

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.27 of 2024

1. Smti Priyanka Das,

Aged about 24 years, daughter of late Badal Das,
Resident of South Bhuratali, P.O. Fulchari- 799143,
P.S. Manu Bazar, District- South Tripura;

.....Petitioner(s).

Versus

1. The State of Tripura,

to be represented by the Secretary, Department of Health,
Government of India, New Civil Secretariat,
P.O. Kunjaban-799006, P.S. New Capital Complex,
District- West Tripura;

2. The Director,

Directorate of Health Services, Government of Tripura,
New Civil Secretariat, P.O. Kunjaban-799006,
P.S. New Capital Complex, District- West Tripura.

3. The Sub-Divisional Medical Officer,

Sabroom, South Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. P.K. Biswas, Senior Advocate.
: Mr. S. Bhattacharjee, Advocate.
: Mr. R. Nath, Advocate.
: Mr. P. Biswas, Advocate.

For Respondent(s) : Mr. K. De, Addl. G.A.

Date of Hearing : **12.04.2024**

Date of Judgment : **10.05.2024**

Whether fit for reporting: No

_B_E_F_O_R_E_

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

_J_U_D_G_M_E_N_T_

The Writ Petition is filed praying for a direction to provide a job under Die-in-Harness Scheme to the petitioner and also for quashing Order No.F.2(334-N)-MS/ESTT-III/99/1376(VI) dated 25.08.2023 issued by Directorate of Health Services,

Government of Tripura whereby the prayer of the petitioner for providing a job under Die-in-Harness Scheme was regretted.

[2] The father of the petitioner namely Badal Das died in service on 11.02.2021 leaving behind his wife Smti. Sawpna Das, two daughters namely Smti. Priyanka Das (the petitioner) and Smti. Priya Das while he was working as a Night Guard in the establishment of respondent No.3. As per clause 9 of the scheme for compassionate appointment/benefit for the government employees of Tripura published vide No.F.1(1)-GA(P&T)/18 dated 02.03.2019 (Annexure-8 of the Writ Petition), the application for Government appointment or for admissible financial assistance, is required to be submitted within one year from the date of occurrence of the deceased government servant, provided that for admissible financial assistance, time period for application can, however, be extended by one year on valid grounds.

[3] The wife of the deceased in this case namely, Smti Swapna Das initially filed one application on 07.04.2022 i.e. beyond one year for providing her suitable job under Die-in-Harness Scheme which was regretted by the respondents vide letter bearing No.F.2(334-N)-MS/Estt-III/1999/467(VI) dated 17.07.2023 (Annexure-3 of the Writ Petition) on the ground that she did not possess minimum qualification for the proposed post. Meanwhile, the present petitioner applied for such post on 04.07.2023 which was also rejected by the respondents vide letter No.F.2(334-N)-MS/ESTT-III/99/1376(VI) dated 25.08.2023

(Annexure-6 of the Writ Petition) on the ground of submitting delayed application. However, while communicating the decision of the department in respect of application of Smti. Swapna Das (wife) vide letter dated 17.07.2023, she was informed that she might apply for *special pension under category Support-I*.

[4] As per the scheme, the nature of support as provided to the family of the government servant died in harness are as follows:

"3. Nature of Support:-

3.1 Government appointment or financial assistance of ₹1.00 lakh (Rupees one lakh) or ₹10.00 lakh (Rupees ten lakh) only, as the case may be, depending upon the category to which the affected Government Servant belongs to.

3.2. Support Category-1:

If the age of the affected Government Servant is equal to or more than 50 years on the date of occurrence, then the family will be paid Special Pension amounting to difference between last drawn salary and pension in addition to the normal pension till the affected employee would have attained 60 years of age, provided that there is no earning member in the family. After attaining 60 years of age, only normal pension will be paid.

3.3 Support Category-2:

If there is an earning member in the family of the affected Government Servant, then the next of kin will be paid a lump sum ex-gratia of ₹1.00 lakh (Rupees one lakh) only.

3.4 Support Category-3:

If the age of the affected Government Servant is less than 50 years on the date of occurrence and there is dependent family member eligible for getting Government job as per eligibility criteria mentioned in this Memorandum and there is no earning member in the family, in such case suitable Government employment (Group-C & Group-D) post only shall be admissible subject to fulfilling other required qualifications as per Recruitment Rules of the respective post. Such employment will be subject to availability of direct recruitment vacancy in the parent Department and maximum 15% of total available vacancy as on First April of the concerned Financial Year in the parent Department may be utilized for this purpose.

3.5 Support Category-4:

If the occurrence date of the affected Government Servant is before attaining the age of 50 years and there is neither earning member in the family nor any dependent eligible member for Government employment, in such case one time financial assistance of ₹10.00 lakh (Rupees ten lakh) only shall be given to the next of kin.

3.6 Explanation:-

i. If the candidate belongs to support category (3) does not get employment in the parent Department of the affected Government Servant within one year from the date of occurrence due to non-availability of vacancy in that Department, then the candidate may be considered for posting in other Departments with the concurrence of the Finance Department.

ii. Eligibility to be determined as on date of occurrence of the affected Government Servant.

iii. One family will be eligible to get only one benefit out of Support Category-1 to 4 mentioned above."

Thus, the wife of the deceased was treated to be eligible under *category Support-I* vide letter dated 17.07.2023.

[5] Mr. P.K. Biswas, learned Senior Counsel referring to death certificate of the deceased (Annexure-1 of the Writ Petition) submitted that age of the deceased as per said death certificate was 49 years at the time of death and, therefore, the petitioner or other dependent family members could not come within the *category Support-I* which is applicable where the government servant dies at the age of 50 years or more. Referring to clause no.12 of the scheme, Mr. Biswas, learned Senior Counsel strenuously argued that it was the duty of the department to apprise about the terms and condition of the scheme to the family members of the deceased and to assist them in filing proper application in time, but failure on the part of the respondents to do

the same, they should now provide the petitioner a government job under Die-in-Harness Scheme and, therefore, a direction was required to be issued to the respondents in this regard. Learned Senior Counsel also contended that the first application filed by the wife was not rejected on the ground of delay despite the same was filed beyond one year from the date of death, rather on the ground of insufficiency of educational qualification and, therefore, the respondents ought to have provided the similar treatment to the present petitioner also by not rejecting the petitioner on the ground of delay. Learned Senior Counsel further submitted that the petitioner was the family member of a Group-D employee and being rustic persons were not acquainted with the relevant procedure for filing application under Die-in-Harness Scheme in time and none apprised them also in this regard.

[6] Mr. De, learned Addl. G.A. seriously opposed the prayer of the petitioner arguing that the petition of the petitioner was hopelessly time barred and more so as per Clause 12 of the Scheme it was not the duty of the department to enlighten the family members of the deceased about the scheme in details, rather it was duty of the deceased himself to do the same and, therefore, the petitioner now cannot take benefit of their own fault or the fault of the deceased. According to Mr. De, learned Addl. G.A. the second application i.e. the application of the petitioner was not filed within the period of one year and, therefore, the respondents were completely justified in rejecting the claim.

[7] Mr. De, learned Addl. G.A. to gain support for his contention relied on a decision of this Court in case of **Nayan Paul vs. The State of Tripura & Ors., 2020 2 GauLT 589**, wherein at para 19 it was observed that no such direction could be given for providing Government job under Die-in-Harness scheme when the application of the petitioner is de hors the scheme. Mr. De, learned Addl. G.A. also relied on another decision of Hon'ble Supreme Court in **Food Corporation of India & Anr. Vs. Ram Kesh Yadav & Anr., 2007 Legal Eagle (SC) 239**; (equivalent citation **2007 AIR (SC) 1421**) where in at para 7 it was held that the employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. In **N.C. Santhosh vs. State of Karnataka & Ors., 2020 Legal Eagle (SC) 260**; (equivalent citation **2020 AIR (SC) 1401**) as referred by Mr. De, learned Addl. G.A., it was held by the Apex Court that the prevailing rules of the scheme as in force on the date of the filing of the application for compassionate appointment should be the basis for consideration of the claim for such compassionate appointment and not the scheme applicable on the date of death of government employee. Therefore, learned Addl. G.A. prayed for rejection of the Writ Petition.

[8] In view of above said principles of Law as laid down by the Apex Court in **Food Corporation of India (Supra)**, the court cannot now direct the respondents to provide a job under Die-in-Harness scheme to the petitioner when the application was filed beyond the time limit as prescribed under Clause 9 of the scheme

as indicated above. Said Clause 9 also does not give any authority to the respondents to extend the time for submission of the application for the job beyond the period of one year from the date of death of the deceased. Thus, the respondents were justified in not allowing the application of the petitioner going beyond what was provided in the scheme itself. So far the Clause 12 of the scheme regarding general awareness as referred by Mr. Biswas, learned Senior Counsel is concerned, said Clause also does not cast any duty upon the respondents to sensitise or enlighten the family members of the deceased about the scheme, rather it was duty of the deceased himself to do the same. For reference Clause 12 is extracted below:

"12. General Awareness:

It is the duty and responsibility of every Government Servant serving under the State Government/Teaching and non-teaching employees of Privately Managed Government Aided Schools/Home Guards/ Woman Guards/ Boarder Wing Home Guards to brief/enlighten his/her family about this Scheme in details."

[9] In view of above, it is held that the petitioner is not entitled for a direction from this Court towards the respondents for providing her a suitable job under Die-in-Harness scheme and, therefore, no such direction can be passed in favour of the petitioner in this case. However, as it appears from the death certificate of the deceased (Annexure-1 of the Writ Petition), at the time of death, the age of the deceased Government employee was 49 years, and if said age is correctly reflected, the survivors or dependents of the deceased, as per scheme would come within the

Support Category-4 entitling them to one time financial assistance of Rs.10,00,000/-(Rupees ten lakh) only. The respondents are, therefore, directed to verify the age of the deceased father of the petitioner and to extend such financial benefit of Rs.10,00,000/- (Rupees ten lakh) only to the next of kin of the deceased under *Support Category-4* of the above said scheme dated 02.03.2019 (Annexure-8 of the Writ Petition), if the age of the deceased is found below 50 years at the time of his death, otherwise necessary benefit will be provided to the dependant family members of the deceased as per other suitable support category of the scheme.

Entire exercise should be done within 8(eight) weeks from the date of receipt of copy of this judgment.

With above said direction, the Writ Petition is disposed of.

Pending application(s), if any, shall also stand disposed of.

JUDGE

SATABDI DUTTA

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