

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.383 OF 2007

Sri Sandipan Sengupta,
son of late Amalendu Sengupta
resident of Office Tilla, Bishalgarh,
P.S. Bishalgarh, District – Sepahijala

..... Petitioner

– Vs –

1. The State of Tripura,
represented by Secretary-Cum-Commissioner,
Forest Department, Government of Tripura
2. The Principal Chief Conservator of Forests,
Government of Tripura, Gurkhabasti,
Agartala, Tripura West
3. The Divisional Forest Officer,
Agartala, West Tripura
4. The Range Officer,
Charilam Range Office,
Sadar Division
5. The Deputy Secretary
to the Government of Tripura,
General Administration(P&T) Department,
Government Secretariat

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. R. Dutta, Advocate.
Ms. R. Purkayastha, Advocate.

For the respondents : Mr. D.C. Nath, Advocate.

Date of hearing & order : 29.05.2015

Whether fit for reporting :

Yes	No
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JUDGMENT & ORDER (ORAL)

Heard Ms. R. Purkayastha, learned counsel appearing vice Mr. R. Dutta, learned counsel for the petitioner as well as Mr. D.C. Nath, learned state counsel appearing for the respondents.

2. By means of this petition, the petitioner has challenged the action of the respondents, denying him a job under the Die-in-harness Scheme vide memorandum No.F.1(2)-GA/77 dated 13.08.1996, Annexure-E to the writ petition, for death of his father, namely Amalendu Sengupta on 06.07.2005, as is available from the Death Certificate dated 28.07.2005, Annexure-A to the writ petition.

3. The petitioner's father had admittedly been serving as the Forester and he died in the harness during the extended period after his superannuation, leaving behind five legal heirs including the petitioner who at the time of his father's death was 23 years and eligible for the Government service, commensurate to his qualification. The petitioner had applied for compassionate appointment under the Die-in-harness Scheme with all necessary

testimonials including the no objection from the other family members on 23.09.2005 vide Annexure-D to the writ petition. But, the Government did not appoint him for long and finally by the memorandum dated 17.02.2006, Annexure F to the writ petition, the petitioner was informed that according to the existing rules under the Die-in-harness Scheme, there may not be any scope to provide a Government job to the family of the Government servant who died in the extension of service after the actual date of retirement on superannuation.

4. It is not denied by the petitioner that his father died while he was in the extension of his service after retirement on superannuation. The petitioner has, by this writ petition, also challenged the vires of the memorandum No.F.(1)GA(P&T)/2005 dated 16.05.2005, Annexure-G to the writ petition, whereby a clarification has been made by the Government in the General Administration (P&T) Department that the benefit of the Die-in-harness Scheme shall not be available to the family of the Government servant who dies while on extension of service after the actual date of retirement on superannuation.

5. Ms. Purakayastha, learned counsel appearing for the petitioner, has strenuously argued that the substantive right created by a scheme cannot be curtailed under the subsequent clarification. Moreover, this clarification is hit by unreasonableness

under Article 14 of the Constitution of India. Therefore, rejection of the prayer of the petitioner for compassionate appointment cannot be sustained. She has firmly urged for a direction to the respondents for providing the petitioner an appointment under the die-in-harness scheme so that the difficulties faced by the family of the deceased employee can be sailed over, which according to her, is the salutary object of the Die-in-harness Scheme.

6. From the other side, Mr. D.C. Nath, learned counsel appearing for the respondents, has categorically submitted that the Government while framing the Die-in-harness Scheme, since could not specifically clarify what would be the position of the family members of the deceased employee who died during the extension of service after the actual date of retirement on superannuation or re-employment, was persuaded to issue a clarificatory memorandum to settle the confusion forever. Therefore, there is nothing illegal in such clarification. Such clarification was not even visited by unreasonableness, as alleged by the petitioner as the purpose for clarification was to build up intelligible differentia. Mr. Nath, learned counsel, by production of the records has contended that due procedure was followed in issuing that clarification by the memorandum dated 16.05.2005, Annexure-G to the writ petition. He has further submitted that there is no infraction of the policy of the Government while considering the case of the petitioner. The petitioner was informed

that since his prayer was not covered by the Die-in-harness Scheme, his case was not considered.

7. In rejoinder to what has been submitted by Mr. Nath, learned counsel appearing for the respondents, Ms. Purkayastha, learned counsel appearing for the petitioner, has submitted that previously the Government has given appointment under the Die-in-harness Scheme to the family members of a Government employee who died during his extension of service after retirement on superannuation.

8. On that count, this court is constrained to observe that Article 14 of the Constitution of India is for making the positive declaration when it is discovered that the right of the citizen has been infringed either for arbitrary action of the Government or for any colourable exercise of power. In this case, this court cannot come to a decision that the previous act of the Government would estop them from observing the procedure as prescribed under the Die-in-harness Scheme.

9. Having regard to the circumstances and the records so produced before us, this court is of the view that the memorandum dated 17.02.2005, Annexure-F to the writ petition, does not suffer from vice of unconstitutionality and that is bound to be read with the memorandum dated 13.08.1996, Annexure-E to the writ petition, and as such the denial of compassionate appointment to

the petitioner cannot be held to be in contrast to the provisions of the Die-in-harness Scheme.

10. Accordingly this petition being devoid of merit, is dismissed. No order as to costs.

For dismissal of this petition, the respondents are not precluded from considering the petitioner for a Government job having regard to well-being of the family of the deceased employee.

JUDGE

ROY/Moumita