

**HIGH COURT OF TRIPURA
AGARTALA**

WA 46 OF 2023

Ms. Jui Das,
D/o Lt.Bakul Chandra Das, resident of
Ushabazar, Chinaini, P.O. Ushabazar,
P.S.Airport, District-West Tripura.

....Appellant.

Vrs.

1. The State of Tripura,
Represented by the Principal Secretary,
Department of Health & Family Welfare, Government of Tripura,
New Capital Complex, Agartala, P.O. Secretariat Complex,
Agartala, P.S. New Capital Complex, District-West Tripura.

2. The Director,
Family Welfare and Preventive Medicine,
Government of Tripura, Gurkhabasti, P.O. Secretariat Complex,
Agartala, P.S. New Capital Complex, District-West Tripura,
Pin-799010.

3. The Director of Health Services,
Government of Tripura, Gurkhabasti, Agartala,
District-West Tripura.

4. The Chief Medical Officer,
West Tripura, Agartala.

....Respondents.

Present:

For the appellants : Mrs. S. Deb (Gupta), Advocate.
Ms. Rumpa Dey, Advocate.

For the respondents : Mr. D. Sarma, Addl. G.A.

Date of hearing : **24.01.2024**

Date of delivery of
judgment & order : **23.02.2024**

Whether fit for reporting : Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR.JUSTICE ARINDAM LODH**

JUDGMENT & ORDER

[Arindam Lodh, J.]

The instant writ appeal is directed against the impugned judgment
and order dated 31.03.2023, passed by the learned Single Judge in WP(C)

No.406 of 2022 whereby and whereunder the learned Single Judge has dismissed the writ petition.

2. Facts of the case of the appellant (here-in-after referred to as the petitioner), in a nutshell, are that the father of the petitioner, namely, Bakul Chandra Das was a regular employee of the Department of Health & Family Welfare, Government of Tripura who died in-harness on 16.12.2017. He was posted as Ex-Talua at Narsinghar PHC, West Tripura District. The petitioner being the daughter and one of the legal heirs of said Bakul Chandra Das looks after her mother since the death of her father with severe hardship as there is none in her family to maintain their livelihood. The petitioner studied upto Class-X and she made an application to the respondents on 15.03.2021 for her employment on compassionate ground under Die-in-harness Scheme for the untimely death of his father. The father of the petitioner left behind two dependants as it is apparent from the survival certificate dated 04.04.2018 issued by the Sub-Divisional Magistrate, Mohanpur, West Tripura [Annexure-11 to the writ petition]. The other survivor namely Mrs. Sajal Rani Das (wife) has executed a no objection certificate by way of swearing an affidavit to the competent authority undertaking that she would have no objection if the petitioner, namely, Jui Das is appointed under Die-in-harness Scheme for the death of her husband. But, the prayer made by the petitioner on 15.03.2021 was rejected by the respondent No.3 vide letter dated 26.04.2021 on the ground that the petitioner had submitted her prayer after prescribed period of submitting application for appointment under the Die-in-harness Scheme. Accordingly, the petitioner had approached this court by way of filing a writ petition for an appropriate direction upon the respondents particularly, upon the respondent No.3 to provide her a compassionate appointment under the

Die-in-harness Scheme framed by the Government of Tripura as she is eligible to be appointed in a suitable post under the said Scheme. The learned Single Judge of this Court vide its judgment and order dated 31.03.2023 dismissed the writ petition with the following observations:

“In view of above discussion and after perusal of the material evidence on record, this Court is of the opinion that the scheme upon which the present writ petition has been filed seeking compassionate appointments which is 26th December, 2015 is no longer invoked. Since, in the year 2019 a new scheme has been notified by the Government of Tripura and the petitioner made an application in 2021. Accordingly, the petitioner cannot succeed for any relief referring the scheme which has already been abolished. Accordingly, no rights have been conferred to the petitioner for getting relief under this scheme. Hence, the present petition is devoid of any merits and thus, the same stands dismissed...”

Being aggrieved by the aforesaid judgment and order, the appellant has filed the instant appeal.

3. At the time of hearing, Mrs. S. Deb (Gupta), learned counsel appearing for the original petitioner has submitted that learned Single Judge did not consider that the administrative order or executive order cannot have retrospective effect so as to take away the right accrued in favour of the petitioner. She mainly stressed upon the fact that the deceased father died at the time when the Die-in-harness Scheme of 2015 was in force not under the present Scheme of 2019. Further, Mrs. Deb (Gupta), learned counsel reiterated that the respondents failed to provide the necessary guidelines to the original petitioner making her aware about the Scheme for compassionate appointment and necessary assistance to enable her to file an application. According to Mrs. Deb (Gupta), learned counsel for the petitioner, since the father of the petitioner died in the year 2017, the Die-in-harness Scheme framed by the Government under notification dated 26.12.2015 would be applicable in regard to the case of the petitioner. It is further submitted that the members of the family of the deceased may not be aware of the provision of Die-in-

harness Scheme and the formalities to be completed for making such an application and, keeping in mind such type of situation, a provision has been engrafted in the Scheme of 2015 that as soon as the concerned department receives the information about the death of an employee while in service, communication in writing should be made to the family members of the deceased so that application for employment under the Scheme can be submitted within the stipulated period. Hence, Mrs. Deb (Gupta), learned counsel prays for quashing/setting aside the impugned judgment and order passed by the learned Single Judge since according to Mrs. Deb (Gupta), learned counsel, the impugned judgment and order is based on an incorrect appreciation of law and facts.

4. Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents *inter alia* contended that the deceased person, namely, Bakul Chandra Das, Ex-Talua was born on 13.05.1961 and the date of his demise was on 16.12.2017. Therefore, Mr. Sarma, learned Addl. G.A. relying upon the counter affidavits submitted that the deceased was 56 years 7 months and 3 days at the time of his death while he was in service and that the claim of the petitioner cannot be considered for compassionate appointment under the Die-in-harness Scheme. Moreso, the petitioner had submitted application for appointment after expiry of 1(one) year from the date of death of the Government Servant. Further, learned Addl. G.A. submitted that in the meantime, the financial benefits i.e. gratuity, leave salary and group insurance etc. have already been released to the mother of the petitioner. Hence, Mr. Sarma, learned Addl. G.A. candidly submitted that there is no scope to avail the benefits under the aforesaid Scheme after the inordinate delay of almost 3 years and 3 months from the date of death of the deceased. Thus, learned

Addl. G.A. supported the impugned judgment and order passed by the learned Single Judge and accordingly prayed for upholding the same.

5. In view of the submissions made by learned counsel for the parties, we have gone through the factual aspects of the case of the petitioner. First of all we see that the petitioner was aged about 27 years at the time of death of her father while he was in service. She studied upto Class-X and there is no other earning member in their family. The deceased left behind only two dependent family members in their family i.e the petitioner herself and her mother. Admittedly, the petitioner had applied for compassionate appointment after lapse of more than three years as she was not aware of the formalities of seeking compassionate appointment and consequences of not applying within time. But, the respondents had turned down her prayer on the ground that the prayer had not been made within the statutory period of one year from the date of death of the deceased. Mr. Sarma, learned Addl. G.A. also stressed upon this proposition that the petitioner could not make her prayer within the prescribed period of one year.

6. We have perused the Memorandum dated 02.03.2019, issued by the General Administration (Personnel & Training) Department, Govt. of Tripura by which a “Scheme for Compassionate Appointment/Benefit for Government Employees of Tripura, 2019” [for short, Scheme, 2019] had been framed and came into force in supersession of all earlier instructions issued by the Govt. of Tripura in connection with Die-in-harness Scheme. Admittedly, the father of the petitioner had died at the age of 56 years 7 months while he was in service disentitling the petitioner for compassionate appointment since the Scheme of 2019 provides that if an employee dies at an age more than 50

years, then, his/her dependents would not be entitled for compassionate appointment, but, provisions have been made extending financial benefits.

7. In view of the above context, we may revisit Clause 3.2 and Clause 9 of the Scheme 2019, which is reproduced here-under for the sake of convenience.

“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.”

“9. Time limit for considering applications for compassionate appointment:

For Government appointment and admissible financial assistance, requests to be submitted within one year from the date of occurrence of the deceased government servant or missing or permanent invalidation while on government duty.

Provided that for administrative financial assistance, time period for application can be extended by 1(one) year on valid grounds.”

8. Here, in the instant case, admittedly the petitioner applied for her compassionate appointment in the year 2021 while her father died-in- harness in the year 2017 i.e. after three years which is beyond the statutory period of one year from the date of death of her father. Scheme, 2019 is very clear that for Government appointment and admissible financial assistance, requests to be submitted within one year from the date of death of the deceased government servant which the petitioner could not make. After more than three years, the petitioner applied for such compassionate appointment, which was rejected on the basis of the prevalent Scheme of 2019 which has been framed in supersession of all other earlier Schemes. From the Survival Certificate [Annexure-1 to the writ petition] it appears that it was issued on 04.04.2018 i.e. within 3(three) and half months from the date of death of the deceased and no objection was there from any corner in applying the same.

9. Having gone through all these aspects, we may gainfully revisit some observations made by the Apex Court which are as follows:

10. In ***Umesh Kumar Nagpal vs. State of Haryana***, reported in (1994) 4 SCC 138, Hon'ble Supreme Court observed that— *the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That 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, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.*

11. In ***Haryana State Electricity Board vs. Hakim Singh***, reported in (1997) 8 SCC 85, Hon'ble Apex Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. Hon'ble Apex Court cautioned that – *it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the*

untimely demise of its sole earning member. Therefore, Hon'ble Apex Court held that – it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

12. In ***State of Haryana vs. Ankur Gupta***, reported in ***AIR 2003 SC 3797*** the Apex Court held that— *in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.*

13. In the above backdrop, Hon'ble Supreme Court very recently in the case of ***Bank of Baroda Vrs. Baljit Singh***, reported in ***2023 SCC OnLine SC 745*** referring to the case of ***N.C. Santosh Vrs. State of Karanata, (2020) 7 SCC 617*** and ***State of Himachal Pradesh Vrs. Sashi Kumar, (2019) 3 SCC 653*** emphatically held as follows:-

“.....In ***N.C.Santhosh vs. State of Karnataka*** (supra) a three-Judge Bench of this Court reiterated that *appointment on compassionate basis is a concession and not a right and the criteria laid down in the Rules and Schemes applicable must be satisfied by all aspirants. Therefore, the case for compassionate appointment has to be considered in accordance with the prevalent Scheme.*

Similarly, in ***State of Himachal Pradesh Vs. Shashi Kumar*** (supra), this Court has observed that –*compassionate*

appointment being an exception to the general rule, the dependents of deceased government employee are made eligible by virtue of the policy of compassionate appointment and they must fulfill the terms of the policy which are framed by the States/Employers.”

14. In the instant case, it appears that the father of the petitioner died in harness on 16.12.2017 while in service at the age of 56 years and odd and at Para 12 of the counter affidavit filed by the respondents it also transpires that the petitioner had duly informed the date of death of her father and as a result provisional family pension was also sanctioned vide order dated 14.05.2018. Therefore, the respondents within five months from the date of death of the deceased completed the entire process of service benefits and released the same to the family of the deceased which facts were, no doubt, within the knowledge of the petitioner and her mother. The petitioner at that time also could have pursued the matter with the respondents had she been informed in terms of Clause 10(ii) of 2015 Scheme for compassionate appointment.

15. Keeping in view the analogy depicted at Para 19 of the case of *N.C. Santhosh* (supra), where the three-Judge Bench of Hon'ble Supreme Court held that – ‘*the norms prevailing on the date of consideration of the application should be the basis for consideration of the claim for compassionate appointment. The Bench further held that the dependant of a government employee, in the absence of any vested right accruing on the date of death of the government employee, can only demand consideration of his application and hence he is disentitled to seek the application of the norms prevailing on the date of death of the government servant*’, the petitioner/appellant is not entitled to get any compassionate appointment and her claim would be considered in terms of the Scheme of 2019, which was

prevalent in the year 2021 when the petitioner had submitted her application for compassionate appointment.

16. One noticeable feature, we find that sub-clause (ii) of Clause 10 of the Scheme of 2015, dealing with the “*responsibilities of the department*” itself says that sometimes the members of the family of deceased may not be aware of the provisions of the Die-in-harness scheme and the formalities to be observed in submitting the application (i.e. time limit of submission of application, consequence of submission of false documents etc.). The said clause further speaks that on being informed about the death of any of the employees, while in service, the department is under obligation to immediately communicate in writing to the respective family so that the family members of the deceased employee can submit application for employment/financial assistance within the prescribed period as mentioned in the Die-in-harness scheme. In the instant case, the State-respondents have failed to place any record before the Court that though they received the information of death of the father of the petitioner in the year 2017, but they failed to make any endeavour to make the family members of the deceased aware of the benefits stated in the scheme. According to us, it is an obligation cast upon the concerned department to intimate the family members of the deceased as regards the extent of benefits provided in the Die-in-harness scheme and the period by which such family member would submit application seeking benefits of the scheme they are entitled to get.

17. In view of this, we are not in agreement with the submission of learned counsel and the stand taken by the State-respondents that the petitioner is not entitled to get the benefit of the scheme as she failed to submit application within one year from the date of death of her father.

18. Admittedly, the petitioner had submitted application for compassionate appointment under the Die-in-harness scheme on 15.03.2021 when the scheme of 2019 was prevalent. Keeping in mind the principles laid down in *N.C. Santosh(supra)* that the norms prevailing on the date of submission of the application should be the basis for consideration of the scheme for compassionate appointment, we are of the view that the competent authority of the department had to consider the application submitted by the petitioner within the ambit of the Scheme of 2019 as regards the extent of benefit provided in Scheme of 2019, but the respondents failed to do so.

19. It is settled that appointment on compassionate ground is an exception to Article 14 and 16 of the Constitution of India. It cannot be claimed as a matter of right. Further, the Scheme of 2019 clearly lays down that compassionate appointment would not be allowed to any of the family members of the deceased employee if the age of such government servant is equal to or more than 50 years on the date of occurrence. In such a case, the dependent family members shall be provided with financial assistance. In the instant case, admittedly, the father of the petitioner died at the age of more than 56 years. As such, the petitioner is not entitled to claim appointment on compassionate ground under the Die-in-harness scheme prevalent in the State.

20. Under clause 3.2 scheme of 2019 extracted in the preceding paragraph, the respondents are under obligation to extend a lump sum financial assistance to the petitioner since the father of the petitioner died at the age of 56 years while in service.

21. As a logical consequence to the aforesaid fact, the respondents are directed to pay financial assistance to the petitioner as is admissible in Clause 3.2 of the Scheme, 2019 i.e. the petitioner shall be paid Special

Pension amounting to difference between last drawn salary and pension in addition to the normal pension till the deceased father of the petitioner would have attained 60 years of age since there is no other earning family members in the family of the deceased.

The entire exercise shall be completed within a period of 3(three) months from the date of receipt of copy of this judgment and order.

22. In the light of above observations and directions, the instant appeal stands partly allowed and disposed of. Pending application (s) if any, shall also stand disposed of.

(ARINDAM LODH),J

(APARESH KUMAR SINGH),CJ

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