

05.7.2023
ap
208

WPA 28690 of 2022

Sudipta Dhar Roy
- Versus -
The State of West Bengal & Ors.

Mr. Asok Nath Ghosh
Mr. Kinkar Chandra Basu
... For the petitioner.

Ms. Debjani Sengupta
Mr. Koyel Bag
Mr. Abhijit Chatterjee
... For the University.

Let affidavit-in-opposition filed by the University and reply thereto filed by the petitioner be kept with the records.

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.

Therefore, this Court cannot accept the stand of the University that in absence of a scheme, the case of the petitioner for compassionate appointment cannot be considered.

The petitioner's father was a Group – 'D' staff of Kharagpur College, Paschim Medinipur, affiliated with Vidyasagar University. He died in harness on April 16, 2017 leaving the petitioner and his wife.

Though the petitioner made representation before the college to consider his case, learned advocate for the petitioner submits that no step has so far been taken by the College.

In the above factual backdrop, this writ petition is disposed of with the following directions:

- (a) The College shall enquire as to whether the present financial condition of the petitioner's family within one month from date of communication of this order.
- (b) If the enquiry report justifies compassionate appointment in favour of the petitioner, the college shall recommend the petitioner's name for compassionate appointment and forward all the relevant documents and the enquiry report

to the Director of Public Instruction, West Bengal for his approval.

- (c) The Director of Public Instruction shall take a decision with regard to the compassionate appointment of the petitioner within one month thereafter. The order should be communicated to the petitioner within seven days thereafter.

However, it is made clear that the Director of Public Instruction shall not reject the case of the petitioner on the ground that there is no scheme in place for compassionate appointment. It is further made clear that the terminal benefits, if any, received by the petitioner or his mother will also not be a ground for rejection of the petitioner's case.

With the aforesaid observations, **WPA 28690 of 2022** is disposed of.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)