

**HIGH COURT OF TRIPURA
AGARTALA**

**I.A. No.01 of 2024
In WA No.25 of 2024
WA No.25 of 2024**

The Managing Director, TSECL & Anr.

..... Appellant-Applicant(s)

V E R S U S

Smt. Rita Biswas & Ors.

..... Respondent(s)

For Appellant-Applicant (s) : Mr. N. Majumder, Adv.

For Respondent(s) : Mr. D.C. Roy, Adv.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

_O_R_D_E_R_

21.05.2024

I.A. No.01 of 2024 in WA No.25 of 2024

Heard Mr. N. Majumder, learned counsel appearing for the appellant-applicants on the prayer for condonation of delay of 402 days in preferring the instant memo of appeal. Learned counsel for the appellant-applicants submits that the applicants were under an impression that there is no period of limitation prescribed for preferring a writ appeal as per the Tripura High Court Rules, 2023 notified w.e.f. 21st March, 2023.

The impugned judgment was passed on 6th January, 2023. However, an amendment has been brought into the Tripura High Court Rules, 2023 w.e.f. 11th January, 2024 which prescribes the period of limitation of 30 days in filing an intra-court appeal. It is, therefore, submitted that the delay has otherwise been explained on account of processing of the file in the department and obtaining legal opinion from the concerned office. The learned counsel for the

appellant-applicants submits that the delay is not intentional and therefore, may be condoned.

Mr. D.C. Roy, learned counsel appearing for the respondent-writ petitioner has opposed the prayer for condonation and submits that the application suffers from sufficient cause for inordinate delay of 402 days and therefore, it may be rejected.

We have considered the submissions for the learned counsel appearing for the parties and taken note of the statements made in the petition for condonation. To some extent that the learned counsel for the applicants is correct as there was a hiatus in the rules notified on 21st March, 2023 where no period of limitation was prescribed for preferring an intra-court appeal till such lacuna has been cured by an amendment to the Rules, 2023 prescribing a period of 30 days for preferring an intra-court appeal. Be that as it may, on account of explanation urged and upon hearing the learned counsel for the parties, we are inclined to condone the delay in the interest of justice.

I.A. is disposed of accordingly.

WA No.25 of 2024

Heard learned counsel for the parties in the main memo of appeal.

By the impugned judgment dated 6th January, 2023, the learned Writ Court has directed the respondents-TSECL to appoint the petitioner, the wife of the deceased employee, Prasanta Biswas who died in harness on 22nd October, 2019 while working as a Management Trainee (Electrical-B) in a suitable post commensurate with her qualification within a period of 3[three] months.

Learned counsel for the appellants submits that the impugned judgment suffers from errors of law as there is no Die-in-Harness Scheme prevalent in the Corporation under which such appointment can be made on compassionate

grounds. It is further submitted that the cited case of *Smt Shiuli Dey Choudhury* before the Writ Court is distinguishable on facts as the husband of Smt. Dey Choudhury was an employee of the Power Department whose services were transferred to the Corporation which got established on 01.01.2005 only. The State Government had a Die-in-Harness Scheme prevalent at the relevant point of time when the husband of Smt. Dey Choudhury had passed away. However, the case of the present writ petitioner is different as the deceased husband of the petitioner was appointed on 5th June, 2014 under the Corporation as a Management Trainee (Electrical-B) and there was no lien of his service with the Power Department of the Government to come under the cover of the Die-in-Harness Scheme of the State Government. It is submitted that in the absence of a Die-in-Harness Scheme in the Corporation in the case of an employee, like the husband of the petitioner who was initially appointed under the Corporation itself and whose services were never transferred from the Power Department to the Corporation, the impugned direction to appoint the petitioner in a suitable post on the death of her husband would be in teeth of the well settled principles governing the compassionate appointment.

Learned counsel for the writ petitioner has strongly opposed the prayer and he has also referred a decision rendered in the case of **Sri Subash Sarkar vs. the State of Tripura and others** [judgment and order dated 15th July, 2019 passed in W.A. No.70 of 2018]. He submits that the writ court directed the competent authority of the TSECL to appoint the petitioner on compassionate grounds since his father had died on 18th January, 2006 while in service under the respondents-TSECL as a casual worker. The case of the petitioner stands on similar footing. Therefore, the impugned direction may not be interfered with.

We have considered the submissions of the learned counsel for the parties and taken note of the materials placed on record. We have also gone through the impugned judgment and the decision cited by the learned counsel for the writ petitioner.

Two distinct facts are apparent in the case of the present writ petitioner. Firstly, the husband of the writ petitioner was appointed substantively as a Management Trainee (Electrical-B) only on 5th June, 2014 under the Corporation and was not under any deputation from the State Government whereas in case of **Subash Sarkar** (*supra*) his father was appointed on 1st March, 1979 in the erstwhile Department of Power, Government of Tripura whose services were transferred to the Corporation which was established w.e.f. 1st January, 2005. While in service under the Corporation he had died. The learned Division Bench of this Court relying upon the memorandum dated 11th August, 1997 issued by the Appointment and Services Department, Government of Tripura held that the benefit of such compassionate scheme would extent to the petitioner since his father was an appointee of the State Government and his services were thereafter transferred to the Corporation only an year before he died while in service of the Corporation. Secondly, there is no Die-in-Harness Scheme under the Corporation to meet with cases of such nature. Compassionate appointment scheme is an exception to the general rule of equality guaranteed under Articles 14 and 16 of the Constitution of India in the matters of public appointment. Any appointment on compassionate grounds can only be made under a scheme framed by the employer. Since there is no scheme such as Die-in-Harness Scheme under the Corporation, the Writ Court fell in error in directing the Corporation-respondents, the appellants herein, to

provide compassionate appointment to the writ petitioner on the death of her husband.

For the reasons as indicated above, the impugned judgment cannot be upheld and accordingly, it is set aside.

The appeal is allowed.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



SUJAY GHOSH Digitally signed by SUJAY GHOSH
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