

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
WP(C) No.30 of 2024

Smt. Payel Das

..... *Petitioner(s)*

V E R S U S

The State of Tripura and others

..... *Respondent(s)*

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Ms. A. Debbarma, Advocate

For Respondent(s) : Mr. Kohinoor N Bhattacharya, G.A.,
Mrs. Riya Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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02/05/2024

Heard Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioner and also heard Mr. Kohinoor N Bhattacharya, learned Government Advocate appearing for the respondents-State.

[2] Petitioner is a married daughter of late Pramod Chandra Das, a Group-D employee who was posted at Khowai Government Girls H.S (+2 Stage) School and died in harness on 14.02.2016. Petitioner states that the deceased employee left behind his daughters i.e. the present petitioner and Ms. Priyanka Das. The survival certificate was issued by SDM, Teliamura, Khowai on 24.06.2017 (Annexure-2). Petitioner further states that despite being married in the year 2008, her husband is unemployed. Therefore, even after marriage, she has been completely dependent on her father as is also unemployed. Therefore, petitioner filed an application for compassionate

appointment under die-in-harness scheme dated 26.12.2015 to the Director of School Education, Government of Tripura on 10.07.2016 (Annexure-3). Petitioner is Class VIII pass. Other legal heir, younger daughter, Smt. Priyanka Das on affidavit has given no objection to the claim of the petitioner for compassionate appointment (Annexure-4).

[3] Learned counsel for the petitioner submits that vide notification dated 19.05.2017, the Government of Tripura excluded married daughters from the purview of die-in-harness scheme. This was made subject matter of challenge in WP(C) No.562 of 2019. The learned Single Judge allowed the writ petition by holding that married daughters cannot be excluded from the purview of compassionate appointment. It was held to be discriminatory and unconstitutional. Similar judgments have been passed thereafter. Learned counsel for the petitioner has also referred to the judgment of learned Division Bench of this Court dated 08.02.2022 in WA No.149 of 2020 and others preferred by the aggrieved State of Tripura against the judgment of the learned Single Judge in WP(C) No.562 of 2019 dated 18.12.2019. The learned Division Bench also affirmed the view laid down by the learned Writ Court that married daughters are entitled to compassionate appointment under die-in-harness scheme. Since there was no response from the respondents to her application dated 10.07.2016, she filed a representation dated 08.05.2023 to the Director of School Education (Higher Secondary), Government of Tripura for providing compassionate appointment (Annexure-6). She has also issued reminders on 21.09.2023 (Annexure-7) to the same authority.

[4] Learned counsel for the petitioner submits that the scheme of 2015 has been replaced by the scheme for compassionate appointment/benefit for Government employees of Tripura notified on 02.03.2019 which has taken effect from 21.11.2018 (Annexure-8). It is submitted that though married daughters were initially not included in the instant scheme of 2019 but by an amendment notified on 06.07.2022 the eligibility Clause under paragraph 2.6 and 18 of the notification has been substituted by including the married daughters for the purposes of the job under the scheme with the condition that in the event of such consideration the income of her husband will be taken into consideration to determine her eligibility. If the husband or son of the married daughter of the deceased Government employee is employed in service, such married daughter shall not come under the purview of the scheme. It is submitted that since married daughters though excluded earlier have been brought under the purview of die-in-harness scheme/compassionate appointment scheme, petitioner's claim ought to be considered by the respondents, in accordance with law, as they had been sitting over her claim for several years.

[5] Learned counsel for the petitioner has relied upon a decision rendered by the Apex Court in case of *Smt. Sushma Gosain and others versus Union of India and others*, reported in (1989) 4 SCC 468 specifically paragraph 9 of the judgment. He submits that the Apex Court held that such appointment should be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. In the present case, the respondents have been sitting over the claim of the

petitioner for several years though petitioner had made an application within 6 months of the date of death. Therefore, the cause of action should not be held to be barred by delay or laches on the part of the petitioner.

[6] Learned counsel for the State has taken an objection of delay in approaching the Court for redressal. Though time was allowed to the respondents to file counter-affidavit but no counter-affidavit has been filed as yet. Learned counsel for the State submits that the counter-affidavit is almost ready but could not be filed due to pending elections.

[7] I have considered the submissions of learned counsel for the parties at length. Relevant material facts borne from the pleadings of the writ petition have been referred to hereinabove.

[8] The purpose of affording compassionate appointment is to provide immediate succor to the dependents of the family of the employee dying in harness. The scheme of compassionate appointment is an exception to the general rule of appointment to public office under Articles 14 and 16 of the Constitution of India. Such claim therefore has to be considered in the light of the scheme framed by the employer. In the present case, under the 2015 scheme, the petitioner made an application for her compassionate appointment on 10.07.2016 after the death of her father on 14.02.2016. Petitioner admittedly is the married daughter who claims to have been living with her father as her husband was unemployed and she was completely dependent upon her father. It has been contended by learned counsel for the

petitioner that by separate notification dated 19.05.2017 the married daughters were excluded from the purview of compassionate appointment and therefore a married daughter, namely, Smt. Debashri Chakraborty approached the Writ Court in WA No.80 of 2020 assailing rejection of her compassionate appointment and also the notification dated 19.05.2017. Under the 2015 scheme under which the petitioner made an application *prima facie* the definition of dependent family members under Clause 2, married daughters were not indicated but petitioner claimed herself to be falling in the category of legitimate children. The said 2015 scheme required the department to dispose of the case of die-in-harness, where an application is complete in all respects, within 6 months from the date of receipt of the claim submitted by the applicant.

[9] In the present case, apparently, no decision was taken upon the claim of the petitioner made through her application dated 10.07.2016. In the absence of a counter-affidavit, the statement that she had made an application on 10.07.2016 remains uncontroverted. Therefore, the Court proceeds on the assumption that such an application was made on 10.07.2016 but the decision was not taken within a period of 6 months from the receipt thereof in terms of Clause 10(i) of the 2015 Scheme.

[10] This Court fails to understand as to why in such an event if no decision was taken or no response came from the department within 6(six) months from the date of receipt of the application of the petitioner for compassionate appointment she should have waited for 7 and half years to

prefer this instant writ petition on 17.01.2024. Meanwhile, the scheme of 2015 has been repealed by the scheme of 2019 notified on 02.03.2019. This scheme is effective from 21.11.2018. The definition of dependent family members under Clause 2.6 of this scheme also did not contain the married daughters. However, as observed hereinabove, such an amendment has been made vide notification dated 6th July, 2022 whereby claims of married daughters are also being considered apparently pursuant to the judgment rendered by this Court in WA No.80 of 2020 and other analogous appeals dated 08.02.2022.

[11] Under the 2019 scheme, Clause 9 provides the time limit for considering applications for compassionate appointment. Such application has to be made within one year from the date of occurrence of the deceased government servant or missing or permanent invalidation while on government duty. Date of occurrence has been defined under Clause 2.3 which as per (i) thereof means the date of death of the Government servant in case of die-in-harness. Apparently, for the event of death of petitioner's father occurring on 14.02.2016 no application under 2019 could be entertained in view of the clear prescription of time under Clause 9 thereof. Petitioner's claim under 2019 obviously is time barred and could not be entertained. If the claim of the petitioner under 2015 scheme is also taken into consideration in the first place married daughters were not included in the 2015 scheme under the definition of dependent family member under Clause-2. Though such exclusion by a subsequent notification dated 10.05.2017 has been held to be unconstitutional by this Court in WA No.80

of 2020 but petitioner is guilty of being a fence sitter awaiting the outcome of the said decision while allowing the march of time to run against her for 7 and half years thereafter. Petitioner did not deem it proper to approach this Court even after the decision rendered by the learned Writ Court holding the notification dated 19.05.2017 excluding the married daughters as unconstitutional.

[12] The judgment of the learned Division Bench in WA No.80 of 2020 preferred by the State of Tripura was delivered on 08.02.2022 whereby the decision of the learned Writ Court was upheld. The condition of exclusion of married daughters was held to be unconstitutional. Even then, the writ petitioner chose to sit over the matter and has finally approached this Court in January, 2024 after making certain representation on 08.05.2023. Apparently, all these years, petitioner has been able to survive in the absence of the deceased employee whom she claims to be dependent upon. The whole purpose of the compassionate appointment scheme is to give immediate assistance to the dependants of the deceased employee to tide over the crisis created by the loss of the bread earner. If the petitioner has survived after 8 years of death of her father, no necessity to offer compassionate appointment exists. Mere filing of representation and that too after 7 years of her application does not amount to reviving a stale cause of action. In this regard, the opinion of the Apex Court in the case of ***Umesh Kumar Nagpal vrs. State of Haryana and others*** reported in (1994) 4 SCC 138 at para-6 is quoted below:

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

[13] Further, in the case of *State of Himachal Pradesh and another vrs. Shashi Kumar* reported in (2019) 3 SCC 653, the Apex Court once again reiterated the above view at paragraphs-18 & 35 which are extracted hereunder:

“18. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependents of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognises that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.

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35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the writ petition before the High Court was instituted on 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007. On 15-1-2008 the Additional Secretary had required that the amount realised by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In *Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]*, this Court has emphasised that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of

immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.”

[14] In a recent decision in the case of *State of West Bengal vrs. Debabrata Tiwari and others* reported in 2023 SCC OnLine SC 219 the Apex Court has held in similar terms at paragraphs-35 and 40 quoted as under:

“35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in *Hakim Singh* would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

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40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, wherein the following observations were made:

“19. From the aforesaid authorities it is clear as crystal that **even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.**”

(emphasis by us)

[15] The decision of the Apex Court in case of *Smt. Sushma Gosain* (*supra*) relied upon by the petitioner cannot come to her aid as in the very same paragraph No.9 the Apex Court has also observed that the purpose of appointment on compassionate grounds is to mitigate the hardship due to death of the bread-earner in the family and it should be provided immediately to redeem the family in distress. In the present case, if the application of the petitioner was kept pending, petitioner ought to have knocked the doors of justice for relief within reasonable time. Instead, she has filed this writ petition after 7 ½ years of her application.

[16] As a result of the aforesaid discussions and the reasons recorded hereinabove, the writ petition is dismissed on the ground of delay.

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

(APARESH KUMAR SINGH) CJ

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