

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.122 OF 2022**

The State of Tripura

..... **Appellant(s)**

Vs.

Sri Munna Das

..... **Respondent(s)**

For the Appellant(s) : Mr. D. Sharma, Addl. G.A.

For the Respondent(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.

Date of hearing and delivery of
Judgment & Order : 04.04.2023.

Whether fit for reporting : YES/NO.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR JUSTICE ARINDAM LODH**

JUDGMENT AND ORDER(ORAL)

This present appeal has been filed by the appellant-State against the Judgment and Order dated 04.02.2022 passed by the learned Single Judge in WP(C) No.684 of 2021 allowing the writ petition.

2. Brief fact of this present case is that the father of the writ appellant namely Dip Kumar Das passed away on 25.12.2018 while working as the Sweeping and Cleaning Assistant borne in the regular establishment. At the time of

death, he was posted in the office of the Information and Cultural Affairs situated in Santirbazar, South Tripura. After death of the father of the petitioner, the petitioner applied for the compassionate appointment under the Die-in-Harness scheme. It may be noted that the appellant has been working as Casual Worker under the Directorate of Information and Cultural Affairs, Government of Tripura but he is not in the regular establishment. The surviving members of the family left by the deceased employee have executed a no-objection certificate relinquishing their individual claims and laying their no objection in respect of appointment of the petitioner under Die-in-Harness Scheme. The petitioner filed his application for compassionate appointment on 26.03.2019 within one year from the day of death of his father. It has been asserted by the petitioner that except him, none of his family members is eligible for the Government employment. As the respondents did not take any decision on the prayer for compassionate appointment, the petitioner served a notice on 16.03.2020 for his appointment under Die-in-Harness scheme. Thereafter, he filed a writ petition being WP(C) No.852 of 2020 in this Court and the said writ petition had been disposed of vide by order dated 13.01.2021 in following terms:-

"let the respondents decide the application of the petitioner for compassionate appointment within 4(four) weeks from today and communicate the decision to the petitioner. If the decision is adverse to the petitioner, the competent authority shall state brief reasons for arriving at such conclusions upon which it would be open for the petitioner to seek further remedy in law".

3. It transpires that pursuant to the order dated 13.01.2021, the Director, Information and Cultural Affairs, Government of Tripura, by the order dated 06.01.2021 has dismissed the prayer for the compassionate appointment.

4. Thereafter, the appellant herein filed WP(C) No.684 of 2021 agitating his grievance. The respondents by filling the reply has reiterated their stand as espoused in the reply. The date of relevance would be the date of consideration. As the family will be getting the pension, it can be stated that the family left by the deceased employee will not suffer any form of destitution. On the foundation of the policy, the impugned decision has been taken by the respondents. When a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist unless its operation for a purpose is saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the petitioner.

5. After hearing the parties, the Hon'ble Single Judge, allowed the said WP(C) No.684 of 2021 in the following terms:-

"Having observed thus, the respondents are directed to consider the case of the petitioner for compassionate appointment on the day of death of the deceased employee i.e. on 25.12.2018 under the Die-in-Harness Scheme circulated by the notification dated 26.12.2015. Such exercise shall be completed within a period of two months from the day when a copy of this order will be furnished to the respondents by the petitioner.

6. Aggrieved thereby, the appellant-State has preferred this present appeal seeking the following reliefs:-

" A) Admit appeal & call for records.

B) Pass order setting aside the judgment & order dated 04.02.2022 passed by the Hon'ble Single Judge in WP(C) No.684 of 2021.

C) Pass order staying the operation of the Judgment & order dated 04.02.2022 passed by the Hon'ble Single Judge in WP(C) No.684 of 2021.

D) Pass any other order or Orders as deem fit & proper having regard to the facts & circumstances of the case."

7. Heard Mr. D. Sharma, learned Addl. G.A. appearing for the appellant-State and as well as Mr. P. Roy Barman, learned Sr. counsel assisted by Mr.S. Bhattacharjee, learned counsel appearing for the respondent.

8. Mr. D. Sharma, learned Addl. G.A. submits that learned Single Judge has failed to appreciate that the norms prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of the government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however, disentitled to seek

consideration in accordance with the norms as applicable, on the day of death of the Government employee. Learned Addl. G.A. further submits that the claim for compassionate appointment is traceable only to the scheme framed by the employer for such employment and there is no right whatsoever beyond such scheme. An appointment under the scheme can be made only if the scheme is in force. When a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

9. Mr. P. Roy Barman, learned Sr. counsel appearing for the respondent submits that judgment and order as passed by the learned Single Judge is just and proper and touches all the legal aspects. Learned Sr. counsel referred to several paragraphs of the impugned Judgment passed by the learned Single Judge and submitted that in view of the same, the learned Single Judge has rightly considered the date of the death of the deceased employee as the considering factor. Here the deceased employee died on 25.12.2018 and on that day, the scheme under 26.12.2015 was in force and the new scheme has come into force is in 2019. So, the new scheme cannot take away the right of the appellant herein. Though compassionate

appointment might not be a vested right but right to be considered cannot be taken away by the new scheme and learned Single Judge has rightly allowed the writ petition.

10. Heard both sides and perused the evidence on record.

11. Learned Division Bench of this Court in Judgment and order dated 16th March, 2022 passed in WA No.228 of 2021 along with WP(C) No.686 of 2020 delivered in similar kind of issues which are as follows:-

" (i) Whether right to compassionate appointment under die-in-harness policy is a vested right.

(ii) Whether the revised notification dated 02.03.2019 superseding the die-in-harness scheme of 2015 with retrospective operation from 21.11.2018 is valid.

(iii) Whether the norms prevailing on the date of death of the deceased employee or the norms prevailing on the date of consideration of the application would apply for considering a claim under die-in-harness policy."

12. While giving finding to the said issues, the learned Division Bench observed thus:-

*"[27] The next question which arose for our consideration was whether the application would be considered under the norms prevailing on the date of death or under the norms prevailing at the time of consideration of the application. Such issue was dealt with a larger bench of the Apex Court in **N.C. Santosh vs. State of Karnataka & Ors. (Supra)** wherein the Apex Court held that norms prevailing on the date of consideration of claim for compassionate appointment. Observation. Observation of the Apex Court is as under:*

"19. Applying the law governed compassionate appointment culling out from the above cited judgments, our opinion on the point at issue is that the norms prevailing on the date of consideration of claim for compassionate appointment, A dependant of a

government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

[28] *In the given context, as noted, the petitioner's father in WP(C)No.502 of 2020 died on 18.01.2019, petitioner Kamalabati Gour filed her application seeking compassionate appointment on 21.09.2019. The revised policy was notified on prior date on 02.03.2019 with retrospective effect from 21.11.2018. Similarly, in WP(C) No.686 of 2020, petitioner's father died on 17.01.2019 and application for compassionate appointment was filed by the petitioner on 02.06.2020. The revised scheme, as sated above, was notified on a prior dated on 02.03.2019 with retrospective effect from 21.11.2018. It is thus obvious that in both the cases, the petitions were field and considered after the revised scheme came into operation. Situated thus, the respondent in WA No.228 of 2021 as well as the petitioner in WP(C) No.686 of 2020 are not entitled to be considered for compassionate appointment under the old scheme. Both of them are entitled to be considered for the benefits available to them under the revised scheme date 02.03.2019.*

[29] *For the forgoing reasons the judgment of the learned Single Judge in WP(C) No.502 of 2020 is set aside and resultantly WA No.228 of 2021 stands allowed and the reference made by the learned Single Judge in WP(C) No.686 of 2020 is answered accordingly in view of the our decision rendered in WA No.228 of 2021."*

13. Similarly, the father of the appellant here passed way on 25.12.2018 and the revised policy was notified on prior date on 02.03.2019, with retrospective effect from 21.11.2018. Thus, it is obvious that the petition was filed and considered after the revised scheme came into operation. So, the appellant herein is not entitled to be considered for compassionate appointment under the old scheme and he is entitled to be considered for the benefits available to them under the revised scheme dated 02.03.2019.

14. In view of the above finding and reasons, this Court is also of the opinion that appellant herein is also a similarly situated person like that of the respondent of WA

No.228 of 2021 and order dated 04.02.2022 passed by the learned Single Judge is liable to be set aside and accordingly, the same is set aside. Hence in the light of the observation given in the earlier W.A No.228 of 2021, the present Writ Appeal is allowed.

15. As a sequel, stay if any is vacated, pending application(s), if any, also stands closed.

JUDGE

CHIEF JUSTICE (ACTING)

suhanjit



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