
(1998) 03 GAU CK 0029
In the Gauhati High Court
Case No : Second Appeal No. 4 of 1998

Nanda Dulal Acharjee

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Citation : (1998) 1 GLT 418

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B. Das and T.K. Dey, for the Appellant; U.B. Saha, for the Respondent

Judgement

D. Biswas, J.—The Plaintiff-Appellant herein, instituted a suit before the learned Civil Judge, Junior Division, Court No. 2, West Tripura, Agartala for cancellation of Order No. F.2-8397 (P)/18562-65 dated 30.12.1995, issued by the Respondent No. 2 revoking/cancelling his appointment as Night Guard on compassionate ground. The appointment was made vide order dated 17.10.1995 under the die-in-harness scheme of the Government of Tripura as the Plaintiffs father Pran Gopal Acharjee died on 31.10.93 in harness. The appointment made on 17.10.95 was cancelled by the Respondents on the ground that his elder brother, Shri Babul Acharjee is a Government employee and as such the provisions in Item No. 4 of the Memo No. F. 1(2) -GA/77 dated 31.5.95 bars his appointment. The learned Civil Judge decreed the suit cancelling the impugned order dated 30.12.1995. But on appeal, the learned District Judge, West Tripura, Agartala reversed the finding and dismissed the suit allowing the appeal of the State. In this appeal, this order of the learned District Judge has been challenged.

2. After hearing Mr. B. Das, learned senior counsel for the Appellant as well as Mr. U.B. Saha, learned Govt. Advocate and taking into account the pleadings and evidence on record, following point of law is formulated for adjudication in this Second Appeal:

Whether the term "family" as referred to in item No. 4 of the Memorandum of

1995 will attract the definition of "family" contained in Memo No. F.19(2)-GA/77(L) dated 8th January, 1992 or definition thereof as contained in Supplementary Rule (8).

3. The appointment of the Appellant was made after revised Memorandum pertaining to the die-in-harness scheme of 1995 was published on 31.5.1995. Therefore, the provisions of the said Memorandum will govern the instant case. Item No. 4 of the said Memorandum is quoted below:

(4) EMPLOYMENT TO DEPENDENTS OF PERSONS WHO DIE IN HARNESS

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 vacancies 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 R/Rs., appointment may be made only after the required relaxation of the provisions of the R/Rs. duly approved by the appropriate authority.

It would appear from above that the term "family" incorporated therein has not been defined.

4. In view of the admitted position that the elder brother of the Appellant has been in Government service since before the death of his father, the Plaintiff Appellant is obviously not entitled to get an appointment. The provisions incorporated in Item No. 4 of the Memorandum of 1995 operate as a bar. But the learned Counsel appearing for the Appellant argued that the case of the Plaintiff-Appellant has to be treated in a different footing since his elder brother has been residing separately from long before the death of his father. His argument is that if the definition of the term "family" as incorporated in Supplementary Rule (8) is applied in the instant case, the Plaintiff-Appellant is entitled to get the appointment since his elder brother, residing "family" as follows although in Govt. Service, has been separately. The definition of the term is in Supplementary Rule (8) reads as

Family means a Government Servant's wife or husband, as the case may be, residing with the Government servant and legitimate children and step children residing with and wholly dependent upon the Government servant....

It would appear from the definition above that a member of the family not residing with the Government servant is not treated as a member of the family.

5. Learned Govt. Advocate submitted that the appointment made on compassionate ground under die-in-harness scheme has a different philosophy behind it and as such the term "family" as defined by the State Government in its memorandum No. F. 19 (2)-GA/77(1) dated 8th January, 1992 read with the Memorandum dated 19th November, 1997 is to be referred to while dealing with matters pertaining to appointment on compassionate ground. It appears that the State Government on 8th January, 1992 vide the Memorandum referred above defined the term family" in die-in-harness cases. This Memorandum was issued by way of clarification to the Memorandum No. F. 1 (2)-GA/77 dated 8.6.1988. Let us, therefore, refer to the definition as contained in the Memorandum dated 8th January, 1992. The term "family" has been defined as under:

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

Note : (a) The term "Children" includes sons and unmarried daughters.

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

6. The definition as reproduced above makes it clear that married sons even if they live separately should be treated as a member of the family. If the definition as contained in the Memorandum dated 8.1.92 read with the Memorandum No. F.1(1)-GA/92(L) dated 19th November, 1997 is made applicable in this case, the elder brother of the Plaintiff-Appellant, who is in Government service, has to be treated as a member of the family and consequently by operation of the provisions embodied in Item No. 4 of the Memo, issued in 199S, the Plaintiff-Appellant's claim for appointment on die-in-harness principle cannot be conceded to

7. Mr. Saha, learned Govt. Advocate further argued that the appointment order made on 17.10.95 was cancelled by the State Government as the Inquiry Report submitted by the S.D.O., Sadar, Agartala revealed that the Plaintiff-Appellants elder brother was already in the service of the State Government. This part of his argument is not disputed.

8. Mr. Das, learned senior counsel for the Appellant, however, disputed the stand of the learned Govt. Advocate on the ground that the definition of , "family" as contained in the Memorandum issued by the State Government on 8th January, 1992 cannot be referred to as this Memorandum has been superseded by the Memorandum issued in the year 1995.

9. It is true that the Memorandum issued by the State Government on 31.5,95 was in supersession of all previous Notifications/Memoranda in this regard. Therefore, technically the Memorandum dated 8.1.92 is not in force. On this context, it has to be decided whether the definition of the term "family" as contained in, Supplementary Rule (8) will be applicable or the Memorandum No. F. 1(1)-GA/92(L) dated 19th November, 1997 read with the spirit of

Memorandum of 1992 has to be relied upon.

10. It transpires that the definition contained in Supplementary Rule (8), if admitted for this purpose, will have a far reaching consequence enabling the members of the family of deceased Govt. servant to obtain appointment even if more than one members of the said family are already in employment of the State. This situation will otherwise frustrate the very object of the intention under the die-in-harness scheme. The Government's intention from different Memoranda is clear. It is intended to provide a job to a member of the family of the deceased Govt. servant to tide over the sudden financial difficulty. At this stage, we may refer to the views of the Supreme Court expressed in Umesh Kumar Nagpal Vs. State of Haryana and Others, In Para 2 of the aforesaid judgment the Supreme Court held:

The whole object of granting compassionate employment is 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.

11. It would appears from the observation of the Supreme Court that the object behind the die-in-harness scheme is not to give a member of such family a post much less a post for post held by the deceased and the compassionate appointment on the death of a Government servant can not be a routine process. The appointing authority has to examine and take into account the financial condition of the family of the deceased. The similar view has also been expressed by the Apex Court in Haryana State Electricity Board and another Vs. Hakim Singh, . Mr. Saha, learned Govt. Advocate citing the above decisions vehemently argued that the Court is to lay down laws in tune with the object of the policy behind the die-in-harness scheme and cannot permit any deviation.

12. Taking aid of the principles highlighted in the aforesaid decisions, it will, therefore, not be in fitness of things to incorporate the definitions of the term "family" as contained in Supplementary Rule (8) as it has a wider range and is contrary to the principle behind the appointment policy of the State Government on compassionate ground. Although the Memorandum issued by the State Government on 8.1.1992 was superseded, the spirit of the said Memorandum defining the term "family" will have to be taken into consideration while making appointment on compassionate ground. The intention of the State Government in formulating the scheme is clear and by issuing Memorandum No. F.1(1)-GA/92(L)

dated 19th November, 1997, the State Government has made its mind further clear. In this Memorandum, the term "family" has been defined for the purpose of appointment on die-in-harness scheme. The definition makes it clear that the married sons, even if they live separately, should be treated as members of the family. Although there was an omission on the part of the State Government to define the term "family" in the revised Memorandum issued in the year 1995, but the totality of the circumstances, read with the intention of the State Government in formulating the policy, leads to the conclusion that no second appointment was contemplated in the family of the deceased Govt. servant, even if the other members of the family are in the employment of the State live separately. This view gets reinforcement from the decision of the Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, wherein their Lordship:; expressed that the regulations which have been framed with good intent and purpose cannot be bypassed. The regulations do not contemplate appointment on compassionate grounds when one of the members of the deceased family is gainfully employed. The definition of the term "family" as contained in S.R. (8) cannot be incorporated as it will be counter-productive and contrary to the spirit of the Rule. This definition cannot be imported and imposed to dilute the object of the scheme.

13. The learned District Judge in his impugned judgment expressed the apprehension that the policy of appointment on die-in-harness principle" will get frustrated if the definition of the term "family" as contained in Supplementary Rule (8) having a wider meaning is applied in implementing the scheme. I find no reason to differ from this view.

14. In my considered opinion, the intention of the State Government being clear although, the definition of the term "family" as contained in S.R.(8) can not be applied in the instant case. This being the answer to the question of law involved in this appeal, the Plaintiff-Appellant can not be favoured with an appointment.

15. In the result, the judgment and decree dated 26.8 1997 passed by the learned District Judge, West Tripura, Agartala in Title Appeal No. 11 of 1997 is hereby confirmed and the appeal is dismissed.