

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.807 of 2023

Shri Mrinmoy Karmakar, S/o Late Tapan Karmakar, Vill- Noabadi
Vidyasagar Colony, P.O-Noabadi, Jirania East Barjala, District-West Tripura,
Pin-799045.

..... Petitioner(s).

Versus

1. The State of Tripura, to be represented by its Secretary, Secondary Education Department, Government of Tripura, Civil Secretariat, PO & PS – NCC, Agartala, West Tripura, Pin-799010.
2. The Director of Secondary Education, Govt. of Tripura, Agartala, West Tripura, Pin-799001.
3. The Head of Office & D.D.O., Kobra Khamar H.S. School, Jirania, West Tripura, Pin-799045.

..... Respondent(s).

For Petitioner (s) : Mr. P.K. Pal, Advocate,
Ms. Maitri Majumder, Advocate.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

20/09//2024

Heard Mr. P.K. Pal, learned counsel together with Ms. Maitri Majumder, learned counsel for the petitioner and Mr. D. Sharma, learned additional Government Advocate for the respondents-State.

[2] It is a case of compassionate appointment of the son of the employee who died-in-harness on 26.06.2021 while working as a L.D.C. under the Directorate of Secondary Education, Government of Tripura, Agartala. The claim for compassionate appointment of the petitioner has been rejected vide letter dated 17.01.2022 on the ground that the petitioner is less than 17 years age. Respondent No.2 has requested the petitioner's mother to receive the financial assistance in lieu of compassionate appointment to the tune of

Rs.10,00,000/- (Rupees ten lakhs) only. However, petitioner is not satisfied with financial assistance being extended by the respondents and has chosen to pursue his claim for compassionate appointment through this writ petition. The die-in-harness scheme of General Administration (Personnel & Training) Department, Government of Tripura, dated 2nd March, 2019 under Clause-7 provides the 'Age limit' for candidature of such an applicant. The Clause-7 is quoted hereunder:

"7. Age limit :-

Minimum age limit is 18 (eighteen) years and upper age limit is 40 (forty) years as on the date of occurrence. Upper age limit is relaxable by 5(five) years in case of SC/ST/PH candidates.

Provided that age limit is relaxable subject to following conditions:-

- i. Minimum Age is relaxable by 1(one) year i.e. age of an applicant on the date of occurrence shall not be less than 17(seventeen) years but actual employment shall be provided on attaining the age of 18(eighteen) years of age.
- ii. Upper age limit is also relaxable by 1(one) year i.e. for candidates of un- reserved category, age should not be more than 41(forty one) years and candidates of SC/ST/PH category should not be more than 46(forty six) years to get the benefit of Government job under the Scheme.
- iii. No age limit is prescribed for having the benefits of financial assistance under the Scheme.
- iv. There will be no other relaxation in any provisions of Recruitment Rules of any particular post for the purpose of providing compassionate employment under the Scheme."

[3] Petitioner was 16 years 2 months & 17 days on the date of death of his father, i.e. date of occurrence as per clause 2.3 of the scheme. Petitioner's mother was 41 years 7 months 6 days as on the date of death of her husband. As such, petitioner was less than 17 years and his case could not be considered in terms of Clause-7.1. Petitioner belongs to un-reserved category. Financial assistance to the tune of Rs.10,00,000/- (Rupees ten lakhs) only in lieu of compassionate appointment has been extended in terms of Clause-3 which

provides for 'Nature of Support' under 'Support Category-4' since the affected government servant had died below the age of 50 years.

[4] Learned counsel for the petitioner has placed reliance upon Clause-18 of the die-in-harness scheme which is 'Powers to Relax'. The Clause-18 is extracted hereunder:

"18. Power to Relax:

Where the State Government is of the opinion that if it is felt necessary or expedient to do so, it may, by order, for reasons to be recorded in writing relax any of the provisions of this scheme."

[5] Mr. P.K. Pal, learned counsel for the petitioner has referred to certain decisions rendered by this Court in (i) S.B. WP(C) No.150 of 2017, judgment dated 13.03.2018, (ii) WP(C) No.572 of 2019, judgment dated 10.12.2019 and (iii) WA No.291 of 2021, judgment dated 13.12.2021 arising out of the judgment dated 10.12.2019 passed in WP(C) No.572 of 2019. He submits that in those cases, though the age of the petitioner was less than 17 years on the date of death/date of occurrence but this Court, considering the nature of the compassionate appointment being a beneficial legislation directed consideration of the case of the concerned writ petitioner/candidate by exercising the 'Power to Relax' under Clause -18 of the die-in-harness scheme. The respondents should have abided by the judgments passed by this Court in similar situations. Therefore, appropriate directions may be passed for reconsideration of the case of the petitioner while setting aside the impugned order.

[6] Mr. D. Sharma, learned additional Government Advocate for the respondents-State has defended the impugned decisions and submits that the petitioner was ineligible because of the 'Age limit' prescribed under Clause-7 as

he was only 16 years 2 months 17 days on the date of death/ date of occurrence. The scheme itself provides for relaxation for one year i.e. up to the age of 17 years in case the dependant is minor on the date of death/ date of occurrence but not beyond that. Since the scheme has been framed by the Government, this Court in exercise of writ jurisdiction should not endeavour to rewrite the scheme by lowering the age limit as it may also create bad precedent. It is further submitted that the respondent department has considered the case of the petitioner in the light of the die-in-harness scheme and under 'Support Category-4' extended compensation to the tune of Rs.10,00,000/- (Rupees ten lakhs) only in lieu of compassionate appointment since the deceased was less than 50 years of age. Therefore, no exception should be made in such circumstances. He submits that the 'Powers to Relax' can be exercised in an appropriate case depending upon the facts and circumstances and reasons, if any.

[7] I have considered the submissions of the learned counsel for the parties and taken note of the attended materials facts placed from record. Compassionate appointment being an exception to the general rule of public employment as mandated under Article 14 and 16 of the Constitution of India, the consideration of any such claim can be made strictly in accordance with the scheme framed by the employer. In the present case, the petitioner is 16 years 2 months 17 days on the date of death/ date of occurrence i.e. obviously less than 17 years as per Clause-7 of the die-in-harness scheme dated 02.03.2019. On that score, the decision to reject his claim cannot be found fault with. However, it appears that there is a 'Power to Relax' under Clause-18 of die-in-harness scheme to be exercised in appropriate case if necessary or expedient to do so for reasons to be recorded. Petitioner has relied upon certain decisions in support of

his claim for relaxation in age. In such circumstances, this Court deems it proper to allow liberty to the petitioner to approach the competent authority for relaxation of the 'Age limit' criteria under Clause-7 by invoking Clause-18 which is the 'Power to Relax' with supporting facts and circumstances. Such representation can be made within a period of four weeks from today. The competent authority under the department would reconsider the representation of the petitioner in accordance with law, without being inhibited by the earlier order of rejection, within a reasonable time thereafter, preferably 10(ten) weeks from the date of receipt of such representation and a copy of this order.

[8] Accordingly, the instant petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ