Mr. Aviroop Mitra, Adv.
For the State (W.P.A. No. 13527 of 2022)	:Mr. Tapan Kumar Mukherjee, Sr.Adv., Ms. Debdooti Dutta, Adv.
For the State (W.P.A. No.16082 of 2022)	:Mr. Swapan Kumar Dutta, Sr. Adv.& A.G.P., Mr. Pradyot Kumar Das, Adv.
For the State (W.P.A. No.16780 of 2022)	:Mr. Swapan Kumar Dutta, Sr. Adv.& A.G.P., Mr. Tapas Kumar Dey, Adv.
For the State (W.P.A. No.10489 of 2022)	:Mrs. Paramita Pal, Adv.
For respondent nos.6 to 9 (W.P.A. No.18757 of 2022)	:Mr. Subhrangsu Panda, Adv., Ms. Ina Bhattacharyya, Adv., Ms. Mithu Singha Mahapatra, Adv.
Hearing concluded on	: 07.02.2023
Judgment on	: 13.07.2023

Kausik Chanda, J.:-

The writ petitions under consideration raise a common legal question pertaining to the applicability of the Calcutta University Act of 1979 (referred to as "the said Act") in conjunction with the Calcutta University First Statutes of 1979 (referred to as "the said Statutes"). The question is whether these legislative provisions include provisions for compassionate appointment. Additionally, the absence of a specific scheme prompts an inquiry into whether the petitioners' case may be considered for compassionate appointment.

2. The relevant provisions of the Calcutta University First Statutes, 1979 are also quoted below:

“CHAPTER-XIII

...

3. For the purposes of these Statutes, the employees concerned are classified as follows–

(a) Ministerial Staff comprising the posts of –

(i) Office Superintendent, Cashier, Accountant, Head Clerk, Senior Assistant and Senior Clerk and such other posts as may be approved by the State Government.

(ii) Assistant, Clerk, Library Assistant, Laboratory Assistant, Store Clerk, Store-keeper, Care-taker, Stenographer, Record Keeper, Collection Clerk and such other posts as may be approved by the State Government.

(b) Lower Subordinate Staff comprising the posts of –

(i) Skilled Driver, Laboratory Attendant, Skilled Bearer, Electrician. Mechanic and Carpenter; and

(ii) Unskilled Bearer, Messenger Peon, Durwan, Night Guard and Sweeper.”

.....

“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 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 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.”

3. It may be noticed that the aforesaid provisions are in *pari materia* with the Statutes 160 and 163(a) of the Vidyasagar University First Statutes, 1983. Statute 5 (CNTE) (4)(a) of the Kalyani University Statutes exhibits a resemblance to the provisos outlined in Statute 6(a) under Chapter-XIII of the Calcutta University First Statutes, 1979.

4. The manner in which the Statutes are to be framed has been provided under Section 51(1) of the Calcutta University Act, 1979, which is quoted below:

“How to make Statutes:

51. (1) The Syndicate may of its own motion, and shall, when required by the Senate, make a draft of any Statute and submit the same to the Senate. The draft so submitted shall be considered by the Senate at a meeting or meetings to be held within a period of six weeks from the date of such submission (hereinafter referred to as the said period), and the draft so submitted shall, unless rejected or amended by the Senate before the expiry of the said period by a majority of the total number of its members existing at the time, be deemed to have been passed by the Senate. If the Senate so rejects or amends the draft of any Statute, it shall be sent back to the Syndicate with the views of the Senate for reconsideration. Thereupon, the syndicate shall reconsider the draft and resubmit it to the Senate with such changes as it may deem necessary. On such resubmission of the draft, it shall again be considered by the Senate at a meeting or meetings to be held within a period of six weeks from the date of such submission (hereinafter referred to as the latter period) and the draft so resubmitted shall, unless rejected by the Senate before the expiry of the latter period by a majority of the total number of

its members existing at the time, be deemed to have been passed by the Senate without any amendment, or be passed by the Senate with such amendments as it may deem fit to make therein within the latter period and by the same majority as aforesaid.

(2) A Statute, passed in the manner provided in Sub- Section (1), shall be presented to the Chancellor for assent and shall come into force on being assented to by the Chancellor in consultation with the Minister.

(3) A Statute shall remain in force until repealed or amended by a new Statute similarly passed and assented to by the Chancellor.”

“Transitory Provisions and repeal:

(2) The first Vice-Chancellor shall, with the approval of the Chancellor and with the assistance of a committee consisting of not less than nine members nominated by the Chancellor, cause the first Statutes, the first Ordinances and the first Regulations of the former University to be reviewed and, if he considers it necessary, cause them to be amended.”

5. The said provisions are also identical to the Section 46 of the Kalyani University Act, 1981.

6. Identical issues were raised in W.P.A. No.23952 of 2022 (*Sri Pritam Mallick v. State of West Bengal and Others*), W.P.A. No.17742 of 2022 (*Gita Rajak v. The State of West Bengal and Others*) and W.P.A. No.28475 of 2022 (*Aparna Talukdar v. The State of West Bengal and Others*), where this Court has examined those issues in the context of Kalyani University Act, 1981 and the Statutes of the Kalyani University and held as follows:

“20. Clause (4) of Statute 5 (CNTE) of the said Statutes introduces an exception to the standard mode of recruitment for filling up the posts mentioned in Statute 3 (CNTE). It provides that posts mentioned in Statute 3 (CNTE) may be filled up by compassionate appointment by the dependant of any employee who died in harness. Such appointment has to be consistent with his/her qualification. The said dependant shall have a preference from others in the matter of appointment of placement as the case may be.

21. It is clear that Clause (4) of Statute 5 (CNTE) of the said Statutes obliges the authority to offer compassionate appointments in deserving cases without adhering to the regular recruitment process for the posts mentioned in Statute 3 (CNTE) of the said Statutes.

22. I also do not accept the contention put forth by the University that, in the absence of a scheme compassionate appointment cannot be granted due to the West Bengal Universities (Control of Expenditure) Act, 1976, which prohibits any appointment with financial implications without the approval of the State.

23. It has been rightly pointed out by Mr. Bihani that Section 46(2) of the said Act of 1981 provides that a Statute, passed in the manner provided under Section 46(1) of the Act of 1981 shall be presented to the Chancellor for assent and shall come into force on being assented to by the Chancellor in consultation with the Minister. Therefore, the State cannot decline to enforce a statutory provision that has been framed in consultation and with the approval of the State.

24. I am also of the view that West Bengal Universities and Colleges (Administration and Regulation) Act, 2017, cannot hinder compassionate appointment. Section 21 of the said Act of 2017 is quoted below:

*“Overriding **21.** Notwithstanding anything*

effect. contained in any other law or in any custom or usage for the time being in force, or in any Statutes, Ordinances, Rules and Regulations made by any authority under any law for the time being in force that is repugnant to the provisions of this Act, the provisions of this Act, to the extent of such repugnancy, shall have overriding effect against any such law, custom, usage, Statutes, Ordinances, Rules and Regulations.”

25. Suffice it to say that the Act of 2017 does not contain any provision for compassionate appointment and as such, there cannot be any repugnancy between the said Statutes of Kalyani University and the said Act of 2017, insofar as the provision for compassionate appointment is concerned. The said Act of 2017 does not override the provision of compassionate appointment as contained in the Statutes of Kalyani University.

26. In the case of **Ashis Das (supra)** and **Arghya Maity (supra)**, this Court has rejected the contention that in absence of a scheme framed by the State, the case of the petitioners for compassionate appointment cannot be considered, and directed the State to consider the case of the petitioners therein for compassionate appointment in light of the Statute 5 (CNTE) (4)(a) of the said Statutes. It has also to be noted that in the case of **Pallabi Banerjee (supra)** and in **Prakash Chandra Ghosh (supra)**, this Court, even in the absence of any scheme, has directed to consider the case of the petitioners for compassionate appointment in the light of the provisos to Statute 6(a) under Chapter-XIII of the Calcutta University First Statutes, 1979, which are similar to Statute 5 (CNTE) (4)(a) of the Kalyani University Statutes. In view of the aforesaid consistent views, I am not

*inclined to follow the view taken in **W.P.A. No.5902 of 2018 (Bandana Dalui v. The State of West Bengal & Ors.)**.”*

7. Furthermore, in parallel vein, in the judgment and order dated June 27, 2023 rendered in W.P.A. No.5891 of 2023 (*Shrimati Binapani Murmu v. The State of West Bengal & Ors.*) while dealing with the Vidyasagar University First Statutes, 1983 and the Vidyasagar University Act, 1981 it was held by this Court, inter alia, as follows:

“A combined reading of Statute 163 and Statute 160 makes it absolutely clear that the posts mentioned in Clause a (ii) of Statute 162 have to be filled through direct recruitment while the posts mentioned in Clause a (I) of Statute 162, must initially be filled up by way of promotion from the feeder posts mentioned in Clause a (ii).

If the said posts cannot be filled up by way of promotion due to lack of suitable candidates, they may be filled up by way of direct recruitment in accordance with the prescribed procedure. The first proviso carves out an exception to the aforesaid mode of recruitment for filling up the posts mentioned in Statute 160. It stipulates that the posts mentioned in Statute 160 may be filled up by granting compassionate appointment to the wife, son, daughter or dependent of an employee consistent with his/her qualification. The said family member should have precedence over others in matters of appointment or placement. In other words, the proviso obliges the authority to offer a compassionate appointment in deserving cases without adhering to the regular recruitment rules for the posts mentioned in Statute 160. In my reading, the proviso entails of the substantial statutory right to be appointed on compassionate grounds and it cannot be termed as a “stray provision” as observed by the Director of Public Instruction in the order impugned.

When the Statute recognises the right to compassionate appointment, the said right cannot be negated on the specious plea that there is no scheme in place to give effect to the Statute. When the Statute confers a substantial right to appointment, a scheme can only provide the procedural framework to give effect to such right. A scheme typically provides for the procedural aspects related to compassionate appointments, such as the time limit within which an applicant must approach the authority to seek a compassionate appointment, or the financial criteria to ascertain the financial need of the deceased employee's family. The scheme may also provide for the procedure to form an enquiry committee to assess the financial need of the family. All these are only procedural aspects, only to uphold the recognised statutory right to compassionate appointment."

8. The learned advocates appearing for the respondents in these cases at hand have made arguments similar to those advanced by the respondents in the cases where this Court dealt with the provisions related to compassionate appointment under Vidyasagar University Act, 1981 and Kalyani University Act, 1981. Since the statutory scheme relating to compassionate appointment of Calcutta University is similar to that of the Kalyani University and Vidyasagar University, there is no scope to answer the issues involved in the present cases differently.

9. However, it should only be noted that aforesaid Statutes namely, Statute 6 under Chapter-XIII of the Calcutta University First Statutes, 1979, has been enacted with the heading "promotion" unlike the corresponding Statutes of Vidyasagar University and Kalyani University

where the headings have been described as “recruitment and promotion”. The respondents in these cases suggested that consequently, the provisos to said Statute 6 apply exclusively to cases of promotion and not to direct recruitment or compassionate appointment.

10. The argument does not appeal to this Court. A plain reading of Statute 6(a) makes it clear that it relates to promotion while the provisos thereof pertain to compassionate appointment. It is settled law that in case of conflict between the plain language of the provision and the meaning derived from the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder. **[See: (2004) 4 SCC 766 (*Raichurmatham Prabhakar v. Rawatmal Dugar*)]**

11. Accordingly, it must be held that

- a) The provisos to Statute 6(a) of the Statute relating to the terms of employment and conditions of service of non-teaching employees of colleges affiliated to the University other than Government Colleges under Chapter-XIII of the Calcutta University First Statutes, 1979, provides for compassionate appointment.
- b) Such statutory provision binds the State Government since the same has been assented to by the Chancellor in consultation with the Minister.

- c) The absence of scheme cannot negate the statutory rights of compassionate appointment provided by the said Act and the said Statutes.

12. Since the factual aspects involved in the aforesaid writ petitions differ, I deal with them separately.

In Re: W.P.A. No.13527 of 2022

13. In this case the petitioner's mother died in harness on January 29, 2002, while serving as a "Bearer" at Seth Anandaram Jaipuria College, a College affiliated with the Calcutta University. The petitioner has made out a case that he applied for compassionate appointment before the College on February 4, 2002, and the College in the year 2004 recommended the name of the petitioner for compassionate appointment before the Director of Public Instruction. Ultimately, the Director of Public Instruction by a memo dated February 20, 2015 declined to appoint the petitioner on compassionate ground in view of G.O. No.690-Edn(CS)5P-41/2014 dated 22.08.2014.

14. Challenging the said order dated February 20, 2015, this present writ petition has been filed in the year 2022.

15. Though this Court has set aside the aforesaid G.O. No.690-Edn(CS)5P-41/2014 dated 22.08.2014, by the judgment delivered in W.P.A. No.23952 of 2022, W.P.A. No.17742 of 2022 and W.P.A. No.28475 of 2022, no relief can be granted to the petitioner for a tardy and indolent approach.

His prayer is grossly belated. It is well settled that a compassionate appointment is provided to tide over the sudden financial crisis faced by a family due to untimely death of the sole bread winner of the family. The delay defeats the very object of compassionate appointment. Therefore, W.P.A. No.13527 of 2022 is dismissed.

In Re: W.P.A. No.16780 of 2022

16. The petitioner's father was a Mess Helper under Calcutta University. He died in harness on January 17, 2013. The case of the petitioner for compassionate appointment was rejected on August 20, 2019, on the ground that the notification of Higher Education Department, Government of West Bengal, dated October 20, 2014, treated all existing posts of Hostel/Mess employees in all State-aided Universities as "dying cadre" and all such posts should be treated as personal to the incumbent. No further recruitment, either contractual or permanent including appointment on compassionate ground was allowed to such posts with effect from date of the issuance of the said order.

17. The case of the petitioner was directed to be reconsidered by an order of a learned Single Judge of this Court dated July 13, 2021, passed in W.P.A. No.24255 of 2019.

18. The Registrar of the University of Calcutta in terms of the said order reconsidered the case of the petitioner and by the impugned order dated

February 11, 2022, rejected the prayer on the ground of absence of any scheme for compassionate appointment.

19. The reasoning of the order dated February 11, 2022, cannot be accepted but at the same time the arguments advanced on behalf of the University before this Court cannot be discarded. The University has argued that the post of Mess Helper has not been mentioned in the statutory scheme. I find that the post of Mess Helper has not been mentioned in the Statutes 3(a)(i) and 3(a)(ii) under Chapter-XIII of the Calcutta University First Statutes, 1979. Therefore, the post of Mess Helper cannot be relatable to compassionate appointment as provided under Statute 6(a) under Chapter-XIII of the Calcutta University First Statutes, 1979. Moreover, the petitioner was not an employee affiliated to a College with the University.

20. Accordingly, W.P.A. No.16780 of 2022 is dismissed.

In Re: W.P.A. No.10489 of 2022

21. The case of the petitioner for compassionate appointment was turned down by the Deputy Secretary, Department of Higher Education, Government of West Bengal, by the impugned order dated April 18, 2022.

22. The father of the petitioner was a Bearer (Group-D staff) at Prafulla Chandra College, affiliated with Calcutta University. He died in harness on January 29, 2018. The petitioner has been working at the said College to a temporary post since 2001. Immediately after death of his father, the

petitioner made an application for compassionate appointment on February 27, 2018. An enquiry committee, formed by the College, to enquire about the financial status of the family and recommended appointment of the petitioner on compassionate ground. The College accordingly forwarded all documents to the Department of Higher Education on April 30, 2019. Ultimately, by the order impugned dated April 18, 2022, the case of the petitioner was rejected primarily on the grounds that the relevant Statutes of Calcutta University do not provide for compassionate appointment and in absence of any scheme, the case of the petitioner for compassionate appointment could not be considered.

23. In view of the aforesaid discussion, the said order dated April 18, 2022, passed by the Deputy Secretary, Department of Higher Education, Government of West Bengal, is set aside.

In Re: W.P.A. No.16082 of 2022

24. The petitioner's father was appointed as a "Sweeper" at Dinobandhu Mahavidyalya, Bongaon, and he died in harness on April 1, 2007. The College, at that material point of time, was affiliated with Calcutta University. On compassionate ground, the petitioner was offered a temporary job of Group-D staff as the said College on April 15, 2007. The College subsequently prayed for approval of the said appointment before the State. Ultimately, the Director of Public Instruction, by the impugned order dated April 22, 2022, rejected the case of the petitioner on the

grounds that in absence of any scheme, the case of the petitioner could not be considered for compassionate appointment though the Calcutta University First Statutes, 1979, provides for compassionate appointment.

25. For the similar reason, the said order dated April 22, 2022, issued by the Director of Public Instruction, Education Directorate, Government of West Bengal is set aside.

In Re: W.P.A. No.18757 of 2022

26. The petitioner's father was a Laboratory Attendant at Ashutosh College, who died in harness on August 26, 2014. Considering the financial condition of the family, the College appointed the petitioner on temporary basis on June 1, 2016 as office assistant and the petitioner has been continuing with the said temporary post.

27. The petitioner made a prayer for her regular appointment before the College and the College in turn forwarded all documents to the Director of Public Instruction, West Bengal. The case of the petitioner for her permanent appointment is still pending before the Director of Public Instruction, West Bengal.

28. Accordingly, **W.P.A. No.10489 of 2022, W.P.A. No.16082 of 2022, and 18757 of 2022** are allowed. The relevant colleges shall cause an enquiry to ascertain whether there is any existing financial crisis in the family of the petitioners within two weeks from the date of communication of this order. If the enquiry report justifies a

compassionate appointment, the respondents-colleges shall recommend compassionate appointment of the petitioners to a position commensurate with his/her educational qualification and forward all relevant documents to the Director of Public Instructions within one month thereafter. The Director of Public Instructions shall consider the case of appointment of the petitioners and communicate the decision to both the colleges and the petitioners within two weeks from the date of receiving the documents.

29. Furthermore, I must observe that despite several consistent orders passed by this Court, the State has persistently denied the rightful claims for compassionate appointment by citing the absence of a scheme. It is both surprising and regrettable that despite the Calcutta University First Statutes, 1979 being in existence for approximately five decades, no scheme for compassionate appointment has been formulated yet by Calcutta University and numerous cases have been rejected on the ground of lack of a scheme.

30. Such practices should not be allowed to continue indefinitely. Therefore, I also direct Calcutta University to frame a scheme within a period of six months from the date of this order to facilitate the implementation of the provisos to the Statute 6(a) under Chapter-XIII of the Calcutta University First Statutes, 1979. After framing the scheme, the university shall submit it to the Higher Education Department,

Government of West Bengal for approval. The Higher Education Department of the State shall approve the scheme with the required modifications, if any, within one month thereafter. Once approved by the State, the scheme should be promptly circulated to the university and its affiliated colleges.

31. Accordingly, W.P.A. No.10489 of 2022, W.P.A. No.13527 of 2022, W.P.A. No.16082 of 2022, W.P.A. No.16780 of 2022 and W.P.A. No.18757 of 2022 are disposed of.

32. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)