

19.05.2023

SL.No.19
Crt. No.11.
KB

**FMA 1281 of 2022
with
IA No. CAN 1 of 2022**

**Mithun Acharyya
Versus
The State of West Bengal & Ors.**

Mr. Kumar Jyoti Tewari
Mr. Shahan Shah
... For the appellant.

Mr. Amitava Chaudhuri
Mr. N. Roy
... For the University.

Mr. Swapan Kumar Datta
Mr. Rajat Dutta
... For the State.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

The appellant is aggrieved by the order of the Hon'ble Single Bench dated the 27th of June, 2022 in the Writ Petition, being WPA 10369 of 2022. The appellant submits that the writ petition was dismissed by the Hon'ble Single Bench on the ground of delay since the writ petitioner/the present appellant had challenged an order of the Director of Public Instruction (DPI),

Government of West Bengal dated the 30th of October, 2015 after the lapse of seven years, i.e. in the year 2022.

Mr. Tiwari, Learned Senior Counsel appearing for the appellant/the writ petitioner, submits that in the interregnum the writ petitioner had submitted several representations before the concerned authorities but without result. Mr. Tiwari primarily rests his submission on the reason for the objection raised by the DPI *vide* the Order dated 30th October, 2015 which, Learned Senior Counsel points out, cites the absence of a scheme for compassionate appointment applicable to the College-in-Issue under the University-in-Issue, which is Kalyani University.

Learned Senior Counsel takes this Court to several contemporaneous orders passed by the DPI in respect of similarly circumstanced persons who were not granted compassionate appointment on the ground of an applicable Scheme for colleges under the said University.

Mr. Tiwari submits that irrespective of the length of delay, the appellant/writ petitioner has accrued a right to equally treated with other similarly circumstanced persons who have been granted compassionate appointment.

Both Mr. Datta, Learned Additional Government Pleader appearing for the State/DPI and Mr. Choudhury,

Learned Senior Counsel appearing for the Respondent/Kalyani University, submit that the sole ground for dismissing the writ petition was inordinate delay in challenging the order of the DPI passed in 2015. It is trite in law that compassionate appointment is intended to alleviate financial hardship and the appellant/writ petitioner having delayed in approaching the Hon'ble Court, the pre-condition of financial hardship requiring immediate redress stands removed.

Having heard the parties and considering the materials placed, this Court is satisfied with the stand of the appellant/the writ petitioner that the foundation of the order of rejection of the DPI dated the 30th of October, 2015, is erroneous inasmuch as a wrong yardstick of the absence of a scheme for compassionate appointment was applied in the case of the appellant which was not applied in the case of other similarly circumstanced candidates.

This Court is satisfied that the petitioner has made out a case of denial of equal treatment.

Accordingly, the DPI shall re-visit the issue by carrying out an inquiry into the financial condition of the appellant/ the writ petitioner and, in the event in the inquiry it is discovered that the financial condition of the appellant/the writ petitioner is penurious, the DPI shall

then take steps to consider the case of the appellant for compassionate appointment.

Let the above directed exercise be completed within a period of eight weeks from the date of communication of this order.

Since affidavits are not invited, allegations in the writ petition are deemed to be denied.

FMA 1281 of 2022 with **IA No. CAN 1 of 2022** stand accordingly **disposed of**.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

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

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)