

05.07.2023
Item No. 159
Ct. No. 238
AKG

WPA 17550 of 2019
With
I.A. CAN 1/2021 (Not in File)
Dipanwita Chowdhury
Versus
The State of West Bengal & Ors.

Mr. Lalratan Mondal,
Mr. Dilip Kumar Sadhu

...for the Petitioner

Mr. Sayantan Bose,
Mr. S. Bhattacharya,
Mr. S. Rout

...for the Respondent Nos. 7 to 9

Ms. Debjani Sengupta,
Ms. Shahina Haque,
Ms. Koyel Bag,
Ms. Jonaki Khan

...for the University

The claim of the compassionate appointment of the petitioner was rejected by the Law Officer, Higher Education Department, Govt. of West Bengal by a letter dated July 22, 2019. The relevant part of the said letter reads as follows :-

**“Sir,
In response to your letter and subject captioned above it may be mentioned that there is no scheme in this Department for providing compassionate appointment of the non-teaching staff in Govt. aided Colleges in West Bengal. It is further to be mentioned that though the statutes of Vidyasagar University has mere mentioning for compassionate appointment, but the statute has also no detailed scheme for giving compassionate appointment.”**

In the judgment delivered in **MAT 899 of 2022** (**The State of West Bengal & Anr. Through the Secretary, Department of Higher Education vs. Partha Sarathi Manna and others**), it has been authoritatively decided by a Division Bench of this Court that Statute 163 of the Vidyasagar University First Statutes, 1983, provides for compassionate appointment. The relevant part of the said judgment is quoted below:

“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 issue of absence of scheme has also been dealt with in a judgement dated June 27, 2023 passed by this Court in **W.P.A. 5891 of 2023 (Shrimati Binapani Murmu vs. The State of West Bengal & Ors.)**. It has been held in the said case the absence of a scheme cannot negate the statutory right.

In course of hearing of this writ petition, the college was directed to file a report with regard to the financial condition of the family of the petitioner. A copy of the said report has been retained with the records of this case.

The said report filed by the Principal of the college states that the family of the petitioner has no other source of income except the family pension of her mother.

In that view of the matter, this writ petition is disposed of with the following orders.

The college will once again send all necessary papers relating to the compassionate appointment of the petitioner along with a copy of the report dated May 10, 2023 filed by the Principal of the college before this Court within a period of two weeks from the date of this order.

The Director of Public Instructions shall decide the case of the petitioner for granting compassionate appointment within one month thereafter.

It is also made clear that the Director of Public Instructions shall not reject the case of the petitioner merely on the ground that the mother of the petitioner receives family pension or there is no scheme in place for compassionate appointment.

With the aforesaid directions, **WPA 17550 of 2019** is disposed of.

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

(Kausik Chanda, J.)