
(2021) 08 CAL CK 0073
In the Calcutta High Court
Case No : Writ Petition No. 5112 Of 2019

Partha Sarathi Manna	Vs	APPELLANT
State Of West Bengal & Ors.		RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 08 CAL CK 0073

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Balai Lal Sahoo, Kaustav Mishra, Uttam Kr. Bhattacharyya, Ardhendu Nag, Swapan Kr. Datta, Debjani Mitra

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The petitioner seeks compassionate appointment in the died in harness category. The father of the petitioner was an employee of Pingla Thana

Mahavidyalaya who died in harness on 16th December, 2007. Due to non-consideration of his prayer for being appointed on compassionate ground,

the petitioner approached this Court for relief by filing writ petition being WP 28816 (W) of 2008, which was disposed of by order dated 21st

December, 2009. The Court directed the College to forward all the papers of the petitioner to the Director of Public Instruction (DPI for short), who

was directed to take a decision in accordance with law. The DPI considered the prayer of the petitioner and observed that the prayer for appointment

of the petitioner on compassionate ground may be considered if all criteria for appointment is duly fulfilled. The DPI directed the College to scrutinise

the educational certificates of the petitioner and to assess the financial condition

of the petitioner. The petitioner was directed to apply before the College with all educational testimonials and the income statement as well as no objection certificate from the other heirs of the employee. The petitioner was directed to cooperate with the College.

In terms of the aforesaid direction of the DPI, the petitioner forwarded all his educational testimonials before the College. Pending consideration of the

petitioner's prayer as steps were taken by the College for filling up the Group D post, he approached this Court once again by filing writ petition

being WP 16987 (W) of 2010. The aforesaid writ petition was disposed of on 18th April, 2017 by directing that the College shall carry forward the

prayer of the petitioner for being appointed on compassionate ground to a logical conclusion and the College was further directed to communicate its

finding to the DPI. The DPI was directed to take a reasoned view in the matter within a specified time. It was ordered that if the findings are not

adverse, the DPI shall take necessary consequential steps. One post in the Group D category was directed to be kept vacant for a period of two

weeks from the date of receipt of a communication from the DPI.

In terms of the direction passed by the Court an Enquiry Committee was formed by the College to assess the financial status of the petitioner. The

Enquiry Committee consisting of three members, was of the unanimous opinion that there is no substantial income of the family. The case of the

petitioner for being appointed on compassionate ground was recommended by the College to the DPI.

The DPI on 1st February, 2019 passed a reasoned order rejecting the prayer of the petitioner primarily on the ground, that, there is no existing scheme

of the department under which the benefit of compassionate appointment can be extended to the legal heirs of a deceased non-teaching employee of a

government aided college and that the petitioner's economic conditions does not justify feasibility of his claim.

The order of the DPI dated 1st February, 2019 is under challenge in the instant writ petition. When the matter was taken up for consideration by the

Court an order was passed on 8th March, 2019 directing that the operation of the impugned decision shall remain stayed till disposal of the writ petition

and the respondents were directed to keep one Group D post vacant until further order.

According to the petitioner, as the Statute under which the employee was governed has a provision for providing appointment on compassionate

ground, there is no requirement for any further scheme of the Government for providing such appointment. Reliance has been placed on Statute 163 of

the Vidyasagar University First Statutes, 1983. The said provision relates to recruitment and promotion. The First Statutes was framed with the

approval of the Chancellor in exercise of the power conferred under the Vidyasagar University Act, 1981. Statute 163(a) first proviso lays down that

“Provided that the provisions relating to recruitment of non-teaching employees of affiliated colleges as laid down in the foregoing Statute shall not

apply in cases where, on compassionate ground, a wife, son, daughter or dependent 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.”

It is the specific case of the petitioner that as the Statute under which the College is running has a separate independent provision for providing

appointment on compassionate ground, there is no requirement of any further scheme of the Government for providing employment to a dependent

member of the aided college.

The further case of the petitioner is that his financial condition is very poor and he needs the job for his survival.

The petitioner relies upon the following judgments in support of his stand:

1) Unreported judgment delivered by a learned Single Judge of this Court on 2nd February, 2016 in WP 29281 (W) of 2015 (Pallabi Banerjee vs-

State of West Bengal & Ors.) wherein the Court took into consideration the provisions of the First Statutes of the Calcutta University and directed the

DPI to decide the issue with a rider that the prayer of the petitioner for appointment on compassionate ground in the died in harness category should

not be rejected solely on the ground of lack of scheme and policy for such purpose.

2) Unreported judgment by a learned Single Judge of this Court dated 14th February, 2020 in WP 4228 (W) of 2019 (Prakash Ch. Ghosh vs- State

of West Bengal & Ors.) wherein similar order was passed taking into consideration the First Statutes of the Calcutta University. The order of the DPI

rejecting the prayer of the petitioner on the ground of non-availability of a scheme was set aside by the Court.

3) Swati Chatterjee â?"vs- State of West Bengal & Ors. reported in 2010 (1) CHN (Cal) 665 (paragraphs 8, 9 and 10)

4) Rupali Chowdhury â?"vs- State of West Bengal & Ors. reported in 2000 LAB.I.C 3794 (paragraph 3)

5) Tapan Kumar Barman â?"vs- State of West Bengal & Ors. reported in 2009(1) CHN 23 (paragraphs 9, 10 and 11)

6) Swapna Lahiri â?"vs- State of West Bengal & Ors. reported in (2004) 1 Cal LT 541 (HC) (paragraphs 44 - 48 and 55)

7) Director of Public Instruction, West Bengal & Ors. â?"vs- Swapna Lahiri reported in 2007(1) CLJ (Cal) 304 (paragraphs 10, 11 and 15)

8) Commissioner of Central Excise, Bolpur â?"vs- Ratan Melting and Wire Industries reported in (2008) 13 SCC 1 (paragraph 7)

9) Govind Prakash Verma â?"vs- LIC & Ors. reported in (2005) 10 SCC 289.

The learned advocate for the petitioner prays for a direction upon the DPI for providing appointment to him on compassionate ground.

The learned senior advocate representing the State respondents vociferously opposes the prayer of the petitioner. It has been submitted that

irrespective of the fact that the Statute of the University provides for giving appointment on compassionate ground, but in the absence of a Scheme

specifying the manner in which the said appointment will be given effect to, the prayer of the petitioner for being appointed on compassionate ground

cannot be allowed.

It has been contended that the Statute of the affiliating University is not akin to a Scheme. The Statute of the University cannot bind the Government.

Without a specific Scheme in accordance with which appointment is to be allowed, the provision of the Statute cannot be implemented. It has also

been submitted that the service of the employees of the College is governed by the Government circulars.

It has been submitted that the provision of Statute 163 relates to recruitment and promotion. The same does not provide for giving appointment on

compassionate ground. Distinction has been sought to be made with respect to the expression â??recruitmentâ?? and â??appointmentâ??.

According to the respondents the letter of appointment may be issued only after

recruitment process is initiated by the respondents in accordance with the Scheme framed by the Government. It has been argued that appointment cannot be offered to the petitioner till a Scheme to that effect is framed by the Government.

The argument of the respondents is that appointment on compassionate ground cannot be claimed as a matter of right. Consideration of such prayer flows from a Scheme which is absent in the present case.

It has also been submitted that the financial condition of the applicant is also a valid factor which is required to be enquired into at the time of consideration of the prayer for being appointed on compassionate ground. Since providing appointment on compassionate ground is an exception to the normal rule, accordingly, the provisions of the Scheme is required to be strictly followed, otherwise the same will amount to violation of the provisions of Articles 14 and 16 of the Constitution of India.

The respondents have relied upon the following judgments in support of their case:

- 1) National Institute of Technology & Ors. â"vs- Niraj Kumar Singh reported in (2007) 2 SCC 481 (paragraph 14).
- 2) Bhawani Prasad Sonkar â"vs- Union of India & Ors. reported in (2011) 4 SCC 209 (paragraph 20(i)).
- 3) State of Gujarat & Ors. â"vs- Arvindkumar T. Tiwari & Anr. reported in (2012) 9 SCC 545 (paragraph 8).
- 4) Union of India & Anr. â"vs- V. R. Tripathi reported in (2019) 14 SCC 646 (paragraph 13).
- 5) State of Madhya Pradesh â"vs- Narmada Bachao Andolan & Anr. reported in (2011) 7 SCC 639 (paragraph 64).

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival contentions of the parties.

The father of the petitioner died in harness on 16th December, 2007. Application was made for providing employment on compassionate ground in February, 2008, that is, immediately after the death of the employee.

The impugned order mentions that in matters of appointment on compassionate ground in Government aided colleges adherence to GO No. 690

EDN(CS) dated 22nd August, 2014 is necessary. The DPI failed to understand

that the father of the petitioner died long prior to the issuance of the Government Order on 22nd August, 2014, accordingly there will be no manner of application of the aforesaid Government Order in the facts of the present case. The aforesaid Government Order does not have any retrospective operation and cannot be made applicable in case of the petitioner.

When the case of the petitioner was initially taken up for consideration by the DPI, an order was passed on 9th June, 2010 wherein the DPI mentions

that the College should scrutinise all the certificates of qualification and income of the petitioner and furnish the details in the prescribed format as laid

down by the Labour Department, Government of West Bengal followed by the guidelines and directions provided in GO No. 301 EMP dated 21st

August, 2002 and 30 EMP dated 2nd April, 2008. As the father of the petitioner expired while the aforesaid two Government Orders were in vogue,

the DPI may, at best, place reliance on the aforesaid two Government Orders, but cannot rely upon the subsequent Government Order which came

into effect long after the death of the employee.

The aforesaid Government Orders dated 21st August, 2002 and 2nd April, 2008 contains the provisions for giving appointment on compassionate

ground to the dependents of the deceased employee. Accordingly, the ground of rejection of the prayer of the petitioner on account of non-availability

of a Scheme is certainly bad in law and liable to set aside.

It is settled law that a case has to be considered on the basis of the law that was available on the date when the cause of action arose. In the instant

case, the cause of action arose in the year 2010 when the notification being 30 EMP dated 2nd April, 2008 was in force. The DPI committed gross

error in considering the case of the petitioner in accordance with the subsequent Government Order.

The decision relied upon by the petitioner in the matter of Prakash Ch. Ghosh (supra), Pallabi Banerjee (supra) are squarely applicable in the facts of

the present case. The First Statutes of the University of Calcutta are *pari materia* with the First Statutes of the Vidyasagar University qua the principles

relating to appointment on compassionate ground.

In Swapna Lahiri (supra) the Honâ??ble Division Bench held that the circular issued by the Department cannot override the substantial Statute

provision regarding appointment on compassionate ground. The matter related

to compassionate appointment under the Calcutta University First

Statutes which is *pari materia* to the Vidyasagar University First Statutes. The Honâ??ble Division Bench directed the State respondents to approve

the appointment of the petitioner and to pay all other service benefits including arrear salaries to her.

The other reason mentioned in the impugned order is that the family has received a considerable amount of money as death-cum-retirement benefit,

enough to maintain a decent standard of living. It has been indicated that the petitionerâ??s economic condition does not justify feasibility of his claim.

The aforesaid contention, in my opinion, appears to be absolutely mechanical without proper application of mind. The fact that the family of the

petitioner maintains a decent standard of living is completely based on surmises and conjectures. It appears from records that in compliance of the

order passed by this Court an Enquiry Committee was set up by the College. Three members of the Enquiry Committee unanimously opined that there

is no substantial income of the family and recommended consideration of the application of the petitioner for getting employment on compassionate

ground. The said report of the Enquiry Committee was duly forwarded to the DPI by the Teacher in Charge of the College by a communicating memo

dated 24th April, 2018. The DPI came to the conclusion with regard to the financial status of the petitioner without taking into consideration the proper

facts and figures.

The Court, in Tapan Kumar Barman (*supra*) relied upon the judgment delivered by the Honâ??ble Supreme Court in the matter of Balbir Kaur &

Anr. â??vs-Steel Authority of India Ltd. & Anr. reported in (2000)6 SCC 493 and clearly held that the payment received on account of provident fund

and gratuity is an earned and assured amount of the deceased. As far as family pension is concerned, it is one kind of deferred payment. The payment

on account of terminal benefit cannot be equated with the scheme of compassionate appointment. The Court was pleased to pass mandatory order

directing the authority to take lawful steps to give compassionate appointment to the applicant. Swati Chatterjee (*supra*) is also on the same line.

The Honâ??ble Supreme Court in Govind Prakash Verma (*supra*) clearly laid down that it was wholly irrelevant for the departmental authorities to

take into consideration the amount which was paid as family pension to the

widow of the deceased and other amounts paid on account of terminal benefits under the rules. The scheme to provide compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as service benefits which one gets on the death of the employee. It was categorically held that compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the rules.

In *Ratan Melting and Wire Industries (surpa)* the Honâ??ble Supreme Court held that a circular which is contrary to the statutory provision has no existence in law. In the instant case the Scheme of the Government as well as the First Statutes under which the employeeâ??s service was covered, contains the provision for providing employment on compassionate ground.

The decisions cited by the respondents in my opinion are time tested, well settled propositions of law. It is no denying the fact that compassionate appointment cannot be claimed as a matter of right and the same flows from the Scheme. It is certainly an exception to the normal rule of employment.

The decision referred by the respondents in the matter of *Narmada Bachao Andolan (supra)* deals with the concept of precedence doctrine. The same is also a very settled proposition of law and does not require any comments.

The judgments cited by the petitioner, in my opinion, are very much in favour of the order prayed for by him.

It will be profitable to take note of an unreported order passed by this Court on 29th July, 2015 in WP 17159 (W) of 2015 (*Manas Das â??vs- State of*

West Bengal & Ors.) wherein a learned Single Judge of this Court relied upon the judgment delivered by the Honâ??ble Supreme Court in the matter

of *Abhishek Kumar â??vs- State of Haryana & Ors.* reported in (2006)12 SCC 44 and came to the conclusion that the claim for compassionate

appointment needs to be considered on the basis of the rules and regulations which were operative on the date of death of the employee. In the instant

case on the date of death of the employee there was a provision of the Government for providing appointment on compassionate ground to the

dependent of employees dying in harness. There was and there still is a provision

for providing appointment on compassionate ground to the dependent of a deceased employee under the First Statutes of the Vidyasagar University.

It appears that previously when the matter was referred to the DPI for consideration by the Court, DPI was in favour of considering the case in

accordance with the prevailing Government Orders/ circulars/ notifications, but later on, DPI applied the wrong test without proper application of mind

and mechanically rejected the case of the petitioner. The ground(s) for rejection or the objection against consideration of the prayer ought to have

been pronounced at the very first instance and the same should not be permitted to come by way of instalments, one after the other. The authority

ought not to come up with fresh grounds of rejection each and every time the matter is remanded to them for consideration. The same will result in

unending number of litigations. In such a case, an intending candidate will be left running around the corridors of the Court, for years together, in

pursuit of justice. The candidate in the meantime loses valuable service years which in turn affects the future prospects of an employee if he

ultimately succeeds in getting a job on compassionate ground.

The very purpose of providing appointment on compassionate ground gets frustrated if the consideration is not made on emergent basis. By the time

the dependent lands up in Court, the matter is already delayed. The respondent tries to scuttle the claim citing the ground of delay without realising that

the delay was on their part to consider the claim and not on the part of the dependant to approach the authority with the prayer for providing

appointment. Delay caused at the employer's end ought not to be the ground for rejecting the case of the dependant applicant.

In the present case, the petitioner is knocking the doors of justice since 2008 and his case has been dealt with by the DPI in an absolute illegal and

arbitrary manner. Had the case of the petitioner been dealt with promptitude, the question of rejecting the claim relying on a memo which came into

effect seven years after the death of the employee would not have arisen at all.

The learned advocate of the College has submitted that the financial condition of the petitioner is so poor that the College had to provide casual

engagement to the petitioner at a paltry sum of Rs. 5,000/- only per month so that the family may survive. Bare survival of the petitioner would be at

stake had such casual engagement not been given to the petitioner.

Accordingly, the reasons mentioned for rejecting the prayer of the petitioner, being wholly untenable in the eye of law, are liable to be set aside and

are hereby set aside. The matter is pending since 2007 and the petitioner was compelled to approach this Court on repeated occasions. In the present

facts and circumstances, the Court thinks it fit to direct the Director of Public Instruction to take prompt necessary steps for providing appointment to

the petitioner on compassionate ground in the died in harness category at the earliest, but positively within a period of ninety days from the date of

communication of a copy of this order.

The Director of Public Instruction shall keep in mind that the employee expired on 16th December, 2007 and the Enquiry Committee as late as in the

year 2018 certified that the financial condition of the petitioner is very poor. There is no substantial income of the family and hence recommended his

appointment.

In terms of the earlier order passed by this Court, one post has been kept vacant for a considerable period of time. The recruitment process was

initiated by the College for filling up the Group D post way back in 2010 and the learned advocate for the College has submitted that the College is

facing huge problem due to shortage of staff. Accordingly, the Director of Public Instruction shall provide appointment to the petitioner in the said

vacant post.

WPA 5112 of 2019 is disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.