

(2005) 04 GAU CK 0056
In the Gauhati High Court

Arjuna Begum

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-04-2005

Acts Referred:

Assam Non-Government College Management Rules, 2001 — Rule 19(iv)

Citation : (2005) 106 FLR 708 : (2005) 2 GLT 369

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Judgement

Amitava Roy, J.—The petitioner seeks a Writ of Mandamus for her appointment on compassionate ground in terms of the Government policy to that effect as contained in office memorandum No. ABP-357/90/137, dated 9.9.83.

2. I have heard Mr. A.S. Choudhury, senior advocate for the petitioner and Mr. M.R. Pathak, learned Standing Counsel foil the Education Department.

The facts in short are that the petitioner's husband Md. Mantu Sheikh died in harness on 22.8.2001 while he was serving as an LD Assistant in Madhya Kamrup College, Subha, leaving behind the petitioner and three minor children without any means of livelihood. The petitioner then submitted a representation before the Governing Body of the College on 12.9.2001 praying for her appointment on compassionate ground in a Grade IV post. According to her, in terms of the Government policy contained in the aforementioned Office Memorandum dated 9.9.83, she was entitled to be considered for the said purpose. She followed up her request by filing another representation dated 16.10.2001 before the Director of Higher Education, Assam. As the same did not receive any response, she approached this Court.

3. The respondents in their counter have taken a common stand that the government policy for compassionate appointment as comprehended in the office memorandum dated 9.9.83 is limited to the Government servants and is not extendable to an employee of an aided College in the State like the Madhya

Kamrup College where, the petitioner's husband had been serving before his death. A stand has also been taken by the respondent No. 3 that the petitioner is not academically qualified to be appointed to hold the post of LDA and that presently there is no vacancy in the College to accommodate the petitioner.

4. The learned Counsel for the petitioner Has argued that in view of the amendments to Rule 19(iv) of the Assam Non-Government College Management Rules, 2001 (hereinafter referred to as the "Rules") making it mandatory for the Governing Body of a non-Government College to implement amongst others the State Government's instructions and policies in matters of appointment of persons in connection with the affairs of the College against post or posts sanctioned by the State Government, the policy of compassionate appointment as contained in the Office Memorandum dated 9.9.83 is squarely applicable to the case of the petitioner, Therefore, non-consideration of her case as above is without any justification and, thus, she is entitled to a Writ of Mandamus as prayed for.

5. Mr. Pathak, the learned Standing Counsel for the Education Department, on the other hand, has assiduously contended that the requirement of the compliance of the State Government's instructions and the policies as intended in Clause 19(iv) of the Assam Non-Government College Management Rules, 2001, as amended, relates only to the procedure for the purpose of such appointments by the Governing Body of a Non-Government College and is not comprehended to confer any right on an employee thereof at par with the other Government servants. In other words, the applicability of the policy for compassionate appointment as is apparent on the face of the Office Memorandum dated 9.9.83 is to, be confined only to the Government servants. The amendment to Clause 19(iv) of the Rules does not vest any family member of a deceased employee of a non-Government College to claim the benefit of such policy, he urged.

6. Admittedly, the College in question is a aided College and, therefore, is a non-Government College to which the Rules apply. The Rules were preceded by the Assam Aided College Management Rules, 1976. Under Rule 19(iv) thereof, the Governing Body of such College, inter alia, was entrusted with the duty of appointment of persons in connection with the affairs of the College as per provisions of the rules in force. The Assam Non-Government College Management Rules, 2001, superseded the 1976 Rules and under Clause 19(iv) thereof, the Governing Body of such a Non-Government College was empowered to appoint persons in connection with the affairs of the College against the post or posts so sanctioned by the State Government in scrupulous compliance of the reservation policy and the 20 point Roster programme. The amendment introduced to the said provision of the Rules by the Notification No B(2) H 294/2000/39, dated 16.10.2001 is to the following effect.

(iv) to appoint persons in connection with the affairs of the College against the post or posts so sanctioned by the State Government with "scrupulous

compliance of the University Grants Commission guidelines and State Government instructions and policies.

7. A bare reading of the amended Clause 19(iv) of the Rules evinces that the Governing Body of a non-Government College while making appointment of a person in connection with the affairs thereof against the post or posts so sanctioned by the State Government has to act in scrupulous compliance of the University Grants Commission guidelines and State Government instructions and policies. A plain comparison of the language used in Section 19(iv) of the 1976 Rules and the original and amended version of the said provision of the Rules demonstrate a conscious drift towards increased adherence to the Government policies and instructions in matters of appointment by the Governing Body of a non-Government College. Whereas the clear mandate of the 1976 Rules was that such appointments would have to be made in accordance with the provisions of the rules in force. Rule 19(iv) of the rules empowered the Governing Body to do so against the post or posts sanctioned by the State Government in compliance with reservation policy of the State Government. The language used in Rule 19(iv) after the amendment of the Rules is more relaxed and suggesting. It manifest the intention of the Rule making authority that while making the appointments as conceived of therein, the Governing Body is to comply with the University Grants Commission's guidelines and the relevant State Government's instructions and policies. There is no reservation in the language used in the amended Rule 19(iv) of the Rules suggesting any fetter on the power of the Governing Body in applying the policies evolved by the State Government in matters of appointment in Government service. Policies to be complied with also have not been specified. The language on the other hand is categorical and emphatic. Having regard to the fact that the Non-Government Colleges receive grants in-aid from the Government and that at the appropriate level the State authorities have a regulatory control over the appointment of persons to the post or posts therein, in my view, it is not permissible to draw a restraint on the power of the Governing Body applying the germane State Government's policies in making appointments to the post or posts sanctioned by the State Government. In other words, the State Government's policies having a bearing on the appointments to the sanctioned post or posts of a Non-Government College have to be taken note of by the Governing Body in its exercise of powers in effecting appointments thereto.

8. The policy of compassionate appointment has been evolved to provide immediate relief to the family members of a Government servant dying in harness. True is that in absence of any provision to make it applicable to a family of a non-Government servant the benefit thereunder would not be available to the heirs of a deceased non-Government employee. However, if on a plain reading of any provision of law, the applicability thereof can be reasonably and logically inferred, in my view, having regard to the fundamental principles of statutory interpretation, the provision should essentially be interpreted to extend the benefit intended. This accords in my view with the Rules which envisage; a

State control on the appointments of person or persons by the Governing Body of a Non-Government College. To restrict the applicability of the Government policy for compassionate appointment only to a Government servant in the teeth of the language appearing in the amended Rule 19(iv) of the Rules would, in my view, be mutilative of the letter and spirit of the intention expressed therein.

9. In the above factual premises, it is held that the Governing Body of a Non-Government College, under the Rules, while making appointment under Rules 19(iv) as amended would take note of and apply the policy of providing compassionate appointment evolved by the State Government as contained in the Office Memorandum dated 9.9.83. In other words, if an application is submitted by any family member of a deceased employee of a Non-Government College for appointment on compassionate ground under the aforesaid memorandum, the Governing Body of a Non-Government College while making appointments to the post or posts sanctioned by the State Government in terms of extant Rule 19(iv) of the Rules, would have to consider his or her case in terms of such policy alongwith other similarly situated persons, however, strictly in terms thereof.

10. In the above view of the matter, I find sufficient force in the petition. The stand taken by the State authorities that the petitioner's claim for compassionate appointment cannot be entertained as her husband was not a Government servant cannot be sustained. It is, therefore, ordered that the respondent No. 3 would cause necessary steps to be taken for placing the petitioner's case for consideration before the Governing Body in terms of the Government Policy for compassionate appointment as contained in the Office Memorandum dated 9.9.83. This, however, should not be construed to be a direction to the State respondents or the Governing Body of the College to compulsorily provide appointment to the petitioner. Consideration of her case would be subject to her satisfying the conditions of eligibility prescribed by the policy, availability of vacancies and seriality of her request for such appointment.

11. The writ petition stands disposed in the above terms. No costs.