

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 25701 of 2018
Mrityunjoy Panda
Vs
State of West Bengal & Ors.

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Mr. Arunava Banerjee, Adv.
Sk. Qareeb, Adv.

..... for the Petitioner

Mr. Swapan Kumar Datta, Sr.Adv & AGP
Mr. Tapas Kumar Dey, Adv.

..... for the State

Heard On : 04.05.2023

Judgment on : 09.06.2023

Rabindranath Samanta, J:-

1. Aggrieved by the inaction on the part of the state authority to appoint him as a Library Peon on compassionate ground in a college namely Saldiha College, Bankura, the petitioner has approached this court by preferring this writ petition seeking direction upon the respondents to appoint him as a Library Peon in the college.
2. The facts giving rise to the writ petition may be summarised as under:

Smt. Sefalika Panda, the mother of the petitioner Mritunjoy Panda was a permanent Group D employee of Saldiha College. She was working as Helper-cum-Cleaner in the Girls' Hostel of the college. As an approved staff,

sefalika panda used to draw regular salary and other allowances as admissible to a permanent Group D employee.

Unfortunately, the mother of the petitioner while in service died on 21st July, 2014 leaving behind her the petitioner as her unemployed son.

After the sudden demise of his mother, the petitioner made appeal to the college authority for family pension, gratuity etc.. The college authority calculated the family pension at Rs. 4,890/- as on 21.07.2014 and death gratuity at Rs.1,15,890/-.

3. The petitioner applied for appointment on compassionate ground in died in harness category to the college. Responding to his application the Principal of Saldiha College vide Memo dated 19.05.2015 requested the Director of Public Instruction, Government of West Bengal to appoint the petitioner on compassionate ground in the college, but no step has been taken as yet from the concerned authority.

Be it noted that the petitioner filled in the application in prescribed format seeking appointment on compassionate ground. He submitted several no-objections from the other claimants. The enquiry committee constituted by the college authority, on consideration of the application of the petitioner, no objections from other claimants and other relevant factors, recommended the name of the petitioner for appointment on compassionate ground. But, the state authority i.e. the Director of Public Instruction has sat tight over the recommendation forwarded by the college authority.

On the similar circumstances as that of the petitioner, the state authority granted appointment on compassionate ground to the legal heirs of the deceased who died in harness vide Memorandum No. 226-Edn(T/10N/68/10) dated 15th June, 2011. Following such memorandum several appointments have been made and those appointees eke out their livelihoods because of such appointments. But, so far as the petitioner's

case is concerned, the respondent authorities exhibit their indifference to his prayer.

Strangely, during the pendency of the recommendation for petitioner's appointment on compassionate ground, the college authority published an advertisement dated 27.11.2018 inviting applications from the candidates to fill up the post of Library Peon in the college.

Under the aforesaid circumstances, the petitioner seeks direction upon the respondent authorities to appoint him as a Library Peon in the college on compassionate ground and injunction against them so that they cannot take any step to appoint Library Peon in terms of the advertisement dated 27.11.2018.

4. In their report in the form of affidavit filed by the respondent Nos. 1 and 2 namely the State of West Bengal and the Director of Public Instruction, state that the petitioner's father Rabindra Nath Panda was an employee of Saldiha College, Bankura and he died in harness. On his demise, his wife Sefalika Panda, the mother of the petitioner, was given compassionate appointment to the Group D post in the college. While she was working as Helper-cum-Cleaner at the college she died on 21st July, 2014 at the age of 54 years after rendering fifteen years of service. Gratuity and other service benefits were released. After availing of such benefits on the demise of his mother the petitioner has sought for appointment on compassionate ground. These answering respondents state that there is no existing scheme at the higher education department under which the benefit of appointment on compassionate ground can be extended to a legal heir of the deceased non-teaching employee of the Government Aided College and unless and until there is such scheme framed by the authority with regard to compassionate ground, no appointment can be given to any candidate. In the absence of any scheme or any statutory rule the petitioner cannot claim appointment on compassionate ground. Presently, compassionate

appointment of State Government Employees is governed by Labour Department's Order No. 251- Emp dated 03.12.2013. Under such order the applicants have to satisfy a volume of criteria as mentioned in the order. These criteria include financial status of the family after the demise of the employee, pension received by the family, if any, total amount of retiral benefits received by them, statement of movable and immovable property, legal heirship certificate, no-objection certificate from the other members of the family etc. In the absence of such specific scheme, the higher Education Department is not in a position to determine the needs of the claimant and extend any benefit to him.

5. The appointment and other service related matters of the teaching and non-teaching employees of Government –aided Colleges of the State are regulated by the Government Orders as issued by the Higher Education Department, Government of West Bengal, from time to time and not by the statutes of the affiliating universities. This position has been reiterated by the enactment of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017. Under Section 17(2)(1) of the Act the rule making power regarding the terms and conditions of service of all employees of college has been bestowed on the State Government. The appointment of non-teaching employees of colleges is guided by series of Government Orders dated 31.10.1995, 26.11.2007, 09.09.2008, 25.08.2017 and 15.02.2018. The representation of the petitioner should not be considered due to absence of any specific scheme of the Higher Education Department relating to appointment on compassionate ground. In the absence of any such scheme the application filled in by the petitioner is not sanctioned by law.
6. The Memorandum dated 15.06.2011 by which compassionate appointments were made is not relevant as those appointments were given prior to issuance of the Labour Department's Order dated 03.12.2013. Before this Order a few cases were considered inadvertently under the contemporary Labour Department's Order on compassionate appointment.

In the aforesaid Orders it was stated that the benefit of compassionate appointment might be extended to the statutory bodies and other Government undertakings subject to specific adoption of schemes relating to compassionate appointment. However, after introduction of order No. Emp-251 dated 03.12.2013, the scope of extension of benefit of compassionate appointment is now restricted to State Government Employees. The Education Department, by issuing Order No. 690-Edn (CS) dated 22.08.2014 has specifically requested the Director of Public Instruction, Government of West Bengal not to forward any proposal for compassionate appointment to the Department. On such grounds and denying and disputing the averments as made in the writ application these answering respondents submit that the writ application is liable to be dismissed.

7. Learned Counsel appearing for the petitioner submits that after the demise of the father of the petitioner while in service, the petitioner's mother Sefalika Panda was given appointment as a Group D staff on compassionate ground. But, she too died in harness. Learned Counsel submits that the petitioner who possesses all the requisite qualification deserves to be appointed as a Library Peon in the College and the College authority has recommended the appointment of the petitioner on compassionate ground to the Director of Public Instruction. Learned Counsel argues that despite the recommendation made by the college authority and the representation made by the petitioner, the respondent authority is sitting tight over the matter. Learned Counsel submits that similarly circumstanced persons like that of the petitioner have been appointed on compassionate ground as Group D employees at the hostels/mess of Jalpaiguri Government Engineering College. Referring to Statute 50 of the Bankura University First Statutes, 2016 learned counsel submits that this statute speaks of appointments on compassionate grounds of Non-teaching employees. In such context, learned counsel

emphasises that the petitioner too should be appointed as a Group D staff in the college on compassionate ground at par with the appointments made at the hostels/mess of Jalpaiguri Government College. In support of his contention learned lawyer places reliance on an order dated 13.05.2016 passed by a learned Co-ordinate Bench in W.P 8112(W) of 2016 (**Kartik Nayek-Vs- The State of West Bengal & Ors.**).

8. Per Contra, learned counsel appearing for the state respondents submits that there is neither any rule or regulation nor any scheme issued or framed by the Higher Education Department governing compassionate appointment and as such the petitioner's claim for appointment on compassionate ground is not warranted by law. Learned Counsel further submits that some appointments on compassionate ground were made in the hostels/mess of Jalpaiguri Government Engineering College inadvertently and such inadvertent or illegal appointment cannot be considered as a ground on doctrine of equality under Article 14 of the Constitution. The petitioner's mother died on 21.07.2014 and now his claim is under consideration after nine years of her death. Learned Counsel argues that since the sense of immediacy has been lost, the petitioner's claim cannot be considered for compassionate appointment. According to learned Counsel, since no statutory document provides for entertaining a representation, the petitioner's representation also cannot be considered. On such score, learned counsel submits that the writ application is liable to be dismissed. In support of his contention learned counsel has referred to a catena of decisions i) in the case of **State of Madhya Pradesh and Others-Vs- Amit Shrivastava** reported in (2020) 10 SCC 496 ii) in the case of **Bhawani Prasad Sonkar-Vs- Union of India Ors** reported in (2011) 4 SCC 209 iii) in the case of **The National University of Technology and Others-Vs- Niraj Kumar Singh** reported in (2007) 2 SCC 481 iv) in the case of **State of West Bengal -Vs- Debabrata Tiwari** reported in (AIR Online 2023 SC 174) v) in the case of **Vice Chancellor, M.D. University, Rohtak-Vs- Jahan Singh** reported in (2007) 5 SCC 77 and in the case of

Union of India and another –Vs- Ashok Kumar Agarwal reported in ***(2013) 16 SCC 147.***

9. The admitted facts which emerge from the writ application as well as the affidavit-in-opposition are to this effect that the petitioner's father Rabindra Nath Panda was a Group-D employee of Saldiha College, Bankura and he died in harness. On his demise, his wife Sefalika Panda was given compassionate appointment to a Group-D post in the college. While she was in service as Helper-cum-Cleaner in the college she died on 21.07.2014.

It is evident from the documents on record that on the demise of the petitioner's mother Sefalika Panda the petitioner applied for compassionate appointment. Acting on his application the college authority constituted an enquiry committee to consider whether the petitioner's case for appointment on compassionate ground may be allowed. As I find from the relevant documents, the enquiry committee recommended compassionate appointment for the petitioner. On such recommendation the teacher-in-charge of the college by a communication transmitted the relevant papers including the report of the enquiry committee to the Director of Public Instruction, Government of West Bengal seeking permission to appoint the petitioner Mritunjoy Panda on compassionate ground. It is not in dispute that on the communication made by the Teacher-in-Charge of the college, no action has been taken by the Director of Public Instruction. Aggrieved by the inaction on the part of the state authority, the petitioner by representation dated 21.07.2016 made appeal to the Director of Public Instruction to consider his case sympathetically and appoint him in the college on compassionate ground. Undisputedly, this representation has not yet been responded to by the Director of Public Instruction.

Now, the point which falls for consideration is whether the petitioner is entitled to be appointed as a Group- D employee in the college on compassionate ground on the demise of his mother Sefalika Panda in harness and whether the representation made by him requires to be disposed of by the concerned state authority.

A letter dated 15th June, 2011 issued by the Assistant Secretary to the Government of West Bengal, Higher Education Department to the Director of Technical Education, West Bengal (Annexure P6), shows that the Director of Technical Education was advised that the appointment of Hostel/Mess Employees might be made by the concerned chairman of the hostel/mess committee of the respective Government Engineering and Technical Colleges since no approval of the Government would be necessary in that regard. As it appears from Annexure P6 collectively, three applicants namely Gopal Das, Tumpa Chowdhury and Alpan Hazra were appointed on compassionate ground at the Hostel/Mess of Jalpaiguri Government Engineering College. Based on the compassionate appointment of his mother and the aforesaid appointments of three candidates, the petitioner claims that he should also be appointed as a Group-D staff in the college on compassionate ground.

10. As pointed out by learned Counsel appearing for the petitioner, it is true that Statute 50 of the Bankura University First Statutes, 2016 speaks of appointments on compassionate ground of the Non-teaching employees. As it appears from an order dated 13.05.2016 passed by a Co-ordinate Bench in W.P 8112(W) of 2016 (**Kartik Nayek -Vs- The State of West Bengal**), the learned Co-ordinate Bench placing reliance on Statute 163 of the Vidyasagar University First Statutes, 1983 which is akin to Statute 50 of the Bankura University First Statutes, 2016 directed the Director of Public Instruction to dispose of the petitioner's representation for appointment on compassionate ground by a reasoned order.

It is alternatively submitted on behalf of the petitioner that since the statute 50 of the Bankura University First Statutes speaks of appointment on compassionate ground of non-teaching staff, this Court may direct the Director of Public Instructions to consider and dispose of the representation made by the petitioner by a reasoned order.

The application along with the Annexures thereto submitted by the petitioner to the college authority show that the petitioner filled in application in prescribed format and furnished no-objections by way of affidavits from the other claimants.

What this Bench finds, no rule or regulation or scheme has been produced on behalf of the petitioner to show under which legal authority he filled in the application with no-objections from the other claimants seeking appointment. The Notification No. 251-Emp dated 3rd December, 2013 issued by the Labour Department, Government of West Bengal prescribes the procedure relating to submitting application on compassionate ground. But, it is trite to say that this notification dated 3rd December, 2013 is applicable to the Government Employees only. As the various provisions of the Notification dated 3rd December, 2013 suggest, the beneficial provisions as contained in the notification prescribes the procedure of appointment on compassionate ground do not apply to a teaching and Non-teaching staff of a Government aided college like the Saldiha College, Bankura.

11. On the contrary, a letter being No. 690- Edn(CS/5P-41/2014) dated 22nd August, 2014 issued by the Higher Education Department to the Director of Public Instruction, West Bengal clearly mandates that proposals of compassionate appointment of deceased family members of non-government colleges should not be referred either from Directorate Office to the Department or from the college to Directorate Office until a policy in this regard is adopted by the Government. This shows that there is neither any rule or regulation nor any scheme or policy issued by the Higher

Education Department, Government of West Bengal on compassionate appointment in Government aided colleges arising out of death in harness.

The letter dated 15th June, 2011 issued by the Assistant Secretary to the Government of West Bengal, Higher Education Department (Technical Branch) based on which three applicants were appointed as a Group D staff at the hostel/mess of Jalpaiguri Engineering College is not a statutory document and it has no binding effect on a Government aided college authority. Perusal of the letter shows that this letter is a mere advice to the Director of Technical Education as to appointment on compassionate ground. This document having no statutory efficacy and not being warranted by law cannot be pressed in service to consider the recommendation of the college authority and the representation submitted by the petitioner.

12. The West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 was enacted to provide better administration and to improve the quality of education in the State-Aided Higher Education Institutions in West Bengal and for such other matters connected therewith and incidental thereto. By virtue of Section 17 of the Act the State Government has been empowered to make the rules relating to :
 - i) The terms and conditions of service of all employees of colleges and Universities;
 - ii) Code of conduct and discipline for all the employees of the colleges and Universities;
 - iii) Manner and procedure for holding disciplinary proceedings against employees of the colleges and Universities;
 - iv) Manner and procedure of transfer, including mutual transfer and transfer of his own seeking in respect of all the employees of the colleges, other than the colleges run by minorities;

- v) Manner and procedure for maintaining funds and accounts of the colleges and Universities including the procedure for maintaining Provident Fund of the employees of the colleges and Universities;
- vi) Such other subject as the State Government considers necessary for the purposes of this Act.

13. Section 20 empowers the State Government to relax any of the provisions of this Act or any rule, notification, order, schemes or bylaws made under this Act in relation to any college or any university in the interest of public service. The provisions as above coupled with the letter dated 22nd August, 2014 clearly evince that presently there is no rule or regulation or scheme or policy made by the State Government as to appointment on compassionate ground on the demise of a Non-teaching staff of a Government aided college.

True, some applicants who applied for appointment as Group- D staff at the hostel/mess of Jalpaiguri Government College were given appointment on compassionate ground. As stated above, such appointments were made on the basis of a letter which has no statutory force. Since the candidates who have been appointed on compassionate ground are working since long and no proceeding has been brought by anybody challenging their appointments, this Court being a Court of equity should not disturb their appointments. But their appointments cannot be cited as a precedent to extend the similar benefits to the petitioner on the doctrine of equality as enshrined in Article 14 of the Constitution. The Hon'ble Supreme Court in the decision in the case of ***Vice Chancellor, M.D. University, Rohtak -Vs- Jahan Singh*** reported in ***(2007) 5 SSC 77*** has held that merely because benefit conferred on one person illegally, another person similarly situated cannot claim the same benefit on the ground of equality. The Hon'ble Apex Court has ruled held that Article 14 cannot be invoked for perpetuating illegality.

14. The Hon'ble Apex Court in the decision in the case of ***Bhawani Prasad Sonkar-Vs- Union of India and Others*** reported in ***(2011) 4 SCC 2009*** has

held that compassionate appointment cannot be made in the absence of any rule or regulation issued by the Government or Public Authority. Similarly, the Hon'ble Apex Court in the decision in the case of ***National Institute of Technology and Others-Vs- Niraj Kumar Singh*** reported in ***(2007) 2 SCC 481*** has held that compassionate appointment can be made only under the scheme prepared for the purpose.

15. The petitioner's mother died in harness on 21.07.2014. Now, the claim of the petitioner seeking appointment on compassionate ground is under consideration for more than eight years since the death of his mother. The Hon'ble Apex Court in the decision in the case of ***State of West Bengal-Vs- Debabrata Tiwari*** reported in ***AIR Online 2023 SC 174*** has postulated that compassionate appointment cannot be considered when the sense of immediacy has lost.

In an another decision in the case of ***Union of India and Anr-Vs- Ashok Kumar Agarwal*** reported in ***(2013) 16 SCC 147*** as relied on by the State Authority has held that a representation may be considered by the competent authority if it is statutorily provided for. As the case of petitioner is presented, the recommendation of appointment on compassionate ground in favour of the petitioner and the representation by the petitioner seeking appointment on such ground are not backed by any statute or by any rule or regulation or by any statutory scheme or policy framed by the Government.

In the light of the observations as recorded above, this Court cannot either in exercise of any statutory authority or in exercise of its plenary power direct the State authority to appoint the petitioner on compassionate ground on the recommendation of the college authority or direct the State authority to consider and dispose of the representation of the petitioner seeking compassionate appointment.

16. The provision as contained in Statute 50 of the Bankura University First Statutes, 2016 prescribing appointment on compassionate ground of Non-teaching staff not being backed by any rule or scheme or policy in terms of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 does not empower either the college authority or the Director of Public Instruction to give appointment to the petitioner on compassionate ground.
17. In view of the above, the point as posed is answered in the negative.
18. In the result, the writ petition merits dismissal.
19. Accordingly, the writ petition is dismissed on contest. Connected application, if any, stands disposed of.
20. No order as to costs.
21. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.
22. Certified/Photostat copy of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)