

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.770 of 2023

Sri Prasenjit Debnath

.....Petitioner(s);

Versus

State of Tripura & others

.....Respondent(s)

For Petitioner(s) : Mr. Debalay Bhattacharya, Sr. Advocate,
Mr. Samar Das, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.,
Mr. A.K. Pal, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

16/05/2024

Heard Mr. Debalay Bhattacharya, learned senior counsel assisted by Mr. Samar Das, learned counsel for the petitioner and Mr. M. Debbarma, learned Additional Government Advocate for the respondents No.1 & 2-State. Also heard Mr. A.K. Pal, learned counsel for respondents No.3 to 5.

2. Petitioner admittedly is the son of the second wife of the deceased employee who died in harness on 28.10.2014 at GBP Hospital, Agartala while working as a Group-D employee under respondent No.2. The second marriage was incurred during subsistence of the first marriage and the first wife is respondent No.3 in the present writ petition. Respondents No.3 to 5 have got the benefit of death-cum-retiral dues on the basis of a direction passed by this Court in WP(C) No.515/2017. The claim for compassionate appointment was initially made on 08.06.2015 under the die-in-harness scheme dated 24.09.2011. That scheme was replaced by a die-in-harness scheme of 26.12.2015 and at this stage, the scheme which is in vogue was notified on

06.03.2019. Petitioner approached this Court as his claim was not being considered.

3. Respondents No.3 to 5 in their Counter Affidavit have strongly opposed the prayer. It is also evident from the averments made in their Counter Affidavit that the mother of petitioner is employed in Social Welfare Department, a fact which has not been refuted by any Rejoinder. The official respondents have also filed a Counter Affidavit which indicates that the petitioner has not been able to submit No Objection Certificate from other eligible family members who, in this case, are respondents No.3 to 5 – the first wife and her two children. Official respondents have conveyed their inability to process the claim of the petitioner further in the absence of the required conditions to be fulfilled by the applicant-petitioner. This in brief is the case of the parties.

4. Mr. Debalay Bhattacharya, learned senior counsel for the petitioner, submits that the application for compassionate appointment was made in time in the year 2015 within one year of the death, but it has remained pending on account of non-furnishing of No Objection Certificate by the respondents No.3 to 5, who are the first wife and two major children of the deceased. It is quite obvious that the respondents No.3 to 5 would not offer any no objection to the appointment of the petitioner. In that case, the claim of the petitioner ought to have been processed treating it as a tacit no objection on the part of the respondents No.3 to 5. Petitioner is still without any permanent source of sustenance. It is further submitted that by virtue of the decision

rendered by the Apex Court and the terms and conditions in the scheme, there is no distinction between a legitimate and illegitimate child of the deceased employee for the purposes of conferring compassionate appointment. Therefore, the respondents may be directed to take a decision in the matter of grant of compassionate appointment in favour of the petitioner in accordance with law.

5. Mr. A.K. Pal, learned counsel for the private respondents, has opposed the prayer on the grounds taken in the Counter Affidavit and referred to briefly hereinabove. Learned Additional Government Advocate for the State submits that the claim of the petitioner cannot be processed in absence of necessary conditions to be fulfilled by him. Moreover, petitioner has survived for over ten years since the death of his father. The whole purpose of conferring compassionate appointment to provide succour to the dependents of the deceased on the death of the bread earner would be defeated. Therefore, the writ petition may be dismissed as without merit.

6. I have considered the submission of learned counsel for the parties in the canvas of facts noted hereinabove in brief. Petitioner's claim for compassionate appointment as the son of the second wife of the deceased-employee though was made within one year of the death under the scheme of 2011, but it could not be processed and taken to its logical conclusion since petitioner failed to produce No Objection Certificate from the other family members of the deceased employee who are respondents No.3 to 5 – the first wife and two children born out of the marriage with the deceased employee.

7. Petitioner's mother is stated to be in the Social Welfare Department as a government employee, a fact which remains unrefuted. Learned senior counsel for the petitioner has, on instruction, submitted that she is working as a Helper under the anganwadi scheme of the Social Welfare Department which is not a regular permanent job. It is also to be taken note of that there is no distinction between the eligibility of legitimate and illegitimate children of a deceased employee for the purposes of compassionate appointment. However at this length of time, after ten years of the death when the petitioner and his family members have been able to ward off immediate penury and destitution resulting out of the death of the bread earner, any claim for compassionate appointment after ten years would be in teeth of the very object of the die-in-harness scheme which is to provide immediate succour to the dependents of the deceased employee dying-in-harness. In this regard, it is profitable to refer to the decision of the Apex Court in the case of ***Umesh Kumar Nagpal v. State of Haryana and others*** reported in (1994) 4 SCC 138.

Paragraph 6 thereof is extracted hereunder:

“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.”

Further, in the case of ***State of Himachal Pradesh and another v. Shashi Kumar*** reported in (2019) 3 SCC 653, the Apex Court once again reiterated the above view at paragraph 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. Dependants 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 recognizes 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.”

The position in law in this regard has been consistently reiterated and followed in subsequent decisions. In a recent decision in the case of *State of West Bengal v. Debabrata Tiwari and others* reported in **2023 SCC OnLine SC 219**, the Apex Court has held in similar terms at paragraph 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)

8. Having regard to the reasons discussed hereinabove, this Court is satisfied that the claim for compassionate appointment of the petitioner, who has survived for ten years after the death of his father, cannot be entertained as the sense of immediacy is evidently lost by the delay. Moreover, petitioner’s siblings and respondent No.3 have also not furnished any no objection in his favour and petitioner’s mother also appears to be engaged in the Social Welfare Department which indicates that the family was not without any source of sustenance. For all these reasons, this Court is not inclined to allow the prayer made by the writ petitioner. Accordingly, the instant petition is dismissed.

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

(APARESH KUMAR SINGH), CJ

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