

(2014) 06 TP CK 0023
In the Tripura High Court
Case No : W. P. (C) No. 357 of 2013
Ajoy Deb VsThe State of Tripura

Date of Decision : 20-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) LabIC 4411

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : A. Bhowmik, Advocate for the Appellant; J. Majumder and D.C. Nath, Advocate for the Respondent

Judgement

Utpalendu Bikas Saha, J.—The instant writ petition is filed by the petitioner, Sri Ajoy Deb, husband of the deceased Government employee, namely, Bandhana Debnath (Deb) for directing the respondents to provide him with a suitable employment under the die-in-harness scheme as in force in the State of Tripura. Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner and Mr. J. Majumder, learned counsel appearing for the State-respondent Nos. 1 and 3 as well as Mr. D.C. Nath, learned counsel appearing for the respondent No. 2.

2. The brief facts, needed to be discussed, are as follows:--

The deceased wife of the petitioner, Bandhana Debnath (Deb) died on 31.08.2012 in a road traffic accident while she was discharging her duties as a Contract Basis Worker (for short "CBW") under the Tripura State Electricity Corporation Ltd. Thus, he is entitled to a suitable employment under the die-in-harness scheme. It is stated that the engagement of his wife was also approved by the Finance Department, Government of Tripura. It is the further case of the petitioner that stating the aforesaid facts he filed one writ petition being W.P.(C) No. 535 of 2012 and the said writ petition was disposed of by this Court on 23.07.2013 with a simple direction to the respondent Nos. 1 and 2 to dispose of the re-presentation of the petitioner dated 20.11.2012 within a period of two months from the date of receipt of the said order by a reasoned order. Thereafter the respondent No. 2, the Chairman-cum-Managing Director of the Tripura State

Electricity Corporation, vide his order dated 28.10.2013 (Annexure-P/10 to the writ petition) rejected the claim of the petitioner. Hence, the instant writ petition.

3. The respondent Nos. 1 and 3, i.e., the State respondents, contested the case of the petitioner by filing counter-affidavit stating inter alia that the deceased wife of the petitioner seems to be a CBW and there is no provision to provide job to the survivor of such type of worker, as CBW is not approved by the Finance Department. It is also stated that subject to certain conditions mentioned in the Memorandum No. F. 1(3)-GA(P & T)/99 dated 9th January, 2009 the Government job under the die-in-harness scheme would be extended to the families of those Daily Rated Workers and Contingent employees whose names appeared in the Data prepared by the Finance Department and approved by the Council of Ministers for regularization, but, before issuance of the formal order of regularization from the Department, the employee concerned expired. It is the further case of the State-respondents that neither the Finance Department prepared the Data for the CBW nor the Council of Ministers approved the CBW for regularization. Thus, the case of the petitioner is in no way covered under the die-in-harness scheme.

4. The respondent No. 2, the Chairman-cum-Managing Director, also filed a counter-affidavit, wherein the Memorandum dated 09.01.2009 has been referred, which reads as follows:

"The matter of providing opportunity of Government job to the survivors of the deceased Daily Rated Workers (DRW) and Contingent employees approved by the Finance Department for regularization by the concerned department and appeared in the data Bank of the Finance Department has been considered by the Government and it has been decided that henceforth Government job under die-in-harness scheme would be extended to the families of those Daily Rated Workers (DRW) and Contingent employees whose names appeared in the data prepared by the Finance Department and approved by the Council of Ministers for regularization but before issue of the formal order of regularization from the department the employee concerned expired. The benefit may not be admissible to the families if any other surviving member of the deceased's family is in employment."

5. Mr. Bhowmik, learned counsel appearing for the petitioner, while urging for relief sought for, would contend that in the family of the petitioner there is no Government employee except his deceased wife. He submits that the engagement of his deceased wife was approved by the Finance Department and also got the approval of the Council of Ministers for making payment of wages regularly without any administrative hurdle. Therefore, the petitioner is entitled to get a job under the die-in-harness scheme as sought for. On a query of this Court, he has also submitted that the petitioner is driving an auto-rickshaw belonging to his brother for maintaining his livelihood.

6. On the other hand, Mr. Majumder, learned State counsel, while countering the

submissions of Mr. Bhowmik, would contend that the petitioner does not come within the prescription of die-in-harness Scheme as in force in the State of Tripura. He further submits that in the Memorandum dated 13.08.1996, i.e. Die in Harness Policy, it has been specifically stated that "employment may be provided to one member of the family, provided there is no earning member in the family, in an existing vacant post in the Department without any relaxation of recruitment rules and reservation roster, meaning thereby, the member, who prayed for a job under the die-in-harness scheme, is to prove that he/she has no earning to maintain his/her life. But in the instant case, it is admitted position that the petitioner is earning by way of driving an auto-rickshaw and not only that it is not his case that he was dependant on his deceased wife's earning, but only the plea is that there is no Government employee in his family. Therefore, it can be easily said that the petitioner is not entitled to any Government job under the die-in-harness scheme as he does not fulfill the prescription in the scheme.

7. Mr. Nath, learned counsel appearing for the respondent No. 2 also adopted the submission of Mr. Majumder and contended that the deceased wife of the petitioner was only a contract worker not an employee. Therefore, the petitioner is not entitled to any job under the die-in-harness scheme as prayed for.

8. In Steel Authority of India Ltd. Vs. Madhusudan Das and Others, , the Apex Court while reiterating the principle of compassionate appointment has stated thus:--

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

9. Again the Apex Court in General Manager, State Bank of India and Others Vs. Anju Jain, has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution and when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates are to be considered alike. The State or its instrumentality while making any appointment to a public office, cannot ignore the mandate of Article 14 of the Constitution. But in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the

bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.

10. In Union of India (UOI) and Another Vs. Shashank Goswami and Another, , the Apex Court has observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. It is also observed that such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.

11. Upon going through the aforesaid decisions of the Apex Court, this Court is of the considered opinion that it would be proper to examine the claim as well as the scheme in force and also the Memorandum referred to by Mr. Nath, learned counsel for the respondent No. 2. It appears from the scheme that a member of the family of the deceased employee, who died in harness, is only entitled to compassionate appointment subject to establishment of no earning member in the family. A contract basis worker cannot be said to be an employee and more so, admittedly, the name of the deceased CBW has not appeared in the data prepared by the Finance Department for regularization before her death.

12. This Court has given an anxious thought to the submissions of the learned counsel for the parties as well as the contentions made in the writ petition and the counter-affidavits. In the petition though the petitioner contended that his deceased wife was the only earning member of the family and the entire family was fully dependent on the income of the deceased, but from the submission of the learned counsel for the petitioner it appears that the petitioner was earning even when his deceased wife was working as CBW by way of driving an auto-rickshaw. Therefore, it cannot be said that he was dependent on the earning of his deceased wife.

13. Mere death of an employee does not entitle any of the family members to claim compassionate appointment under the die-in-harness scheme as a matter of right and there is difference between "rights" and "compassion". For a right, one can ask for fulfillment of that right since it is an interest, the violation of which would be a legal wrong and the competent authority is bound to respect such interest being it is a legal duty. But for "compassion" one has to wait for the mercy, grace or sympathy of the competent authority to act in that behalf as the compassion is nothing but an exception to the normal rule. Right to appointment being a normal route of public employment which requires open invitation of applications and the applicants have to face competition, but in compassionate appointment the said open invitation is not required and no competition is called for, rather, being an exception to the normal route prescribed to give succor to the destitute family which is fundamental plunged into penury due to untimely

death of the sole bread winner and cast no legal duty to the authority. But admittedly the deceased wife of the petitioner was not the lone bread earner. Moreso, her engagement was neither approved for relaxation either by the Finance Department or by the Council of Ministers. Memorandum dated 11.08.2004 (Annexure-P/2 to the writ petition), as referred by Mr. Bhowmik, is relating to the payment of wages regularly, but not for regularization of service as it would be evident from the said Memorandum, which is reproduced herein below:--

"The DDO-wise list of irregularly engaged DRW/Part Time/Contingent/Casual/Fixed Pay etc. workers as approved by the Council of Minister for making payment of wages regularly without any administrative hurdle subject to certain conditions are sent herewith."

14. Mr. Majumder, learned counsel for the respondent Nos. 1 and 3 very rightly pointed out that for getting a job under the die-in-har-ness scheme due to death of the deceased Government employee, the applicant has to establish that there is no earning member in his family. In the instant case, admittedly, the petitioner is driving an auto-rickshaw and from the earning of the said driving, he can easily maintain his life.

15. This Court is unable to accept the contention of Mr. Bhowmik that "earning member" signifies a job under the Government, not a private job. If the aforesaid contention of Mr. Bhowmik is accepted, then if a member of a business family gets a Government job and expires while discharging duties, in that case also a member of the said family would be entitled to a job under the die-in-harness scheme, which is not the intention of the scheme.

16. It appears from the record that the present petitioner earlier also approached this Court by filing a writ petition and while disposing of the said writ petition, this Court directed the authority to consider his representation. The Court cannot normally direct to appoint a person on compassionate ground, unless the applicant establishes a case that the employer fails to discharge his duty. It is not the case here that the employer-respondents discriminated among the applicants, who applied for job under the die-in-harness Scheme. More so, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis as stated by the Apex Court in the above referred decisions. The object is not to give a member of such family a post automatically due to death of their in service family member. 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. In the result, the instant writ petition is dismissed being devoid of merit. No order as to costs.