HIGH COURT OF TRIPURA
AGARTALA

WP(C)No.1347 of 2019

Rinki Bardhan Saha

…….Petitioner(s)

Versus

State of Tripura & Others

…….Respondent(s)

For Petitioner(s)	:	Mr. Debajit Biswas, Adv.
For Respondent(s)	:	Mr. D. Bhattacharya, G.A.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

18/12/2020

Heard Mr. Debajit Biswas, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharya, learned G.A. appearing for the respondents.

2. By means of this petition, the petitioner who is admittedly the married daughter of the deceased employee has urged this court to direct the respondents to give her a compassionate appointment under the die-in-harness scheme for sudden death of her father namely Santosh Bardhan who died in harness as LFW posted at the College of Veterinary Science and Animal Husbandry, R.K. Nagar, West Tripura. It has been also urged that the order dated 12.09.2019 issued by the Director of Animal Resource Development, Government of Tripura whereby it has been stated that the prayer of the petitioner for

compassionate appointment under the die-in-harness scheme could not be considered having regard to the notification No.F.1(1)-GA(P & T)/18 dated 02.03.2019 issued by the GA (P & T) Department, be set aside and quashed.

Further, the petitioner has urged to direct the respondents, particularly, the Director of Animal Resources Development to consider the appointment of the petitioner under the die-in-harness scheme.

3. The averments are mostly admitted by the respondents. On 29.10.2018, Santosh Bardhan, father of the petitioner died in harness and on 14.06.2019, the petitioner made a prayer for compassionate appointment meaning within the stipulated time. On 12.09.2019, the said application was rejected by the Director of Animal Resources Development [the respondent No.2]. Being aggrieved by that decision, the petitioner has approached this court.

According to the petitioner, she is eligible to be considered for compassionate appointment. Her non-consideration is grossly arbitrary, inasmuch as the said decision is in contrast to the provisions of die-in-harness scheme.

4. It is apparent from the impugned order dated 12.09.2019 [Annexure-4 to the writ petition] that rejection is based on the policy declared by the memorandum dated 02.03.2019 which has been annexed by the respondents along with their reply as Annexure-5. The said memorandum has recalibrated the definition of ‘family’ for the

purpose of providing employment/financial assistance both in die-in-harness and extremist/ethnic violence scheme. The proposed definition of 'family' is as under :

> **"(i) his wife or her husband, as the case may be;**
> **(ii) legitimate children excluding a married son or married daughter or daughter-in-law, if he/she lives separately from other members of the family;**
> **(iii) step Children;**
> **(iv) adopted Children;**
> **(v) dependent daughter-in-law;**
> **(vi) dependent persons;**
> **(vii) dependent unmarried brother(s) and unmarried sister(s) and married brother(s);**
> **(viii) dependent widow daughter(s);"**

It has been also provided that the said definition of 'family' would only be confined to the employment/financial assistance under die-in-harness and extremist/ethnic violence schemes. That memorandum has come to force with immediate effect. The said memorandum dated 24.09.2011 [Annexure-5 to the reply filed by the respondents] was issued in suppression of all other instructions earlier issued by the competent authority. On the ground of constitutionality, the said memorandum has been interfered with. However, Mr. Bhattacharya, learned G.A. has apprised this court that the said judgment has been challenged by the state in the superior court.

5. The respondents No.1 and 2 have filed the reply and they have asserted that the petitioner did not mention whether the petitioner was separated from her husband or she is still living with her husband and in this regard, no supporting documents have been filed. The respondents have asserted that in view of the notification issued by the GA (P & T)

Department, Government of Tripura under No.F.1(1)-GA(P & T)/18 which was issued on 02.03.2019, the petitioner cannot be considered for compassionate appointment under die-in-harness scheme. In the said notification, the family members who will be treated eligible for the scheme have been catalogued. From the catalogue, the married daughter and the married son have been excluded but there is a rider which reads as under :

> **"Provided that a married son or daughter-in-law or widowed daughter; if he or she lives or used to live separately from other members of the family on or before the date of occurrence shall not be considered as family member and at the same time he or she shall not be treated as earning member of the family of the Government employee for the purpose of providing benefits under the Scheme only. Married daughter(s) under any circumstances shall not come under the purview of this scheme."**
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> **[Emphasis added]**

6. The said notification dated 02.03.2019, in the considered view of this court, cannot govern the case of the petitioner inasmuch as the relevant date of consideration in the present case would be the date of death of the deceased employee which occurred on 29.10.2018 much before the issuance of the notification dated 02.03.2019, [Annexure-3 to the writ petition]. Therefore, the case of the petitioner will be governed and guided by the previous memorandum dated 24.09.2011 [Annexure-5 to the reply]. It may clearly be stated that the said notification dated 02.03.2019, as referred above, has not been given any retrospective operation. It has been clearly noted in the said notification that it will come into force with immediate effect.

7. This court is really surprised that the core fact which relevant is to determine whether the petitioner is eligible or not, has not been enquired into. From para-7 of the reply it comes to the fore that the Sub Divisional Magistrate, Jirania was only approached for verification of the ration card of Santosh Bardhan by the communication dated 22.11.2019 [Annexure-4 to the writ petition]. The SDM, Jirania has submitted his report observingt that from the ration card of Santosh Bardhan bearing No.161000407085/APL in the D.C. Para F.P. shop, it appeared that the petitioner's name [Rinki Bardhan Saha] appears in Serial No.3 of the said ration card.

8. Thus, the reply filed by the respondents is structured on the notification dated 02.03.2019 [Annexure-3 to their reply] for negating the claim of the petitioner for being a married daughter of the deceased employee. From the communication dated 12.09.2019 [Annexure-4 to the writ petition] it surfaces that the ground for rejection is the complete exclusion of the married daughter as brought by the said notification dated 02.03.2019.

9. This court is constrained to observe that the said notification dated 02.03.2019 does not have any relevance for considering the case of the petitioner under the die-in-harness scheme. In such circumstances, this court would observe that the petitioner's case be considered under the memorandum dated 24.09.2011 [Annexure-5 to the reply filed by the respondents]. But this court is not getting any

material document or report to hold that the petitioner being the married daughter was dependent or living with the deceased employee on 29.10.2018, the day of death. Though in the writ petition, the petitioner has asserted that she was living with the deceased employee [her father] at the time of death [see para-9 to the writ petition]. It has been further asserted that in terms of the memorandum dated 24.09.2011 [Annexure-5 to the writ petition], the petitioner is eligible to be considered for compassionate appointment under the die-in-harness scheme. If the petitioner being the married daughter was living with the deceased person on the day of his death and was dependant on his income, she is entitled to be considered for compassionate appointment in terms of the relevant memorandum dated 24.09.2011.

10. In this juncture, and to the best interest of justice, this court would direct the respondents to cause a substantive enquiry through SDM, Jirania to verify the fact as asserted in para-9 that whether the petitioner, being the married daughter, was living with the deceased employee. If on the basis of the enquiry it is found that the petitioner was being a married daughter was living with the deceased employee on 29.10.2018, the respondents particularly, the respondent No.2 shall consider the compassionate appointment under the die-in-harness scheme. A copy of the report whenever would be received from the SDM, Jirania be supplied to the petitioner. If by the decision of the

respondents, the petitioner is adversely affected, the petitioner would be at liberty to approach this court by filing a fresh writ petition.

The entire exercise of enquiry and taking decision on the basis of the enquiry report be completed within a period of two months from the date when the petitioner shall furnish a copy of this order to the respondent No.2.

In terms of the above, this writ petition stands allowed.

There shall be no order as to costs.

A copy of this order be supplied to Mr. D. Bhattacharya, learned G.A. for his doing the needful.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

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