

11.12.2023
Sl. No. 18
Suman
Ct.No.238.

WPA 22247 of 2023

Padmashree Mahata
Vs.
The State of West Bengal and Ors.

Mr. Amrita Shankar Ray
..for the petitioner

Ms. Debjani Sengupta
Ms. Koyel Bag
Mr. Abhijit Chatterjee
..for the Vidyasagar University

Mr. Gourav Das
Mr.Ovik Sengupta
..for the State

The petitioner approached this Court on earlier occasion by filing WPA 8618 of 2018 (Padmashree Mahata vs. The State of West Bengal and Ors.) seeking her appointment on compassionate ground. The said writ petition was disposed of on July 22, 2022.

The relevant part of the said order is quoted below:-

“It appears that the petitioner has been knocking the door of this Court since 2017 seeking an appointment on compassionate ground on the death of her mother who used to work as a lady attendant in Vivekananda Satavarshiki Mahavidyalaya, Jhargram.

On an earlier round of litigation, her writ petition, seeking a compassionate appointment was disposed of by a Co-ordinate Bench of this Court giving a direction upon the college

authority to consider her representation in accordance with law. It was further directed to forward the documents to the Director of Public Instruction, Government of West Bengal for his consideration, if the petitioner was found to be eligible.

It appears that the college authority thereafter on January 18, 2018, wrote a letter intimating the Joint Director of Public Instructions, Education Directorate, Government of West Bengal that the college was not in a position to give an appointment to the petitioner as no appointment to a non-teaching post could be made by the college authority without permission of Higher Education Department. It was further intimated through the said letter that after obtaining the permission for filling of the vacant post of non-teaching staff, a written examination for filling up the post of lady attendant was conducted on March 9, 2017, but the petitioner could not qualify in the said examination.

Accordingly, the Director of Public Instruction by a letter dated March 21, 2018, intimated the petitioner that since he had not received any comprehensive proposal from the college, he was not in a position to consider the case of the petitioner.

In my view, the college has committed a mistake in communicating the letter dated January 18, 2018. From the said letter it is clear that the petitioner was asked to sit in the examination for lady attendant, but she failed and the college, therefore, did not recommend the name of the petitioner.

It is well settled that an appointment on compassionate ground is made to tide over the financial crisis faced by a family due to the sudden death of the sole bread winner of the family. A person seeking an appointment in died-in-harness category cannot be asked to participate in a regular selection process since it is not a merit based selection.

In that view of the matter, the communication dated January 18, 2018, from the College to the Joint Director of Public Instructions, Education Directorate, Government of West Bengal is set aside. Consequently, the communication dated March 21, 2018, from the

Director of Public Instruction to the petitioner is also set aside.

The Director of Public Instruction, Education Directorate, West Bengal is directed to consider the case of the petitioner afresh and decide whether the petitioner should be given an appointment on compassionate ground. The petitioner as well as the college shall be heard before the Director of Public Instruction, Education Directorate, West Bengal in arriving such a decision.

The entire exercise shall be completed by the Director of Public Instruction within six weeks from the date of communication of this order.

Accordingly, WPA 8618 of 2018 is disposed of.”

Following the said order dated July 22, 2022 the case of the petitioner was considered by the Director of Public Instruction, West Bengal and by an order dated August 16, 2023 the said authority rejected the case of the petitioner primarily on the ground that there is no scheme in place for compassionate appointment of the petitioner.

The order dated August 16, 2023 cannot be sustained in view of the judgment delivered in WPA 5891 of 2023 (Shrimati Binapani Murmu vs. The State of West Bengal and Ors.)

The relevant part of the said judgment is 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."

Accordingly the order dated August 16, 2023 is set aside. The college shall cause an inquiry to ascertain whether there is any existing crisis in the family of the petitioner within six weeks from date. If the inquiry report justifies a compassionate appointment, the respondent college shall recommend for compassionate appointment with all relevant documents to the Director of Public Instructions, West Bengal within two weeks thereafter. The Director of Public Instructions shall consider the case of the petitioner for compassionate appointment and communicate the decision to the college and the petitioner within one month thereafter.

It is made clear that the Director of Public Instructions, West Bengal shall not reject the case of the petitioner on the ground that there is no applicable scheme or that the family of the petitioner received terminal benefits after the death of petitioner's mother.

Accordingly, WPA 22247 of 2023 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.)