

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.21051 of 2022

MAHUA DAS PAUL

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Ms. Sanghamitra Nandy, Adv.

For the University : Mr. Amitava Chaudhuri, Adv.,
Mr. M. Chaudhuri, Adv.,
Mr. N. Roy, Adv.,
Mr. D. Basu, Adv.

For the State : Mr. Sudipto Panda, Adv.,
Ms. Mun Mun Tiwary, Adv.

Hearing concluded on : 27.03.2023

Judgment on : 28.08.2023

Kausik Chanda, J.:-

The petitioner has asserted her right to an appointment at Kalyani University on compassionate ground. It is the case of the petitioner that her husband was a Junior Assistant at the University of Kalyani. Unfortunately, he was murdered on February 3, 2015, in a ghastly manner. Under such tragic circumstances, the petitioner made an application on March 16, 2015, before the Vice-Chancellor of the University of Kalyani for her compassionate appointment under died-in-harness category.

2. By a letter dated February 26, 2016, the Registrar of the University intimated to the petitioner that the University was not in a position to appoint the petitioner on compassionate ground in view of Government order no. 491(17)-Edn (U)/1U(B)-41/12 dated May 19, 2014. Nonetheless, the petitioner was subsequently engaged as a Junior Assistant on a daily wage basis by the University on February 28, 2016.

3. The petitioner thereafter approached this Court by filing a writ petition which was disposed of by a Coordinate Bench of this Court on June 27, 2022, with a direction upon the Vice-Chancellor of the University to take a decision regarding the compassionate appointment of the petitioner within fortnight from the date of order.

4. The Vice-Chancellor, by a reasoned order dated September 2, 2022, rejected the prayer of the petitioner on the ground that the University was precluded from considering the prayer for compassionate appointment in

view of the aforesaid memo dated May 19, 2014. Further, the petitioner's appointment as a Junior Assistant on a daily wage basis was cited as a disqualification for her regular appointment on compassionate ground. It was also observed that the Kalyani University Ordinance no.46(USC)-1 merely alludes to the discretionary power of the Vice-Chancellor for compassionate appointment lacking a comprehensive scheme for such appointment. The absence of a specific scheme was posited as ground to reject the petitioner's prayer for compassionate appointment.

5. Mr. Sanghamitra Nandy, learned advocate appearing for the petitioner, has argued that the University Ordinance no.46(USC)-1 imposes a statutory obligation upon the Vice-Chancellor to evaluate a prayer of compassionate appointment. Ms. Nandy underscored that the Vice-Chancellor, vested with such authority, had already appointed a number of persons under the died-in-harness category. Ms. Nandy has argued that the memo dated May 19, 2014, is not applicable to the case of the petitioner as it pertains exclusively to government employees.

6. On the other hand, appearing for the University, Mr. Amitava Chaudhuri, learned advocate, has submitted that compassionate appointment is not a regular method or mode of appointment and hinges entirely on the scheme of the appointment authority. Given the absence of a scheme for compassionate ground, the case of the petitioner could not be considered.

7. The petitioner was given an appointment on a daily wage basis in the year 2016. After accepting such appointment, the petitioner cannot claim permanent employment under the died-in-harness category. The immediate necessity of mitigating her hardship by providing a compassionate appointment, therefore, was rendered moot.

8. Mr. Chaudhuri has reiterated the stand of the University as enunciated in the impugned order that the Government order dated May 19, 2014, precluded consideration of the petitioner's case for compassionate appointment.

9. Mr. Chaudhuri has submitted that having regard to the facts of the present case, the Vice-Chancellor has used his discretion rationally and rejected the case of the petitioner for compassionate appointment. Such discretion should not be interfered with by this Court in the exercise of the power of judicial review.

10. Mr. Chaudhuri has argued that in terms of the West Bengal Universities (Control of Expenditure) Act, 1976, no appointments having financial implications can be made by the University without the State Government's approval. Any appointment under the died-in-harness category requires approval of the State Government and for this reason, in the absence of any scheme for compassionate appointment from the appointing authority i.e., State Government, the question of approval of the State Government does not arise.

11. Mr. Chaudhuri has submitted that no candidates under the died-in-harness category have been appointed after the issuance of the memo dated May 19, 2014. The University is bound by the aforesaid government order and, therefore, the case of the petitioner for compassionate appointment could not be considered in violation of the said order.

12. Mr. Chaudhuri, relying upon the judgments of the Supreme Court reported at **(1994) 2 SCC 718 (*Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs)*)**, **(2019) 14 SCC 646 (*Union of India v. V.R. Tripathi*)** and **(2011) 4 SCC 209 (*Bhawani Prasad Sonkar v. Union of India*)** has argued that the appointment under the died-in-harness category being a discretionary relief, no mandamus can be issued to enforce such relief by a Writ Court.

13. To address the petitioner's entitlement to compassionate appointment, it is necessary to delve into the relevant provisions of "The University Ordinances relating to the appointment of teachers, officers and other employees of the University, their emoluments, their duties and other terms and conditions of their service." The said Ordinance has been framed in exercise of power conferred under Sub-Section (2) of Section 55 of the Kalyani University Act, 1981, by the first Vice-Chancellor of the University with the assistance of a committee appointed under Sub-Section (2) of the said Section and with the approval of the Chancellor.

14. University Ordinance 40(USC) provides for the classification of non-teaching employees of the University, and the procedure for recruitment of

non-teaching employees has been enumerated under University Ordinance 42(USC). The provisions for compassionate appointment have been engrafted under University Ordinance 46(USC) which reads:

“Appointment
on
compassionate
ground.

U.Ord.46(USC): (1) In the event of death of a University employee while in service the Vice-Chancellor may, by relaxing the procedure for recruitment to the basic post of non-teaching employees as laid down in U.Ord.42 (USC), appoint at his discretion, on compassionate ground, deceased employee’s spouse, son or daughter, as the case may be actually dependent on him against a vacancy in a basic post of non-teaching employees if such dependent candidate possesses the minimum qualifications proscribed for the post and fulfills the requirement of age.

(2) The provisions of the preceding paragraph may also be applied in case of an employee of the University, who is permanently incapacitated rendering him unfit to continue in service, provided such incapacitation is certified by a medical officer authorised by the Director of Health Service, West Bengal.”

15. It is also essential to quote Memo No.491 (17) -Edn(U)/1U (B)-41/12 dated May 19, 2014, which has been pivotal in the rejection of the claim of the petitioner. The memo reads as follows:

“Government of West Bengal
Higher Education Department
University Branch
Bikash Bhavan, Salt Lake, Kolkata-91.

No.491 (17) -Edn(U)/1U (B)-41/12. Dated, Kolkata, the 19th May, 2014.

From : Sri P.C. Sarkar,
OSD & Ex-Officio Assistant Secretary to the
Govt. of West Bengal.

To : The Registrar,
Kalyani University.

Sub : Rules and Regulations in the matter of
appointment on compassionate ground

Sir,

The extant Rules and Regulations for appointment on compassionate ground are applicable in respect of State Govt. Employees only and these are not automatically applicable for the employees of state aided Universities or non Govt. Institutions. The State Govt. in the Finance Department has already given its observation to that effect on 01.04.2013 to this Department.

Under such circumstances, I am directed to say that there is no such contemplation on the part of the state Govt. to extend the benefit to the employees of non-Govt. aided Institutions and as such the proposal for appointment on compassionate ground to the employees of non-Govt. aided Institutions cannot be entertained from this end.

Yours faithfully,
Sd/- (illegible)
OSD & Ex-Officio Assistant Secretary”

16. The non-teaching employees of the University have been classified under University Ordinance 40(USC). Ordinance 42(USC) prescribes the mode of recruitment of the said non-teaching employees. A comprehensive

analysis of University Ordinance 46(USC) as mentioned above reveals a notable deviation from the standard mode of recruitment for filling up the posts mentioned in University Ordinance 40(USC). In the event of death of a University employee while in service, the Vice-Chancellor at his discretion may appoint the deceased employee's spouse, son or daughter dependent on him against a vacancy in a basic post of non-teaching employees on compassionate ground, if such candidate possesses the minimum qualifications and fulfills the recruitment age. The aforesaid Ordinance implies that the discretion of the Vice-Chancellor should be exercised judiciously to determine the eligibility of a candidate for compassionate appointment. The Vice-Chancellor cannot decline to consider a case for compassionate appointment on any extraneous ground.

17. In the judgment passed in **W.P.A. No.5891 of 2023 (*Shrimati Binapani Murmu v. The State of West Bengal & Ors.*)**, the absence of an existing scheme for compassionate appointments was not deemed a legitimate justification for denying this right when a statutory framework enshrined it. It was held that the responsibility to frame a scheme was with the authorities, and the absence of such a scheme should not impede the recognition of this statutory right. The relevant parts of the said judgment are quoted below:

“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.

It is unreasonable to suggest that the authorities will not frame a scheme to give effect to the statutorily recognised right and deny the said right on the ground that there is no scheme in place. The respondents were obliged to frame a scheme to implement such right."

18. For the same reasoning as aforesaid, the Memo No.491(17)-Edn (U)/1U(B)-41/12 dated May 19, 2014, cannot be sustained and accordingly, the same is set aside.

19. It has already been held by this Court in the judgment passed in **W.P.A. No.23952 of 2022 (Sri Pritam Mallick v. State of West Bengal and Others)** that the West Bengal Universities (Control of Expenditure) Act, 1976, does not stand in the way of compassionate appointment. The relevant paragraphs of the said judgment are quoted below:

"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 effect. **21.**Notwithstanding anything 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.”*

20. I am also unable to accept the stand of the University that the petitioner's appointment as a Junior Assistant on a daily wage basis

precludes her from invoking a statutory provision for compassionate appointment. When a statute acknowledges the right to compassionate appointment, a temporary appointment should not hinder the assertion of that right.

21. The petitioner's case should be considered by the Vice-Chancellor based on the ongoing financial crisis in her family that justifies a compassionate appointment. The University shall cause an enquiry to ascertain whether there is an existing financial crisis in the family of the petitioner within one month from the date. If the enquiry report justifies a compassionate appointment, the Vice-Chancellor shall issue a letter of appointment in favour of the petitioner commensurate with her educational qualification within fifteen days thereafter. The Higher Education Department, University Branch, shall accord the necessary approval to the appointment of the petitioner within two weeks thereafter.

22. Given the consistent denial of compassionate appointment due to the aforesaid Government order dated May 19, 2014, by the University, I also direct the University to formulate a scheme within six months from the date of communication of this order to facilitate the implementation of University Ordinance 46(USC). 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 modification, if any, within one month thereafter.

23. Accordingly, W.P.A. No.21051 of 2022 is allowed.

24. 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.)