

Case No :WP(C) 0000161/2015

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Party Name : BHARAT MILAN JAMATIA Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. A. Sengupta, learned counsel, appearing for the petitioner as well as Mr T.D. Majumder, learned Govt. Advocate appearing for the respondents.

It is admitted position that the father of the petitioner namely, Eleven Jamatia, who was working as a Group-D employee under the respondents, expired on 03.10.2012 in harness.

In terms of the Die-in-Harness Scheme, the petitioner applied for a job commensurate to his qualification. On his application, a formal inquiry at the instance of the Director of School Education was conducted by the Sub-Divisional Magistrate, Amarpur, Gomati District. By the communication dated 18.05.2013, (Annexure-6 to the writ petition), the said Sub-Divisional Magistrate furnished his report to the Director of School Education, Government of Tripura holding that:

"Sri Bharat Milan Jamatia is eligible for Govt. Job under "Die-in-harness" scheme."

But the petitioner's prayer for compassionate appointment in the Education Department was not acceded to even though there was another report from the Sub-Divisional Magistrate, Amarpur, Gomati District that the petitioner is unemployed and he has no demonstrating job under any State or Central Government. The said communication dated 27.01.2014 is available at Annexure-8 to the writ petition.

By the memorandum dated 04.12.2014 Annexure-9 to the writ petition, the Director of School Education has communicated to the petitioner inter alia:

"That Sri Bharat Milan Jamatia along with his above prayer has submitted an attested copy of his family Ration Card in which it is revealed that some names have been included with the original Ration Card of 2012 from which it is not proved that he is a dependent family member of the deceased Eleven Jamatia."

Based on such observation, the petitioner was informed that his prayer for a compassionate appointment under Die-in-Harness Scheme due to death of his father namely, Eleven Jamatia, may not be acceded to.

Thereafter, the petitioner has submitted an affidavit sworn by his mother and younger brother stating inter alia that the petitioner and his wife and child have been residing with the family of the deceased employee. That apart, the petitioner had produced the document to show that he has passed the Madhyamik examination from the Tripura Board of Secondary Education.

There is no dispute that save and except that objection, the petitioner is otherwise eligible for a job under the Die-in-Harness Scheme. According to the petitioner, even though there were two ration cards, he has been living in the same family. Later on, after death of his father the ration cards were also amalgamated in one ration card. Mr. Sengupta, learned counsel has submitted that the requirement is that the married son or daughter-in-law should not live separately from the other members of the family in view of the memorandum dated 24.06.2002, Annexure R/2 to the writ petition.

The petitioner and his wife have been living in the same family though there had been two separate ration cards at one point of time. In support of that contention, Mr. Sengupta, learned counsel has referred to this Court the Election Photo Identity Card (EPIC) and Aadhaar card which are available at Annexures-13 & 14 to show that the petitioner's residence in those documents are the same where his father was living i.e. 190, Malbasa Jamatia Para, Village-Paschim Malbasa, P.S. Birganj, Amarpur Sub-Division, District-South Tripura.

Mr. T. D. Majumder, learned GA, appearing for the respondents has submitted that the statement made by Mr. Sengupta, learned counsel for the petitioner may not be accepted by this Court as the ration cards are issued against the separate families and under no circumstances two ration cards can be issued for the same family unit. As such, it has to be assumed that the petitioner and his spouse were living separately from the family of the deceased employee and in view of the memorandum dated 24.06.2002 no compassionate appointment can be made in favour of the petitioner under the Die-in-Harness Scheme. For purpose of reference, the entire text of the memorandum dated 24.06.2002 is extracted hereunder:

"The term "Family" for the purpose of Die-in-Harness Scheme, as defined under General Administration (P&T) Department (Formerly A & S Department) Memorandum No.F.1(A)-GA/92(L) dated 19.11.1997 is hereby partially modified and defined as follows:

Family in relation to a deceased Government Servant means (i) his wife or her husband, as the case may be (ii) legitimate children (iii) daughter-in-law (iv) dependants parents and (v) dependent un-married brothers and sisters in the case of a bachelor government servant, but does not include a married son or daughter-in-law if they live separately from other members of the family.

This modification shall take immediate effect.

All Departments/Heads of Departments are requested to follow the guidelines strictly to regulate the cases under Die-in-Harness Scheme."

This is a unique case which has fallen for consideration of this Court in respect of the petitioner's appointment under the Die-in-Harness Scheme. There cannot be any amount of dispute that after the Die-in-Harness Scheme was made operational, it has been clarified by the General Administration (Personnel & Training Department), Government of Tripura by the memorandum dated 24.06.2002 that the family in relation to a deceased Government servant means (a) his wife or her husband, as the case may be (b) legitimate children (c) daughter-in-law (d) dependants parents and (e) dependent un-married brothers and sisters in the case of a bachelor government servant, but does not include a married son or daughter-in-law if they live separately from other members of the family.

To some extent Mr. T. D. Majumder, learned GA is correct in holding that this Court may assume that the petitioner was living separately from the family of the deceased employee. But from the collateral documents as well as from the affidavit filed by the mother and brother of the petitioner, it is apparent that they are living in the same family. How the petitioner has acquired the separate family ration cards is a matter shrouded by unexplained circumstances. However, since the Die-in-Harness Scheme for compassionate appointment is a welfare measure of the State, the interpretation may be made purposefully having regard to its object. As such, this Court is of the view that as two opinions are amenable to be formed, the opinion that supports the cause of the petitioner has to be accepted by this Court.

In view of that, the State is directed to consider the compassionate appointment of the petitioner for death of his father, Eleven Jamatia in harness within a period of 3 (three) months from today as it has been found that there is no other objection against making such compassionate appointment.

With this observation and direction, this writ petition is allowed to the extent as indicated above.

There shall be no order as to costs.