

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.579/2024

Smt. Sangita Debbarma, D/O. Late Bishurai Debbarma, W/O. Sri Juliya Debbarma, resident of Debram Thakur Para, P.O. + P.S.-Bodhjungnagar, District-West Tripura, PIN-799008, aged about-32 years.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by its Principal Secretary, Health and Family Welfare Department, Government of Tripura, having its Office at New Secretariat Building, P.O.-Secretariat, P.S.-New Capital Complex, District-West Tripura, PIN-799010.

2. The Under Secretary, Health & Family Welfare Department, Government of Tripura, P.O.-Secretariat, P.S.-New Capital Complex, District-West Tripura, PIN-799010.

3. The Director, Directorate of Health Services, Government of Tripura, having its office at Health Directorate Building, Pandit Jawaharlal Nehru Complex, 1st Floor, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, PIN-799001.

.....Respondent(s).

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate.

For Respondent(s) : Mr. Dipankar Sarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

07/09/2024

Heard Mr. Arijit Bhaumik, learned counsel appearing for the petitioner and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

2. The impugned order dated 16.07.2024 issued by the competent authority under the Health and Family Welfare Department, Government of Tripura has rejected the representation of the petitioner for compassionate appointment under die-in-harness scheme in lieu of death of the father of the petitioner on 19.11.2016 in harness while working as Night Guard for the

reason that the petitioner did not apply within one year from the date of occurrence of the death of deceased Government servant as per the rule.

3. There was a previous round of litigation in WP(C) No.321 of 2024. Petitioner had approached this Court with a prayer for consideration of her case in Support Category-I or III under the die-in-harness scheme of 2019 issued vide Memorandum dated 02.03.2019 (Annexure-9) as according to her, the deceased died at the age of 45 years, i.e. less than 50 years. At that stage, dependent petitioners and legal heirs of the deceased employee had got the financial benefit of Rs.1 lakh under Category-II of the Scheme of 2019. This Court on consideration of the rival submissions of the parties and the relevant provisions of the scheme of 2019 disposed of the matter without making any comments on the merits of the case of the petitioner in the following manner:

"[6] Since the claim of the petitioner has been entertained and benefits have been granted under the scheme of 2019, the eligibility of the petitioner to be covered under the scheme is not an issue herein. It is the category under which the petitioner's case falls, what requires to be examined. Petitioner in the pleadings has stated that she would fall in either Support Category-I or Support Category-III. There are no documents which conclusively establish as to what was the correct age of the deceased employee. The death certificate would not serve the purpose so far as the correct age of the deceased employee is concerned under Category-I, had the deceased been equal to or more than 50 years on the date of occurrence, the family would be entitled to special pension amounting to difference between last drawn salary and pension in addition to the normal pension till the affected employee attains 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. If the petitioner's father was less than 50 years of age as on the date of occurrence which is defined under Clause 2.3(i) as the date of death of the Government servant in harness, the dependent family member eligible for government job as per eligibility criteria mentioned in this memorandum would be considered for suitable government employment if there is no earning member in the family subject to fulfillment of other required qualification as per recruitment rules and earmarked vacancy for the concerned financial year in the parent department under Category-III. Apparently, the impugned order does not dilate on the reasons as to why she has been granted the benefit of Support category-II instead of Category- I or III. If the case of the petitioner was eligible for other categories like Support Category-I or Support Category-III, the benefits would be substantially more.

[7] As such, petitioner appears to have a genuine grievance. However, since all relevant factors germane to be considered are not been reflected on perusal of the impugned order, this Court instead of entering into the merits of the case, deems it proper to remit the matter to the competent

authority/Director of Health Services, Government of Tripura, respondent No.2 to take a fresh decision on the application of the petitioner, in accordance with law, within a reasonable time preferably 12 weeks from the date of receipt of copy of this order. In the process of reconsideration, the order dated 12.02.2024 (Annuxure-7) impugned herein shall not come in the way to the petitioner.

[8] Let it be made clear that this Court has not made any comments on the merits of the case of the petitioner. Needless to say, if the competent authority deems it necessary to require other supporting documents from the petitioner, petitioner would be obliged to supply the same within the same period."

Pursuant to the directions of this Court, her claim was reconsidered and had been rejected by the impugned order dated 16.07.2024 for the reasons indicated hereinabove.

4. Apparently, under Clause 9 of the 2019 scheme, time limit for considering applications for compassionate appointment and admissible financial assistance was within one year from the date of occurrence of the deceased Government servant or missing or permanent invalidation while on Government duty. However, Clause 9 also provided that for admissible financial assistance, time period for application can be extended by 1(one) year on valid grounds. Clause 19 is the repeal clause by which existing orders/ instructions issued from time to time in connection with the die-in-harness scheme stood repealed w.e.f. 21.11.2018. As such, the existing scheme of 2015 during subsistence of which the deceased died on 19.11.2016 stood repealed and it is also obvious from the nature of financial assistance granted to the petitioners that such assistance has been granted under Category-II of the 2019 scheme. Since the administrative instruction or scheme was repealed by the 2019 scheme, case of the petitioner was neither considered nor such claim could have been granted under the repeal scheme. But the claim was considered even under the 2019 scheme despite delay in making such

representation though time limit for considering applications for compassionate appointment under Clause 9 required to be submitted within one year from the date of occurrence. It was extendable for one year for granting admissible financial assistance on valid grounds. It appears that the competent authority under the department took a liberal view of the matter and granted financial assistance in favour of the petitioners to the tune of Rs.1 lakh treating them to be under Category-II of the 2019 scheme. However, the claim for compassionate appointment has been rejected on reconsideration this time on the ground that such claim was not submitted within one year from the date of occurrence, i.e. the date of death of petitioner's father on 19.11.2016.

5. Claims for compassionate appointment are liable to be considered under the terms and conditions of the die-in-harness scheme framed by the employer, i.e. the State Government in this case. Provisions thereof have to be read in a beneficial manner as it is in the nature of a social welfare legislation or subordinate legislation. However, time limits for making such application have to be adhered strictly unless the scheme itself provides for relaxation. In the absence of any provision under the scheme including Clause 9 which prescribes for time limit for considering applications for compassionate appointment, no direction to entertain such a belated claim can be issued by a Writ Court under Article 226 of the Constitution of India as writs in the nature of mandamus or such directions can be issued only to enforce a legally enforceable right. Directions contrary to law or provisions of the scheme cannot be issued as it would be beyond the scope of the scheme and would create bad precedents. It is true that by granting the benefit of admissible financial assistance, the respondents have treated the petitioner eligible for such

claim even under the 2019 scheme but since claim for compassionate appointment could be entertained only within the period of one year from the date of occurrence with no condition to extend it beyond that, it would not be proper for this Court in exercise of writ jurisdiction to issue such a direction upon the respondent authorities. The reason for rejection of the claim for compassionate appointment on the ground that it has not been made within one year as per rules cannot be said to be illegal or erroneous which can be corrected in certiorari jurisdiction of this Court. As such, this Court does not find any merit in the writ petition calling for interference.

6. Learned counsel for the petitioner submits that the respondents may not withdraw the benefit of financial assistance granted to the petitioners earlier vide order dated 12.02.2024. In the circumstances noted above where the observations have been made in relation to the claim of compassionate appointment in the present case, this Court does not find any reason as to why benefits already extended to the petitioners earlier should be withdrawn.

7. The writ petition is dismissed accordingly.

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

(APARESH KUMAR SINGH), CJ

Pulak

SIDDHARTHA LODH

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