HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.03/2019

Sri Nayan Paul, S/O. Late Amalendu Paul, Resident of Aswini Market, Vidyasagar Palli, "C Block", P.O.-ONGC, PS-Amtali, West Tripura, PIN-799014.

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. S. Deb, Sr. Advocate,
Mr. P.K. Pal, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH

Date of hearing and judgment: **7th January, 2020**.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

(Akil Kureshi, C.J.)

This petition arises in the following background:

Petitioner's father Late Amalendu Paul was working as a Helper Grade-II with the Executive Engineer, Public Works Department (Electricals), Gokulnagar when he died on 06.12.2003, still in service. The deceased left behind his widow Smt. Tapati Paul and the present petitioner Nayan Paul who was aged about 4(four) years at the time of the death of his father. The petitioner's mother made an application on 07.05.2004 for being appointed on compassionate grounds. It appears that the mother of the petitioner was not qualified for being appointed in the Government job and the Government, therefore, provided one time financial assistance in the form of payment of ₹50,000 (rupees fifty

thousand) to the family. The mother of the petitioner did not accept such assistance. The petitioner crossed the age of 18 years on 14.08.2017. In the meantime he had acquired the educational qualification of H.S. (+2 stage). On 30.06.2018 the petitioner applied for compassionate appointment under the die-in-harness scheme of the State of Tripura. Since the respondents did not dispose of the application within a reasonable time this petition came to be filed with a prayer to direct the respondents to grant compassionate appointment of the petitioner under the scheme framed by the Government.

2. Initially this petition was placed before the Single Judge of this Court before whom counsel for the petitioner had cited a decision of Division Bench of this Court in case of ***Shri Subham Dey vrs. The State of Tripura & others*** dated 22.11.2018 in ***W.A. No.45 of 2014*** in which reversing the decision of the learned Single Judge the respondents were directed to consider the case of the applicant for appointment on compassionate grounds ignoring the question of limitation in making such application. It was a case where the applicant was minor at the time of the death of his father who was a Government servant and had died in harness. The Single Judge had some *prima facie* doubt about the correctness of the decision of this Court in case of ***Subham Dey*** (supra). By passing a detailed order on 19.12.2019 the petition was ordered to be placed before the Division Bench to consider whether the decision in case of ***Subham Dey*** (supra) requires reference to Larger Bench.

3. In this background, counsel for the petitioner vehemently contended that the decision of the Division Bench of this Court in case of ***Subham Dey*** (supra) is squarely applicable. It was also a case in which the applicant was minor at the time of the death of the Government servant. The Single Judge had rejected his application on the ground that the same was not made within the period of limitation prescribed under the scheme. This decision was reversed by the Division Bench on the ground that the application for appointment was made within one year from attaining majority. He submitted that the die-in-harness scheme of the Government does not debar such application. Alternatively he contended that Section 6 of the Limitation Act, 1963 would apply in the present case. Since the petitioner was under legal disability in making application on account of his minority, period of limitation for making application would be suitably extended after such disability ceased to exist. Counsel submitted that in none of the decisions of Supreme Court this issue has been examined.

4. On the other hand, learned Additional Government Advocate opposed the petition contending that the die-in-harness scheme of the State of Tripura is clear. An application for compassionate appointment can be made only within a period of one year from the date of the death of the Government servant. Minimum age for appointment is 18 years. Application can be made by a person who is not below 17 years of age. Consequently this scheme only recognizes the right of a minor to make application for compassionate appointment as long as he was not below 17 years

of age on the date of death of the Government servant. No directions can be issued dehors the provisions of the scheme, as is laid down in large number of judgments of Supreme Court. Counsel, therefore, submitted that the decision of Division Bench of this Court in case of ***Subham Dey*** (supra) must be seen as having been rendered *per incuriam* and, therefore, does not lay binding precedent.

5. Before adverting the rival contentions, we may refer to the relevant provisions of the die-in-harness scheme. Government of Tripura provides for compassionate appointment to Government servants who die in harness subject to fulfillment of certain conditions. Such schemes are formulated under notifications issued from time to time. We are governed by the die-in-harness scheme formulated by the State Government under its notification dated 26.12.2015. Paragraph-1 of the scheme pertains to eligibility criteria under the scheme. Paragraph-2 defines the term "dependent family member". Paragraph-3 lays down the posts to which appointments under die-in-harness scheme can be made. Paragraph-4 pertains to financial assistance which may be provided to the family of the deceased Government servant where there is no eligible member for granting the benefit of compassionate appointment. Paragraph-6 lays down the age limit and reads as under:

> "**6. Age limit**—Minimum age is 18(eighteen) years and upper age limit is 40(forty) years. Upper age limit is relaxable by 5(five) years in case of SC/ST/PH candidates."

6. Paragraph-7 which pertains to relaxations on age limit reads as under:

> "**7. Relaxations on age limit**—
>
> (a) Minimum Age is relaxable by 1(one) year i.e. age of an applicant on the date of death of deceased Govt. servant shall not be less than 17 years to make him/her eligible to get the benefit of Government job under Die in harness scheme. It may be noted that actual employment shall be provided on attaining the age of 18 years.
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> (b) Upper age limit for the applicant(s) under Die-in-harness Scheme is 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 Govt. job under Die-in-harness Scheme.
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> (c) No age limit is prescribed for having the benefits of financial assistance under Die-in-harness Scheme.
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> (d) 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."

7. Paragraph-9 pertains to limitations for making claim etc. and reads as under:

> "**Limitations for making claim and dispose of cases under Die-in-harness Scheme**-
>
> Claims for employment/financial assistance under Die-in-harness Scheme should be submitted before the appropriate authority within 1(one) year from the date of death of the Government servant as per provisions contained under Para-1(II) above. The eligibility in all respect shall be determined as on the date of death of the concerned employee."

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8. As per this scheme thus in terms of paragraph-9 an application for compassionate appointment can be made within a period of one year from the date of death of the Government servant. For appointment the applicant must be minimum of 18 years of age as per paragraph-6 of the scheme. Paragraph-7 of the scheme which pertains to relaxations on age limit, in clause (a) thereof provides that minimum age is relaxable by one year for an applicant on the date of the death of the Government servant who shall not be less than 17 years to make him eligible to get the benefit. However, the actual appointment should be made upon his attaining 18 years. Clause (c) of paragraph-7 provides that there would be no age limit for granting financial assistance under the scheme. Clause (d) clarifies that there will be no other relaxation in the provision of the Recruitment Rules of any particular post for the purpose of providing compassionate appointment under the scheme. As noted paragraph-4 of the scheme envisages payment of lump sum amount by way of financial assistance if at the time of the death of the Government servant there is no eligible member of the family who can avail the benefit of compassionate appointment.

9. Combined effect of the above noted provisions of the scheme would be that an applicant aspiring to be appointed on compassionate basis, must be minimum of 17 years of age at the time of the death of the Government servant. Only then he can comply with all the requirements of the age limit as provided in paragraph-6, limitation for making application as provided in paragraph-9 and maximum relaxation in age for making application

as envisaged in clause (a) of paragraph-7 of the scheme. This scheme thus in explicit terms does not recognize the right of a dependent of the Government servant who may be minor at the time of the death of the Government servant to be able to make an application for compassionate appointment within one year or any other specified period of attaining majority. Only relaxation is that he could apply before attaining age of 18 years, as long as he is not below 17 years on the date of the death of the Government servant but that actual appointment could be made only after he crosses the age of 18 years. If there is no eligible member of the family who can seek compassionate appointment, the scheme envisages payment of lump sum one time compensation.

10. The terms of the scheme thus are abundantly clear. There is no provision for extending the period for making application on the ground that the dependent member of the deceased was minor at the time of his death and, therefore, he could not have applied within the prescribed period of limitation of one year from the date of the death. If that be the position, in our opinion as per settled law through series of decisions of Supreme Court, the Court cannot direct consideration of an application which is beyond the scope of the scheme by issuing a writ in exercise of powers under Article 226 of the Constitution of India. It is held in series of decisions that appointment on compassionate grounds is by way of a departure from the normal rule of equality clause in public employment enshrined in Articles 14 and 16 of the Constitution of India. However, to the limited extent of recognizing

such exception in terms of the scheme framed by the employer, in order to provide financial assistance to the family members of the deceased Government servant who on account of his sudden death have been left in destitution, such appointments are saved from the vice of breach of equality clause.

11. In case of ***Life Insurance Corporation of India vrs. Asha Ramchhandra Ambekar (Mrs) & another*** reported in ***(1994) 2 SCC 718*** the Supreme Court held that the Courts cannot confer benediction impelled by sympathetic consideration. The decision of Supreme Court in case of ***Brij Mohan Parihar vrs. M.P.S.R.T. Corporation*** reported in ***(1987) 1 SCC 13*** was noted as approval in which it was held and observed that no mandamus will be issued directing to do a forbidden thing in law. It was further observed as under:

> "17. Thus, apart from the direction as to appointment on compassionate grounds being against statutory provisions, such direction does not take note of this fact. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the second respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of this direction will entail contempt notwithstanding the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgment dated October 19, 1993 unsupportable. For these reasons, the civil appeal will stand allowed. There shall be no order as to costs."

12. In case of ***Umesh Kumar Nagpal vrs. State of Haryana & others*** reported in ***(1994) 4 SCC 138*** the Supreme Court had made following observations:

> "2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the

> deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

13. In case of ***State of J & K & others vrs. Sajad Ahmed Mir*** reported in ***(2006) 5 SCC 766*** it was observed that the compassionate appointment is an exception to the general rule of equality.

14. In case of Commissioner of ***Public Instructions and others vrs. K.R. Vishwanath*** reported in ***(2005) 7 SCC 206*** it was observed that in case of application for compassionate

appointment there is no scope of introducing the concept of condonation of delay.

15. In case of ***I.G. (Karmik) and others vrs. Prahalad Mani Tripathi*** reported in ***(2007) 6 SCC 162*** it was held that the compassionate appointment must be made in terms of the scheme.

16. In case of ***Director, Defence Metal Research Laboratory and another vrs. G. Murali*** reported in ***(2003) 9 SCC 247*** the facts were that the dependent of the deceased Government servant was two years old at the time of the death of his father. Upon attaining majority he applied for compassionate appointment. His petition was dismissed by the Central Administrative Tribunal. The High Court reversed such decision upon which the matter was carried to the Supreme Court. The appeal was allowed. Following observations were made:

> "4. We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family had coped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him."

17. In case of ***National Hydroelectric Power Corporation and another vrs. Nanak Chand and another*** reported in ***(2004) 12 SCC 487*** the Supreme Court deprecated the practice of

accepting application for compassionate appointment after long delay.

18. In case of ***Punjab State Power Corporation Limited and others vrs. Nirval Singh*** reported in ***(2019) 6 SCC 774*** it was observed as under:

> "5. The fundamental principle which has to be kept in mind is that there is no inherent right to obtain a compassionate appointment and such compassionate appointment has to be in accordance with the existing policy as the objective is to ameliorate the condition of the family at the relevant stage of time and it is the deviation from the rule of merit."

19. Thus the law being well settled, there is no warrant for directing the respondents to consider the application of the petitioner dehors the scheme for compassionate appointment. The scheme in question, as already recorded, does not recognize the right of a person who is minor at the time of the death of the Government servant to be able to make an application beyond one year from the date of the death of the Government servant concerned. At any rate, the scheme does not make any provision extending the right of a minor to make such application within prescribed period after attaining majority. In our opinion, Section 6 of the Limitation Act has no applicability. It is doubtful if the Limitation Act *per se* would apply to a scheme framed under executive instructions. Sub-section (2) of Section 29 of the Limitation Act reads as under:

> "29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

Thus, applicability of Sections 4 to 24 of the Limitation Act is to "any special or local law". The scheme for compassionate appointment framed under executive instructions, we wonder if can be stated to be special or local law. In any case Sections 4 to 24 would apply to the extent to which they are not expressly excluded. The scheme is a self contained code and applicability of any general provisions of the Limitation Act is thus expressly excluded.

20. In this background, we may discern the trend of judicial decisions of this Court. Learned Single Judge of this Court in case of ***Sri Mintu Reang vrs. The State of Tripura & others*** in ***WP(C) No.717 of 2018*** in a judgment dated 13.02.2019 had in somewhat similar circumstances rejected the petition where the minor was aged about 16 years at the time of the death of the Government servant and, therefore, could not file application for compassionate appointment within the prescribed period of one year. Following observations were made:

> "13. In my view, when a provision of a scheme which has the force of law, prescribing a certain thing to be done in a certain manner, and if

> the language is clear and plain, without any ambiguity and appears to be rational and meets the requirements of the doctrine of equality enshrined in Article 14 of the Constitution of India, then, it will not be wise for the Courts to interpret the same otherwise. In the present case, the language of the employment policy under the die-in-harness scheme applicable in the State is very clear, rational and does not suffer from the vice of arbitrariness. As such, the persons who want to take benefit of the scheme must strictly adhere to it."

21. In case of ***Shri Subham Dey vrs. The State of Tripura & others***, a writ petition was considered by the learned Single Judge who noted the contention of the petitioner that by virtue of Section 6 of the Limitation Act, 1963 the application made by Subham Dey should be considered to have been made within the period of limitation. While dismissing the petition following observations were made:

> "08. Before this Court considers the ramifications of the decision of ***Batuklal Girijashankar Tarwadi*** (supra) in this case, it would be appropriate to examine whether the provisions of Section 6 of the Limitation Act can have any manner of application for appointment under the die-in-harness scheme inasmuch as the procedure of the die-in-harness scheme is self contained and it does not guarantee the appointment alone. Rather, it provides by a clause that if no person is available in the family of the Government employee for appointment, who died in the harness, a lump sum amount of Rs.50,000/- shall be paid to the family for overcoming the financial hardship that visited them for sudden death of the Government employee. As such, no insulated provision for appointment on

compassionate ground has been engrafted in the scheme. Such appointments are subject to satisfying several requirements as provided in the said scheme. Section 6 of the Limitation Act provides that where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule. For having the benefit of the legal disability the minor must have a subsisting legal right. The minor may also be represented by his next friend. If the representation is found not tenable in law or he was not at all represented, the minor's rights cannot eclipse and that right would subsist till he becomes the major and takes recourse to law within the period of limitation from the day of his attaining the majority. On attaining his majority, he may take the recourse of law within the same period as prescribed by the Limitation Act after the disability has ceased. In this case, the minor does not have any subsisting right to get appointment under the die-in-harness scheme and as such on end of the legal disability he or she cannot claim appointment under die-in-harness scheme taking recourse to provisions of Section 6 of the Limitation Act. Further, the proposition as advanced by Mr. Deb, learned senior counsel does not hold any substance. The pertinent question that is required to be considered by this Court is that whether on attaining the majority, any right to get considered for appointment on compassionate ground revives or did any right subsist till the disability for minority is over. The die-in-harness scheme, no doubt is a welfare scheme of the Government for its own employees, particularly for the family of an employee who died in harness. In

> the scheme, it has been provided that no person will be allowed to apply for the appointment on the compassionate ground after one year from the death of the Government employee who died in harness. That prescription has to be read and understood with the other provisions where it has been provided that if there is no eligible person in the family for giving the appointment on compassionate ground, the 'family' will be provided with a lump sum amount instead of the appointment on the compassionate ground. It has been further asserted that a minor who acquires majority within a year from the death of the Government employee he would also be eligible for appointment under die-in-harness scheme. Therefore, a minor who was 17 years of age at the time of death of the employee who died in harness, on his attaining 18 years he would be eligible for consideration for appointment under the said scheme. Even the said minor on his attaining the majority would be allowed to make the application within another year from attaining such majority. When the provisions laying down the conditions for having the benefit of the die-in-harness scheme is well delineated, the person who seeks for the benefit under that scheme shall be governed by the provisions of that scheme only. In ***Batuklal Girijashankar Tarwadi*** (supra) the apex court did not lay down any universal rule. What the apex court has held has been so held "having referred to the fact and circumstances of the case". Those fact and circumstances had prompted the apex court to pass the said order for doing the complete justice. Thus, the petitioners in both the writ petitions cannot get any benefit on placing reliance on ***Batuklal Girijashankar Tarwadi*** (supra)."

22. When such was the trend of judicial pronouncements, the Division Bench in the case of ***Subham Dey*** (supra) while

reversing the decision of the learned Single Judge had made following observations:

> "4. In our considered view, the learned Single Judge moved on the premise that the claim of the writ petitioner stood considered, adjudicated and rejected on merits which, in fact, is not the case in hand. The rejection was simplicitor on the ground of limitation. It is here we find the error to have been crept in, warranting interference by the Court.
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> 5. As on the date of the death of the deceased employee, the writ petitioner was minor, in fact just little more than 7 years of age. Upon attaining the age of majority, within the stipulated period of one year, he did apply for the benefits under the scheme. As to whether he had a vested right for grant of monetary compensation or employment is a different issue which was required to be considered by the authorities, but it could not be said that the case of the writ petitioner was stale for neither he, nor could his guardian ever claim any benefits under the scheme for employment. It is true that the scheme postulates benefits both of employment and monetary compensation. But then the guardian so appointed in the case of the writ petitioner had limited mandate and that being withdrawal and disbursement of pensionary benefits of the deceased employee. And the writ petitioner, in any event, being a minor could not have applied for the same.
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> 6. It is under these circumstances, we find the stand taken by the State not to be in consonance with the settled principles of law for which purpose Sri Deb, learned Sr. counsel rightly invites our attention to the provisions of the General Clauses Act, applicability whereof is not in dispute."

23. The Division Bench thus did not have the benefit of various decisions of Supreme Court noted above. The precise terms of the scheme of die-in-harness were also not referred to. The inherent limitation of one year for making application for appointment on compassionate grounds from the date of the death of the Government servant was also not brought to the notice of the Division Bench. The ratio of decisions noted above that no directions can be issued contrary to the terms of the scheme for compassionate appointment was thus not placed for consideration before the Division Bench. In our opinion, therefore, the decision of the Division Bench was *per incuriam* the binding decisions of Supreme Court which had applicability on all fours. In the result, we do not find it necessary to refer the issue for consideration of the Larger Bench.

24. Instead, we do not find that the petitioner has made out any case for issuing directions as prayed for. Petition is, therefore, dismissed.

(ARINDAM LODH), J **(AKIL KURESHI), CJ**

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