

(2020) 01 CAL CK 0195
In the Calcutta High Court

Case No : Civil Application (CAN) No. 12223 Of 2019 In Writ Petitions (WP) No. 19878 (W) Of 2014

Pranati Ghosh & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0195

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Pratip Kumar Chatterjee, Soumya Majumder, Imtiaz Ahmed, S.K. Saidullah, S. Banerjee, Anurima Mukhopadhyay, Jahar Lal De, Shamim ul Bari

Final Decision : Dismissed

Judgement

Rajasekhar Mantha, J

Affidavit-in-opposition filed by the learned Counsel for the respondent no. 3 as also the affidavit-in-reply filed by the petitioner are taken on record.

The learned Counsel for the petitioner claims compassionate appointment in place of his deceased father late Dinabandhu Ghosh, who was a 'Darwan' in Surendra Nath College for Women, Sealdah since January 29, 1981. The said Dinabandhu Ghosh was died-in-harness on January 11, 2011. The petitioner had applied in the year 2012 and the application was received by the Teacher-in-Charge, Surendra Nath College for Women and forwarded to the State for necessary approval on July 17, 2012.

The learned Counsel for the petitioner submits that in respect of similarly situated employees in other aided colleges under the University of Calcutta, and the University of Kalyani, the Director of Public Instruction, Education Directorate, Government of West Bengal has allowed compassionate appointment to the wards of the employees of unaided Institution thereunder even in Group-D post.

Reliance placed on two decisions of a Co-ordinate Bench of this Court. The first one passed in W.P. 9884 (W) of 2017 (Arghya Maity @ Nirmalya Maity vs. State of West Bengal & Ors.) on December 18, 2017 and the second one passed in W.P. 17305 (W) of 2017 (Santosh Kumar Mishra vs. The State of West Bengal & Ors.) on November 16, 2017.

In Santosh Kumar Mishra case (Supra), the appointment was already given on compassionate ground by the College in question.

In Arghya Maity @ Nirmalya Maity decision (Supra) related to appointment in Salar Mujaffar Ahmed Maha Vidyalaya under the University of Kalyani. The reference in these two judgments is, of course, two other employees under the University of Calcutta.

It is now well settled that compassionate appointment is not normal or regular process of recruitment. It is an exception to the general principle of recruitment by advertising rules and due process of law.

The Surendra Nath College for Women, is an aided Institution and is controlled by a Governing Body. The appointments thereat are of course to be made with the approval of the Director of Public Instruction, Education Directorate, Government of West Bengal.

Mr. Jahar Lal De, learned Senior Counsel for the State submits that there is no rule in the Higher Education Department for compassionate appointment nor is there any policy to this effect within the State.

Mr. Imtiaz Ahmed, the learned Counsel for the respondent no. 3 submits that the College itself does not have any rules for compassionate employment and the statutes of the Calcutta University have no application to the Surendra Nath College in so far as the compassionate appointment and affairs of its employees are concerned.

In the above circumstances, the order of the Director of Public Instruction, Education Directorate, Government of West Bengal dated April 3, 2014, cannot be faulted.

As for the cases under the University of Calcutta relied upon by the petitioner, this Court notes that the petitioner cannot claim negative equality.

In those circumstances, the petitioner is not entitled to compassionate appointment in the absence of any policy rule or circular in this regard. The decisions cited by the petitioner are not only distinguishable in facts but also do not appear to have considered the applicable provisions of the State Government or the concerned Colleges in this regard. The decisions cannot term to the aid of the petitioner.

Accordingly, the instant writ petition being WP 19878 (W) of 2014 is, therefore, dismissed.

In view of the aforesaid, the connected application being CAN 12223 of 2019 is also dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties.