
(2001) 05 GAU CK 0040

In the Gauhati High Court

Case No : Writ Appeal No. 18 of 2000 in WP (C) No. 398 of 1999

Kabita Deb

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 GLT 209

Hon'ble Judges : B.B. Deb, J;A.H. Saikia, J

Bench : Division Bench

Advocate : A.K. Bhowmick, S. Ghosh and S.R. Dey, for the Appellant; U.B. Saha and T.D. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Saikia. J.

1. Heard Mr. A.K. Bhowmick, learned senior counsel, assisted by Mr. S. Ghosh, learned counsel for the appellant. Also heard Mr. U.B. Saha, learned senior Government Advocate, assisted by Mr. T.D. Majumder, learned counsel for the respondents.

2. The impugned Judgment and order dated 3.3.2000 passed by the learned Single Judge in W.P. (C) No. 398/99 is under challenge in this writ petition. The learned Single Judge dismissed the writ petition filed by the petitioner holding that the petitioner was not entitled to the benefit of compassionate appointment under die-in-harness scheme of the Government.

3. The only question involved in the present adjudication is as to whether under the Government's "die-in-harness scheme" the married son already employed in Government service and living separately from the family would be treated as a member of the family of the deceased government servant to exclude other member for compassionate appointment.

4. Before going to have detailed discussion on the issue in hand, let us look into the relevant provisions relating to die-in-harness scheme formulated by the Government of Tripura. But for the sake brevity we refrain ourselves from taking into consideration of all the Memorandums/Notifications issued relating to the die-in-harness scheme save and except those are essential for our discussion . inasmuch as the learned Single Judge has already had the occasion to discuss those in details.

5. On 8.6.1988 the Government of Tripura in framing the revised employment policy at paragraph 6 provided for appointment to one of the dependent son/ daughter or relative who looks after the family of the deceased Government servant die-in-harness scheme. On 8.1.92 the Government by issuing Memorandum clarified on the definition of "family" to come under the die-in-harness scheme as per Memorandum dated 8.6.88 and in the said Memorandum the word "family" defined as follows :-

""Family" means a Government servant - Wife and Husband, as the case may be, and legitimate children.

Note :- (A) The "term "children" includes sons and un-married daughters.

(B) Married sons even if they live separately should be treated as member of the family."

6. The Government framed another revised employment policy in suppression of all previous instructions on the said subject by issuing Memorandum dated 31.5.95 and paragraph 4 of the said Memorandum contemplates the provision for appointment under die-in-harness scheme. The paragraph 4 of the said Memorandum reads as follows :-

"(4) EMPLOYMENT TO DEPENDENTS OF PERSONS WHO DIE IN HAKNESS -

In order to ensure that the "family" of a Government Servant who dies while in service does not" suffer from extreme financial difficulties, employment would be provided to one of the dependents of the deceased Govt. servant. Such employment would be provided only if there is no other member of the family already in the employment of the State Govt. or the Central Govt. or Corporations, undertakings or such other bodies of the State Government or the Central Government. The intention is to ensure that the family gets the benefit of having at least one salaried person. Subject to the availability of services of the appropriate category and having regard to the roster point, the educational qualification, age etc. prescribed in the relevant Recruitment Rules, qualified candidates may be appointed by the concerned appointing authority provided that where the dependent does not have the requisite qualification prescribed in the relevant Rule, appointment may be made only after the required relaxation of the provisions of the R/Rs duly approved by the appropriate authority."

7. Again on 18.11.1997 the Government by another Memorandum, the definition of "family" as enumerated in Memorandum dated 8.1.1992 has been reiterated

and the said Memorandum dated 18.11.1997 was given retrospective effect from 10.4.1993 by issuing Memorandum dated 19.9.1998.

8. In the back drop of the aforesaid provision laid down under the die-in-harness scheme, the factual matrix of the case is that the father of the appellant Late Nanda Dulal Deb while working as Agriculture inspector under the respondents Nos. 1 and 2, died-in-harness on 9.3.1997 leaving behind him his widow, two sons of which one is married and the appellant being the only daughter. The married son, namely, Shri Sankar Lal Deb is stated to be living separately from the family members of the deceased Nanda Dulal Deb since 1994 at different places under separate Gaon Panchayat. The appellant being eligible approached the authority concerned seeking compassionate appointment under die-in-harness scheme by filing application on 11.4.1997. Since the authority failed to appoint her, the appellant approached the Court under Article 226 of the Constitution of India. The learned Single Judge on an elaborate discussion on the facts and circumstances of the case also having regard to all the relevant provisions under die-in-harness scheme formulated by the Government of Tripura and also upon hearing the learned counsel for the parties did not agree with the contention of the petitioner and dismissed the writ petition.

9. Mr. A.K. Bhowmik, learned senior counsel appearing on behalf of the appellant has strenuously argued that under the die-in-harness scheme the appellant is entitled for appointment on compassionate ground and the appointment of the married son living separately must not be an impediment for appointment of the appellant. The married son cannot be treated as a family member in implementing the die-in-harness scheme. Otherwise entire scope/purpose of the die-in-harness scheme itself would be frustrated and defeated. The learned counsel has tried to convince us by interpreting that definition of family as envisaged in Memorandum dated 8.1.1992 has already been whittled down by Memorandum dated 31.5.95 which was framed in supersession of all previous instructions on the subject of revised employment policy and as such in view of the Memorandum dated 31.5.1995 the Memorandum dated 8.1.1992 containing the definition of family is a non-est and accordingly, the married son should not be treated as a member of the family.

10. In view of the decision of the court in Wanda Dulal Acharjee v. State of Tripura & others, reported in (1998) 2 GLR 26, we are unable to accept the said submission made on behalf of the appellant. The learned Single Judge in dismissing the writ petition of the appellant has fully relied on the case of Nanda Dulal Acharjee (supra). In the said case this court has already held that although the Memorandum dated 1.8.92 was superseded by the State Government by issuing Memorandum on 31.5.1995, the spirit of the said Memorandum defining the term "family" would have to be taken into consideration while considering the appointment on compassionate ground. We have also seen that the definition of "family" enumerated in the Memorandum dated 8.1.1992, mentioned above, has also been reiterated in Memorandum dated 19.11.1997. Therefore, in our

opinion, the definition of "family" which includes the married son living separately a member of the family is in vogue.

11. The learned senior counsel, Mr. A.K. Bhowmik in support of his submission has drawn our attention to the several decision of the Apex Court, namely, (1) Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, (2) Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, and (3) Smt. Phoolwati Vs. Union of India and Others,

12. In the Comptroller and Auditor General of India's case (supra), the Apex Court discussed the power of writ court in issuing mandamus. It is settled law that the writ Court has ample power to issue writ of mandamus or any other appropriate writ or necessary directions when the authority failed to exercise its discretion in a judicious manner. In Smt. Sushma Gosain's case (supra) the Apex Court held that there should not be any delay in entertaining the claim for appointment on compassionate ground inasmuch as purpose for providing such appointment is only to mitigate the hardship due to the death of the bread earner in the family and the said view of the Supreme Court got affirmed in Smt. Phoolwati's case (Supra). But from the above decision of the Apex Court it is not possible for us to cull out the proposition that the married son living separately cannot be treated as a member of the family of deceased government employee and as such with all respect we are unable to accept the submission of the learned counsel of the appellant.

13. Defending the impugned Judgment, Mr. U.B. Saha, learned senior Government Advocate appearing on behalf of the State-respondents have vehemently argued that if there is other family members already in employment of the State Government as in the present case, when the married son of the deceased employee has already in service, the appellant cannot get the benefit of the scheme in terms of Clause-4 of the Memorandum dated 31.5.1995. The learned senior Government Advocate has further submitted that the present case in hand, is squarely covered by the decision of Wanda Dulal Acharjce's Case (Supra), wherein the similar question has already been finally decided by this Court in a second appeal which has not been challenged before the Apex Court. Besides, the learned senior Government Advocate has also relied on other decisions of the Supreme Court. Much reliance has been placed on the decision of State of H.P. and Another Vs. Jafli Devi (Smt.), which is stated to be equally applicable in the present case. We have carefully gone through the said Judgment and it is seen that in that case the Apex Court dealt with exactly a similar situation wherein a son of the deceased employee was already in the government service and other son claimed for compassionate appointment. The Apex Court rejected the claim of the another son for compassionate appointment in view of the relevant provision and Office Memorandum dated 18.1.1990 issued by the Government of Himachal Pradesh which is almost similar to the provision of Clause-4 of Memorandum dated 31.5.1995 in the present case. The

paragraphs 3 and 4 of the Jaflidcvi (Smt.) "s case (Supra) is reproduced as under :-

"3. The learned counsel for the appellants has invited our attention to the Office Memorandum dated 18.1.1990 issued by the Government of Himachal Pradesh, Department of Personnel (AP-II) on the subject of appointment of sons/daughters/near relations of Government servant who dies-in-harness leaving his family in immediate need of assistance. In para 5(c) the said Office Memorandum relating to eligibility for such appointment, it has been stated :

"5. (c) Eligibility - In all cases where one or more members of the family are already in government service or in employment or Autonomous Bodies/Boards/Corporations etc., of the State/ Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where in the widow of the deceased government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the Department of Personnel and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers."

4. The submission of the learned counsel is that in view of the said condition laid down in the policy framed by the State Government regarding giving appointment on compassionate grounds, Harbans Lal, the second son of the respondent, could not be given appointment in view of the fact that another son of the respondent was already in government service. It is urged that the High Court was in error in quashing the order dated 31.3.1994 passed by the Director of Fisheries, which was in consonance with the aforesaid policy contained in the Office Memorandum and in directing that the case of Harbans Lal for appointment on compassionate grounds be reconsidered. We find considerable force in this submission. In L/C v. Asha Ramchandra Ambekar this Court has laid down that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration and the Court should ensure to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. In that case it was held that direction for appointment on compassionate grounds could not be given dehors the provisions or statutory regulations or instructions governing such appointments."

14. The learned senior Government Advocate for the State-respondents has also cited another decision reported in Umesh Kumar Nagpal Vs. State of Haryana and Others, and stated that the Apex Court in that case has distinguished Smt. Sushma Gosain's case (Supra) as stated by the learned counsel for the appellant. In another case, reported in Managing Director, MMTC Ltd., New Delhi v. Pramoda Dei alias Nayak, (1997) 11 SCC 390 the Apex Court has discussed the object of compassionate appointment holding that compassionate appointment is only to enable the penurious family to tide over the sudden

financial crisis and is not to provide employment and as such mere death of the employee does not entitle his family to claim compassionate appointment.

15. Being equipped with the aforesaid decision, the learned senior Government Advocate has submitted that the appellant is not entitled for compassionate appointment under the die-in-harness scheme in terms of the condition laid down in Clause-4 of the Memorandum dated 31.5.1995 and the impugned Judgment should be sustained. We have given out thoughtful consideration to the rival submissions of the learned counsel for the parties and we are in respectful agreement with the submissions made on behalf of the respondents wherein we are not at all impressed with the submission put forward on behalf of the appellant.

16. It is settled proposition of law that die-in-harness scheme does not confer a right on a person for compassionate appointment. This is purely a discretion to be exercised by the authority concerned and this discretion is required to be exercised reasonably by the authority after taking into consideration of all the materials and factual situation. The scheme itself is aimed at to give immediate relief and solace to a deceased family to save them from immediate financial crisis faced on the sudden demise of bread-winner. Benefit of compassionate ground under die-in-harness scheme shall be available to a person only in accordance with the terms and conditions laid down in the said scheme, but not on any humanitarian or sympathetic ground. In the case in hand, the scheme is very clear and unambiguous to the effect that compassionate appointment would be provided to one of the dependents of the deceased government servant only if there is no other member of the family already in employment of the State Government. Here in the present case, since one married son of the deceased government employee living separately, being held to be a member of the family, has already in government service, the appellant, being another member of the family, cannot claim the benefit of the said scheme.

17. The learned Single Judge in rejecting the prayer of the appellant has held as follows :-

"15. Here my considered opinion is that Memo dated 31.5.1995 will be deemed to have eclipsed and cancelled only those provisions which are inconsistent with the superceding Memos. It may be seen that the definition of word "family" was given in the Memo dated 8.1.1992 (Annexure-5 to the writ petition). But no new definition is given in the subsequent Memo dated 31.5.1995. Thus, the only logical and harmonious interpretation should be that the definition of the term "family" which was given in Memo dated 8.1,1992 will still hold good even after passing of the Memo dated 31.5.1995. This view of mine also finds support from the Memo dated 18.11.1997 (Annexure-R/1) which provides that the term "family" which had been defined in Memo dated 8.1.1992 shall include parents, dependent unmarried brothers and sisters in case of bachelor Government employees. Again if the definition of family as given in the earlier Memos is deemed to have been cancelled then it will again cause confusion with regard to

the meaning of this word "family". The term used in the Memorandum has got to be interpreted strictly keeping in view the object sought to be achieved by the policy decision of the Government. There are millions of destitutes in the country besides the family of the deceased (if the family is also a destitute family). In our present case, one of the sons is in gainful employment under the Government. Even the mother may claim maintainance from such a son under the personal law of the party, if provided for. Thus, even if the scheme is a welfare scheme, benefit should not be extended to those who are not expressly or by necessary implications, covered by the scheme.

16. From the above conclusion. I am of the opinion that the decision of the learned Single Judge in the case of Nanda Dulal Acharjee (Supra) that the aforesaid definition of "family" given in Memo dated 8.1.1992 will still to be applicable is in the light of the aforesaid conclusion arrived at by me and as such in our present case as one son of the deceased employee was in gainful employment under the Government, the benefit of die-in-harness scheme shall not be available to the petitioner."

18. Having regard to the aforesaid finding of the learned Single Judge and also in the light of decisions of Nanda Dulal Acharjee's case (supra) and Jaflidevi's case (supra) as well as upon hearing the learned Counsel for parties we are of the considered view that there is no illegality or infirmity in the impugned judgement dated 3.3.2000 of the learned Single Judge and accordingly, the same is found to be correct and deserved to be endorsed.

19. In the result, the writ appeal is dismissed. However, we pass no order as to costs.