

Item -
18. 08-01-2024

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&
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MAT 1878 of 2023
with
CAN 1 of 2023
CAN 2 of 2023

The State of West Bengal & Ors.
Vs.
Shramati Binapani Murmu & Ors.

Mr. Somnath Ganguli
Ms. Sukalpa Seal
Mr. Tapas Kumar Dey
... For the Appellants/State

Mr. Lal Ratan Mondal
Mr. Dilip Kumar Sadhu
... For the Writ Petitioner/Respondent

Re: CAN 1 of 2023
(Condonation of delay)

1. There is a delay of 53 days in preferring the appeal.
sufficient cause being shown for not being able to file the
memorandum of appeal within stipulated period. The
delay of 53 days in preferring the appeal is condoned.
2. CAN 1 of 2023 is accordingly, disposed of.

Re: MAT 1878 of 2023

1. The appeal is arising out of an order dated 27th June, 2023
passed in a writ petition in which the respondent no.
1/writ petitioner has prayed for compassionate
appointment in a position commensurate with her
educational qualification.
2. The husband of the petitioner was an Assistant Professor
of Sanskrit at Mahishadal Raj College, Midnapore (East)
affiliated to Vidyasagar University. The husband of the
petitioner joined his service on 28th July, 2014 and
unfortunately he died in harness on 4th November, 2018

while in service after rendering about 4 years and 3 months of total service. It is also distressing to note that at the time of his death, the husband of the petitioner was only 35 years age and the petitioner herself was 20 years old with a 6 year old daughter.

3. The petitioner by a letter dated 27th January, 2021 requested the Principal of the said college to appoint her to a Group C post considering her higher secondary qualification. The said application was rejected by the Principal of the college primarily on two grounds. Firstly, in absence of any scheme for compassionate appointment, the case of the petitioner could not be considered and secondly, the said application was filed belatedly approximately after about two years and two months after the death of her husband indicated the lack of financial need for the family. The aforesaid order dated 9th November, 2021 was challenged by the writ petitioner by filing a writ petition being WPA 430 of 2022.
4. Learned Single Judge³ by an order dated 15th June, 2022 set aside the said order and directed the Director of Public Instruction, Government of West Bengal, to consider the case of the petitioner for compassionate appointment after giving an opportunity of hearing to her.
5. In compliance of the said order dated 15th June, 2022, the Director of Public Instruction, Government of West Bengal, passed an order on 2nd January, 2023 rejecting the case of the petitioner for compassionate appointment.
6. It appears from the impugned order passed by the D.P.I

dated 2nd January, 2023 that the Vidyasagar University First Statute, 1983 does not envisage the mode of compassionate appointment/recruitment of ministerial or lower subordinate staff in dying in harness category except a stray reference in the proviso to Statute 163(1)(a). The D.P.I was of the further view that the Higher Education Department of the State had not issued any order or circular outlining a scheme for compassionate appointment in a Government aided college. The said authority was of the considered opinion that the claim for compassionate appointment can only be considered within the scheme framed by the employer for such employment and compassionate appointment cannot be made in the absence of rules and regulations issued by the government or public authority.

7. Learned counsel for the University in assailing the said judgment had reiterated the views expressed by the D.P.I that since there is no scheme in place for compassionate appointment, the case of the petitioner cannot be considered. The delay in making the application is also the other ground to argue that the period of 2 years and 2 months, after the death of the husband of the petitioner, is a crucial factor to be taken into consideration besides whether the immediate financial need is necessary for the deceased family.
8. Learned counsel representing the petitioner has submitted that the first proviso of Statute 163 of the Vidyasagar University First Statutes, 1983, which is immaterial

whether there is any scheme for compassionate appointment in place. Learned counsel has also referred a Division Bench Judgment of this court granting compassionate appointment to a family member of a deceased employee of a college affiliated with the Vidyasagar University First Statute 1963.

9. For the purpose of determining of the said issue he referred to Statutes 160, 162 and 163 as said Statutes are found to be relevant and much emphasis has been laid in the Statute 162 to submit that the Governing Body has not framed any rule. The initial issues of absence on policy or scheme are now thus to be addressed on the basis of the aforesaid Statute forming the part of the Vidyasagar University First Statute, 1983. Chapter XI of the said Statute deals with the terms of employment and conditions of service of non-teaching employees of colleges other than the government colleges affiliated with the University. The aforementioned three Statutes, namely, Statutes 160, 162 and 163 are reproduced below:-

Statute 160 reads :

Statute 160

For the purposes of these Statutes, the employees concerned are classified as follows:

a) Ministerial staff comprising the posts of

i. Office Superintendent, Cashier, Accountant, Head Clerk, Senior Assistant and Senior

Clerk and such other posts as may be approved by the State Government

ii. Assistant, Clerk, Library Assistant, Laboratory Assistant, Store Clerk, Store-Keeper,

Caretaker, Stenographer, Record Keeper, Collection Clerk and such other posts as may be approved by the State Government

b) Lower Subordinate Staff comprising the posts of

i. Driver, Laboratory Attendant, Skilled Bearer, Electrician, Mechanic and Carpenter ; and

ii. Unskilled Bearer, Messenger Peon, Darwan, Night Guard Sweeper and such other posts as may be sanctioned by the State Government from time to time

Statute 162 provides as follows :

Statute 162

Appointments to all the posts referred to in Statute 160 shall be made by the Governing Body in accordance with such rules as may be framed for the purpose by the State Government.

Statute 163 is quoted below :-

Recruitment and Promotion

Statute 163

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;

Provided further that the provision mentioned above shall also be applied in case of a college employee who is disabled permanently or otherwise incapacitated rendering him unfit to continue in service, provided this fact of disablement is certified by a medical officer authorized by the Director of Health Services.

b) Wherever a permanent vacancy occurs in any of the posts referred to in sub-Clause (ii) of clause

(a) of Statute 160, in the matter of filling up of such vacancy, the procedure as laid down in these Statutes for direct recruitment shall be followed.

c) In the case of filling up of vacancies in the posts referred to in sub-clause (ii) of clause (a) of Statute 160, efficient and experienced members of the lower subordinate staff having the requisite qualifications shall get preference over others.

Explanation

A dependant of an employee shall mean husband, wife, son, unmarried or widowed daughter, unmarried or widowed sister, brother, parent provided such relation of the employee is solely dependent on him/her.

10. The Proviso of Statute 163 acknowledges the right to be considered on compassionate ground. It clearly states that 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.

11. As rightly pointed out by the learned Single Judge on combined reading of Statute 163 and Statute 160 makes it absolutely clear that the posts mentioned in Clause a(ii) of Statute 160 have to be filled up through direct recruitment while the posts mentioned in Clause a (i) of Statute 163, would initially be filled up by way of promotion from the feeder posts mentioned in Clause a(ii). If the said posts cannot be filled up by way of promotion due to lack of suitable candidates, they may be filled up by way of direct recruitment in accordance with the prescribed procedure. The first proviso carves out an exception to the aforesaid mode of recruitment for filling up the posts mentioned in Statute 160. It stipulates that the posts mentioned in Statute 160 may be filled up by granting compassionate appointment to the wife, son, daughter or dependent of an employee consistent with his/her qualification. The said family member should have precedence over others in matters of appointment or placement. In other words, the proviso obliges the authority to offer a compassionate appointment in deserving cases without adhering to the regular recruitment rules for the posts mentioned in Statute 160. The said proviso confers substantial statutory right to be considered for appointment on compassionate grounds and it cannot be termed as a “stray provision” as observed by the

Director of Public Instruction in the order impugned.

12. The main argument on behalf of the appellants was that in absence of any scheme the case for compassionate appointment cannot be considered and in this regard the learned Single Judge had relied upon a decision of the Hon'ble Supreme Court in ***State of West Bengal Vs. Debabrata Tiwari & Ors., reported in 2023 SCC Online 219.*** It is submitted that the said judgment has clearly recognized that in absence of any scheme the University cannot be directed to consider any case of compassionate appointment. We have read the judgment carefully and we are of the opinion that the said judgment is distinguishable of facts. As would appear from Debabrata Tiwari (supra) the heirs of the employees of the Burdwan, Ranaghat and Habra Municipalities have applied for compassionate appointment to the post in the concerned municipality under die in harness category. In fact, it appears that the Chairman of the Burdwan Municipality after causing an inspection forwarded an approved list to the Director of Local Bodies, Government of West Bengal for approval of appointment on compassionate ground. The Director of Local Bodies, Government of West Bengal, did not take any step whereby a writ petition was filed. The writ petition was disposed of by directing the Local Bodies to take a decision on the recommendation of the Chairman of the

Municipality within a period of ten weeks. In continuation of the direction of the Hon'ble Supreme Court the Government of West Bengal passed an order on 16th October, 2015 wherein it was stated that the Director of Local Bodies had no authority to appoint on compassionate ground in urban local bodies unless the policy in the matter was laid down by the State Government. It was, therefore, observed by the Director of Local Bodies that as soon as the State Government extends such policy for appointment of the employees of the urban local bodies under compassionate ground in died in harness category, the prayer of the writ petitioner cannot be considered.

13. The learned Single Judge dismissed the writ petition on the ground that in the absence of a statutory scheme for compassionate appointment with respect to employment, no leave may be granted to the writ petitioner. In appeals preferred by the writ petitioner, the Hon'ble Division Bench of the Hon'ble High Court has directed the Director of Local Body, Burdwan Municipality and the concerned of the Raiganj and Habra Municipalities to consider the application made by the writ petitioner seeking appointment on compassionate ground. It appears that the Hon'ble Division Bench observed that the employee of the Municipality cannot be treated as an employee of State Government and, therefore, the scheme available to the State Government employee cannot be extended to the dependant of an employee of the

Municipality to die in harness and on the basis of the aforesaid reasonable it was held that they are not entitled to the benefit of compassionate appointment in terms of the scheme formulated vide Circular No. 97-Emp; 142-Emp, 130-Emp and 51-Emp which were applicable to the State Government employees. As to the issue whether there was no scheme for grant of compassionate appointments in respect of the employees of Municipality, the Hon'ble Division Bench by referring to the Circulars observed that the said scheme which are not in respect of establishments covered under the West Bengal Regulation of Recruitment in the State Government Establishments and Establishment of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 and since the said circulars were extended to the employees of all establishments including the local authorities like Municipalities, were neither withdrawn nor substituted by the subsequent notifications and the circulars, held that in few of circulars those were not specifically withdrawn to continue to remain applicable and the Circular nos. 301-Emp, 302-Emp and 303-Emp circular No. 391-Emp and 302-Emp and 303-Emp would be applicable to the legal heir of such deceased employees.

14. In paragraph 28 of the said judgment, points for consideration was formulated thus:

- i. *Whether the Division Bench of the High Court of Calcutta erred in allowing the appeals filed by the*

Respondents-writ Petitioners and directing that their claims for compassionate appointment be considered by the Appellant?

ii. *What order?*

28. It was observed that those appeals primarily concern the question whether there exists any scheme in the State of West Bengal, governing compassionate appointment governing municipal employees dying in harness. In paragraph 32 of the said judgment on consideration of various decisions, the following principles were laid down.

i. *That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.*

ii. *Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family*

of the deceased to get over the sudden financial crisis.

- iii. *Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.*
- iv. *That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*
- v. *In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.”*

29. It was observed that the financial condition of the family of the deceased at the time of death of the deceased, the primary condition that ought to be guided the authority’s decision in the matter.

30. In paragraphs 41, 42, 44 it was held that:

“41. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the

year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action.

42. It may be apposite at this juncture to refer to the following observations of this Court in Malaya Nanda Sethy v. State of Orissa, AIR 2022 SC 2836, as to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds:

"9. Before parting with the present order, we are constrained to observe that considering the object and

purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several

years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”

44. As noted in the said case, the operation of a policy/scheme for compassionate appointment is founded on considerations of immediacy. A sense of immediacy is called for not only in the manner in which the applications are processed by the concerned authorities but also in the conduct of the applicant in pursuing his case, before the authorities and if needed before the Courts.

31. All the facts it was held that sense of immediacy is diluted and lost in the present case. It is attributable to the authorities of the appellant/State as well as the respondent to the writ petition. The Hon'ble Supreme Court used the word of reproach in keeping the application pending. Paragraph 47 is reproduced hereinbelow:

“47. However, we must sound a strong word of reproach directed at the authorities of the Appellant-State, about the manner in which the applications for compassionate appointment of hundreds of dependents have been dealt with. Much uncertainty looms around the scope, extent and beneficiaries of the various schemes formulated by the State for governing compassionate appointment and therefore, the concerned authorities are unable/unwilling to positively decide claims for compassionate appointment. This may have ultimately resulted in prejudice to the families of many government employees dying in harness. Delay on the part of the authorities of the State to decide claims for compassionate appointment would no doubt frustrate the very object of a scheme of compassionate appointment. Government officials are to act with a sense of utmost proactiveness and immediacy while deciding claims of compassionate appointment so as to ensure that the wholesome object of such a scheme is fulfilled.”

32. With regard to applicability of the relevant circulars it

was observed that the circulars no. 301-Emp, 302-Emp and 303-Emp were not understood or read to be a scheme governing all employees of other establishments governed by the Act 1991 and the existence of the policy issued by the State Government is a *sine quo non* for making appointment on compassionate appointment. Thereafter it was observed in paragraph 57 that the appointments must follow the stipulations made in the policy. It is therefore a no-brainer that in the absence of a policy governing compassionate appointment to posts under a local authority, no appointment could be made to such an authority on compassionate grounds.

33. Unlike the aforesaid decisions, the instant case referred to a statute which clearly provides for compassionate appointment to a wife, son, daughter or dependant of any employee both teaching and non-teaching who have died during their employment died in harness and those categories of dependant are entitled to be offered a job consisting of his/her qualifications unlike the circular which creates an ambiguity in the instance case. The statute itself makes a provision for compassionate appointment. Merely because the governing body may not have framed a rule under the Statute 163 cannot be a ground to deny and the heir of the deceased who is dependent on the decease to be considered for compassionate appointment. In fact, in the first writ petition, the learned Single Judge set aside the order dated 9th November, 2021 by which the Principal of the College

has denied compassionate appointment, inter alia, on the ground that in the absence of any scheme of compassionate appointment, the case of the writ petitioner cannot be considered. The order dated 15th June, 2022 by which the impugned order of 9th November, 2021 was set aside, was not challenged.

34. Thereafter, the matter was considered by the Director of Public Instruction, Government of West Bengal. The DPI has failed to take into consideration that when the statute itself creates a right, it cannot be denied on the ground that the expression compassionate appointment in the proviso is a stray provision. As rightly observed by the learned Single Judge that when a statute recognized 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 stand.
35. In the absence of any scheme, it was open for the University to take into consideration such factors like financial condition of the family in question and other relevant factors which are normally and ordinarily taken into consideration in deciding the claim for compassionate appointment so long as a scheme is not framed. However, the right to be considered for compassionate appointment cannot be defeated merely on the ground that the governing body has not formulated the scheme. The scheme has to follow the statute.
36. The State respondents have accepted the order passed by a Co-ordinate Bench where compassionate appointment

was granted to the family members of a deceased employee of a College affiliated with Vidyasagar University and based on an examination of the Vidyasagar University First Statute 1983 and, therefore, at this stage cannot take a stand and treated absence of a policy to defeat the claim of the writ petitioner.

37. The learned Single Judge has taken into consideration such factors when it is observed in the judgment.

“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.

Therefore, I am of the view that the petitioner's case should be considered solely on the basis of whether there is an ongoing financial crisis

in the family that justifies a compassionate appointment. It is an admitted position that the petitioner's husband died in harness, without the wife receiving any pension. The petitioner or her daughter has not been provided with any family pension as on date since her husband did not have the qualifying service to receive the pension. The petitioner, now a thirty three year-old widow with a school-going minor daughter, is devoid of any reasonable financial support, such as pension or retirement benefits for herself and her daughter. This crucial aspect has completely been glossed over by the Director of Public Instruction in the order impugned.

I have already held that the petitioner's right to be appointed on compassionate ground stems from the first proviso of Statute 163 of the Vidyasagar University First Statutes, 1983."

38. We fully concur with the aforesaid observation of the learned Single Judge and direct compliance of the aforesaid order by the Executive Council of the Vidyasagar University by extending the period i.e. within a period of two months from date.

39. The learned Counsel for the appellant has also relied upon an order dated 19th May, 2023 passed by a coordinate Bench in *Mithun Acharyya vs. The State of West Bengal & Ors.* in FMA 1281 of 2022 with IA No. CAN 1 of 2022

and it is argued that direction upon DPI to revisit the issue by carrying out an inquiry into the financial condition of the appellant/writ petitioner and in the event, in the inquiry is it discovered that the financial condition of the appellant/writ petitioner is penurious, the DPI shall then take steps to consider the case of the appellant for compassionate appointment, has been stayed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 42907/2023 in The State of West Bengal & Ors. vs. Mithun Acharyya & Ors. on 4th December, 2023. It appears that the writ petition was dismissed on the ground of delay since the petitioner/present appellant had challenged an order dated 30th October, 2015 after lapse of seven years in the year 2022. We find from the judgment of the Hon'ble Division Bench in the absence of a scheme for compassionate appointment to the College in question was raised and answered against the College and the DPI was directed to take steps to consider the case of the appellant for compassionate appointment.

40. However, in the instant case, we find that there a specific provision in the Act which provides for compassionate appointment to the dependants and legal heirs of the employee died in harness.

41. With the aforesaid directions, the appeal and the application are accordingly disposed of.

42. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)