

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. 101 of 2022

Sri Goutam Sarkar, son of late Anil Sarkar, resident of Totabari, P.O. Totabari, P.S. Kalyanpur, District- Khowai, Tripura

... APPELLANT
(Petitioner in the writ petition)

Versus

1. The State of Tripura

represented by the Secretary, Government of Tripura, Department of PWD, Civil Secretariat P.O. + P.S. New Capital Complex, District- West Tripura, PIN-799010

2. The Superintending Engineer (PWD)

2nd Circle, West Tripura, Pin-799006

3. The Executive Engineer (PWD)

Teliamura Division, Teliamura, District- Khowai, Tripura

... RESPONDENTS
(Respondents in the writ petition)

For Appellant(s)	:	Mr. SK Deb, Sr. Advocate Mr. PK Pal, Advocate
For Respondent(s)	:	Mr. D. Sarma, Addl. GA
Date of hearing & delivery of judgment	:	29.03.2023
Whether fit for reporting	:	Yes / No

HON'BLE THE CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

29/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. SK Deb, learned senior counsel assisted by Mr. PK Pal, learned counsel for the appellant. Also heard Mr. D. Sarma, learned Additional GA appearing for the respondent-State.

2. This appeal has been filed by the appellant assailing the judgment and order passed by a learned Single Judge dated 04.05.2022 in WP(C) no. 642 of 2021 dismissing the writ petition filed by the petitioner, the appellant herein.

3. Briefly stated, the father of the petitioner, namely, Anil Sarkar was serving as Helper under the respondent no. 3. On 09.03.2012, the father of the petitioner had died in harness leaving behind his survivors. Thereafter, the petitioner submitted an application seeking appointment under the die-in-harness scheme, and in pursuant thereof the respondent no. 3 directed the petitioner to submit certain documents. In pursuant to that the petitioner submitted the relevant documents. Thereafter on 22.05.2014 the respondents have forwarded the list of names of similarly situated candidates for considering their appointment under die-in-harness scheme. In the said recommendation, the name of the petitioner was figured at serial no. 15. Thereafter, on further inquiry, by a communication dated 28.09.2021, the respondents asked the petitioner to submit his ration card for considering his name in the light of the memorandum. Thereafter, the petitioner vide his letter dated 13.12.2021 intimated the respondents that the ration card is not traceable for which he could not submit the same. Accordingly, the respondents after inquiry into the matter vide communication dated 14.12.2021 opined that the petitioner had been residing separately by maintaining separate ration card prior to death of his father, and subsequently, rejected his prayer for providing him job under die-in-harness scheme. Feeling aggrieved, the

appellant herein had preferred a writ petition before this court vide WP(C) 642 of 2021. The learned single Judge while appreciating the case of the petitioner has formulated two issues (i) on the point of delay and laches in approaching the court for compassionate appointment, and ii) on the point of dependency, whether the petitioner constitutes within the definition of 'family'. Since the writ petition was filed, without giving any impugned order, the writ petition could have disposed of directing the respondents to decide the matter in the light of the scheme or any other legal provisions and also the memorandums and in accordance with law. However, learned single judge gone into the grass root level of the matter and after hearing both sides by its order dated 04.05.2022 had dismissed the writ petition. Being aggrieved, the petitioner had preferred this writ appeal.

4. Mr. Deb, learned senior counsel appearing for the appellant has submitted that similarly situated persons have been granted with job under die-in-harness scheme by this learned court. Mr. Deb, learned senior counsel has also submitted that though the appellant is having separate ration card, but he is living in the joint family. Mr. Deb, learned senior counsel has further submitted that since there is no physical separation of the appellant from his family so he cannot be excluded from consideration of appointment under the die-in-harness scheme.

Learned senior counsel also has submitted that the petitioner has approached the authority since after death of his father and also after rejection he had immediately approached this court, hence, there is no delay and laches on the part of the appellant.

5. Learned Additional GA has fairly submitted that findings of the learned single Judge in its order dated 04.05.2022 is valid and no interference is called for since the petitioner had separated his family from the family of the deceased employee much before the death of his father by obtaining separate ration card so on the ground of dependency, the instant writ appeal requires to be dismissed. Further, learned Additional GA has submitted that the petitioner after elapse of a long period had approached this court seeking reliefs. Lastly, Mr. Sarma, has submitted that in the light of the judgment rendered in ***The State of West Bengal vs. Debabrata Tiwari and others*** reported in ***2023 LiveLaw(SC) 175***, the instant writ appeal deserves to be dismissed on the ground of laches.

6. We have perused the record and also the judgment of the learned single Judge.

7. Keeping in mind the rival submissions, it would be useful to extract the relevant portion of the notification under No. F.1(2)-GA(P&T)/15, dated 19.05.2017 issued by the Government of Tripura, General Administration (Personnel & Training)

Department on the subject 'Die-in-harness Scheme-Government of Tripura', which is as under-

"Provided that a married son or daughter-in-law or widowed daughter if he/she lives/used to live separately from other members of the family on or before the death of the Government employee shall not be considered as family member of the family of the government employee for the purpose of providing benefits under the Scheme only. Married daughter(s) under any circumstances shall not come under the purview of Die-in-harness Scheme."

8. For being entitlement of the benefits under the die-in-harness and extremists/ethnic violence schemes, the Government of Tripura, General Administration (Personnel & Training) Department vide its Memo dated 24.09.2011 has been expanded the term 'family' in the following manner:

- "(i) his wife or her husband, as the case may be;**
- (ii) legitimate children excluding a married son or married daughter or daughter-in-law, if he/she lives separately from other members of the family;**
- (iii) step Children,**
- (iv) adopted Children.**
- (v) dependent daughter-in-law;**
- (vi) dependent parents;**
- (vii) dependent unmarried brother(s) and unmarried sister(s) and**
- (viii) dependent widow daughter(s)."**

9. From the record, it is evident that the deceased, Anil chandra Sarkar, father of the appellant herein, had died in harness on 09.03.2012, but the appellant had obtained separate ration card on 16.06.2010 i.e. much prior to the death of his deceased father and had been residing separately at Totabari maintaining separate family. In the rejoinder submitted by the appellant, the appellant has also averred that *'it is a fact that the petitioner obtained a separate ration card for him during the lifetime of his father and it was obtained to have the government*

employment for him because at that point of time it was the policy of the state government there should have no other member in the family having government employment. The petitioner though obtained separate ration card he never separated himself including his spouse and baby from joint living with his parents and other. The petitioner accommodate the same house premises sharing the same mess because it was not possible for him to maintain separate establishment with his meager earning of Rs. 2,000/- per month without the help of his parents'.

10. Die-in-harness scheme does not confer a right on a person for compassionate appointment. This is purely a discretion to be exercised by the authority concerned and this discretion is required to be exercised reasonably by the authority after taking into consideration all the materials and factual aspects. Here in the instant writ appeal, the appellant though claimed to be living in joint mess, but from the record it is abundantly clear that the appellant had obtained separate ration card prior to the death of the deceased employee and is living separately maintaining separate mess. It is further evident that inspite the petitioner was figured at serial no. 15 and was considered for being appointed under the scheme but on several persuasions and correspondences made by the respondents, the appellant failed

to submit his ration card, which implies the laches on the part of the appellant. It is not disputed that the appellant had been maintaining separate messing prior to the death of the deceased employee by obtaining separate ration card. Thus, the appellant cannot come under the purview of the term 'family'.

11. This court is of the prima facie view that the compassionate appointment is only a support that is extended by the government under the scheme of the policy to see that the policy does not suffer any hardship and since there is an inordinate delay, in the light of the findings rendered in ***The State of West Bengal (supra)***, the petitioner is not entitled to claim any relief. In view of the delay, whether it happens on the point of the petitioner or the respondent, this court further point out that when the death has taken place in the year 2012 and the petitioner makes his application in the year 2013, till 2021, the petitioner has not moved this court seeking mandamus. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an petitioner deserves consideration because delay or laches on the part of a petitioner may deprive him of the benefit which had been given to others Further, on the point of dependency, the definition which is explained in memo dated 19.05.2017, that married son if living

separately is exempted from claiming dependency, the petitioner is further barred from claiming the compassionate appointment.

12. In our ultimate analysis and for the above reasons, we do not find any infirmity or irrationality in the order dated 04.05.2022 passed by a learned single Judge of this court in W.P(C) 642 of 2021, and thus, we refrain from interfering with the order passed by the learned Single Judge. Hence, there is no substance in this Appeal, the same is, therefore, dismissed. Interim application(s), if any, also stand disposed of.

JUDGE

CHIEF JUSTICE (ACTING)



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