

(2016) 09 CAL CK 0004
In the Calcutta High Court
Case No : Writ Petition No. 14286 (W) of 2016

Roshmi Bhattacharjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2016) LIC 4066

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Mr. Shamim Ahmed, Advocate Mr. Nepesh Majhi, Advocate, for the Petitioner; Ms. Sampa Sarkar, Advocate, for the North Bengal University; Mr. Ashish Guha, Advocate Mr. Naren Ghosh Dastidar, Advocate, for the State

Final Decision : Disposed Off

Judgement

Debangsu Basak, J.—The petitioner has sought compassionate appointment in the died in harness category.

2. Learned Advocate for the petitioner has submitted that, the father of the petitioner was working in the post of Senior Assistant in Raigunj University College. He had passed away on July 1, 2011 while in service. The college was affiliated to University of North Bengal at that time. Subsequently, the college was taken over by the Raigunj University. He has submitted that, the petitioner had applied for compassionate appointment on July 25, 2013. The authorities not taking any steps, the petitioner had moved a writ petition being W.P. No. 18813 (W) of 2015 which was disposed of by a judgment and order dated August 17, 2015 requiring the petitioner to make a fresh representation to the authorities. Upon receipt of such representation, the authorities were directed to consider the claim of the petitioner to grant the compassionate appointment in accordance with law. Learned Advocate for the petitioner has submitted that, the Raigunj University by the letter dated November 20, 2015 has stated that, since the college was taken over by Raigunj University subsequent to the death of father of

the petitioner, and since the college concerned was then under the North Bengal University, the prayer for compassionate appointment should be made to the North Bengal University. He has relied upon (2008) Volume 13 Supreme Court Cases page 730 (V. Sivamurthy v. State of Andhra Pradesh & Ors.).

3. Learned Advocate the North Bengal University has submitted that, the application for compassionate appointment has to be considered in terms of the scheme existing at the time of consideration of the application. Presently, North Bengal University does not have any policy for grant of compassionate appointment in view of the Government Order dated May 19, 2014 where the Government has stated that, appointment on compassionate ground to the employees of Non Government Aided Institutions cannot be entertained. In support her contention that, the application for compassionate appointment has to be considered on the basis of the policy existing at the time of the consideration of the application, she has relied upon (2010) Volume 11 Supreme Court Cases page 661 (State Bank of India & Anr. v. Raj Kumar) and All India Reporter 2013 Supreme Court page 3365 (MGB Gramin Bank v. Chakrawarti Singh). Learned Advocate for the North Bengal University has referred to the Ordinances of the University of North Bengal and has submitted that, the petitioner is not entitled to the compassionate appointment.

4. I have considered the rival contentions of the parties and the materials made available on record.

5. The father of the petitioner was an employee of a college affiliated to North Bengal University. He was working as the Senior Assistant at Raigunj College. He passed away on July 1, 2011. On the date of death of the employee concerned, Raigunj University College was affiliated to the University of North Bengal. Raigunj University College became an independent college with the coming into effect of the Raigunj University Act, 2015 on and from January 21, 2015.

6. Section 62 of the Raigunj University Act, 2015 provides that, an employee of the Raigunj College has the option to either become an employee of the Raigunj University or to continue in employment to any other college or institution under the University of North Bengal. However, prior to the coming into effect of the Raigunj University Act, 2015, the concerned employee had died. Therefore, the question of the concerned employee availing any of the two options available under Section 62 of the Raigunj University Act, 2015 does not arise.

7. The petitioner had applied for compassionate appointment on July 25, 2013. Such application is still pending.

8. Raj Kumar (supra) has dealt with a compassionate appointment scheme of State Bank of India. State Bank of India had a subsisting scheme which was substituted with a new scheme. The new scheme has provided that, the applications pending under the old scheme would be dealt in accordance with the new scheme. In such context, the Supreme Court has held that, the application for compassionate appointment would be considered on the basis of the scheme

subsisting at the time of consideration of the application.

9. Chakrawarti Singh (supra) is also a case where a new scheme had come into being which had a similar clause providing that, pending applications will be considered in terms of the new scheme. In such light, the application for compassionate appointment was considered on the basis of the new scheme.

10. The fact scenario in the present case is different. It has not been shown that, a new scheme had come into being replacing the old scheme so far as the University of North Bengal is concerned. On the date of death of the concerned employee, the Raigunj College was affiliated to the University of North Bengal. University of North Bengal was, therefore, required to consider the application for grant of compassionate appointment in terms of the scheme then subsisting unless the University of North Bengal in a position to show that, a new scheme has coming into being with the provisions that the applications under the old scheme would be considered under the new scheme.

11. V. Sivamurthy (supra) has noted the principles relating to compassionate appointment. It has also recognised that, compassionate appointment is available in the event there existed scheme or policy to such effect. The fact that, the petitioner had applied with Raigunj University for the grant of compassionate appointment does not by itself defeat the claim of the petitioner should the petitioner be found to be entitled to compassionate appointment. There are differences of opinion amongst the two authorities as to who should consider the claim for compassionate appointment. The applicant for compassionate appointment ought not to be penalised for such difference of opinion amongst the authorities. The entitlement of the applicant to obtain compassionate appointment should be decided by the authority is required to decide such an issue. Unless the entitlement is decided upon, the authorities should not be allowed to contend that, since they have a difference of opinion, howsoever bona fide, the claim of the applicant stands negated.

12. Since, the deceased employee had died prior to the coming into effect of the Raigunj University Act, 2015 he had continued to remain an employee of the college affiliated to North Bengal University on the date of his death. As he did not migrate to Raigunj University on the date of his death, the North Bengal University authorities are the appropriate authority to decide the claim of the petitioner.

13. In such circumstance, the University of North Bengal is directed to consider and decide the application for compassionate appointment made by the petitioner, in accordance with law, preferably within a period of four weeks from the date of communication of this order. The University of North Bengal will afford a reasonable opportunity to the petitioner. It will pass a reasoned order which it will communicate to the petitioner forthwith thereafter.

14. With the aforesaid directions, W.P. No. 14286 (W) of 2016 is disposed of. No order as to costs.

15. Urgent certified website copy of this order, if applied for, be given to the parties on priority basis.