

(1997) 01 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule No. 439 of 1990

Nila Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 GLR 377

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : B. Das and N. Majumdar, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

N.G. Das, J.—By means of this application filed under Article 226 of the Constitution of India the Petitioner who lost her husband on 31.10.1993 prayed for issuing a writ directing the Respondents to provide her with a job commensurate with her academic qualification under the die-in-harness Scheme.

2. I have heard Mr. B. Das, the learned senior counsel appearing on behalf of the Petitioner and Mr. U.B. Saha, the learned Government Advocate appearing on behalf of the Respondents.

3. The facts relevant for disposal of this writ petition are that Bhabatesh Ghosh, the husband of the Petitioner who was serving as a U.D. Clerk under the Directorate of School Education, Government of Tripura died-in-harness on 31.10.1993 leaving the Petitioner and a male child aged about 7 years. On (sic) the Petitioner submitted an application to the Director of Education i.e. the Respondent No. 3 to provide her with a job commensurate with her academic qualification. But the Petitioner was not favoured with any reply.

4. The further case of the Petitioner is that (sic) to the untimely death of her husband she is in a very distress condition with her child and even though she approached the authority she was not favoured with any job for maintaining her

livelihood. It is stated that the Government of Tripura formulated a policy to appoint a member of the family of the employee who died-in-harness. But in the case of the Petitioner the Respondents did not consider. Hence, this writ petition.

5. The Respondents resisted the writ petition by filing an affidavit-in-opposition wherein it has been contended inter alia, that this writ petition is not maintainable for suppression of material facts and that in view of the decision rendered by the Supreme Court in the case of State of Haryana Vs. Naresh Kumar Bali, the Petitioner is not entitled to get any relief. The further contention of the Respondents is that under the present policy vide Memo No. F. 1 (2)-GA/77, dated 13.8.1996 which was issued in modification of the previous instruction the Petitioner is not entitled to get a job as she has already crossed the age of 37 years. It is stated that as per the new policy the Petitioner may be entitled to get a sum of Rs. 50,000/- only on compassionate ground.

6. In course of his arguments Mr. U.B. Saha, the learned Government Advocate did not dispute about the academic qualification of the Petitioner. His only contention is that under the new policy the Petitioner is not entitled to get any job as she already crossed the age of 37 years. It is true that as per the affidavit sworn by the Petitioner the latter crossed the age of 37 years.

7. But Mr. B. Das, the learned senior counsel appearing on behalf of the Petitioner has quite fervently argued that the Petitioner's husband died on 31.10.1993 and within a month thereafter she submitted an application to the Director of School Education for providing her with a job commensurate with her academic qualification, Annexure-"B" is that application and this application shows that the Petitioner submitted an application on 22.11.1993 to the Director of Education, Government of Tripura to provide her with any post under his control. This fact has not been disputed and it is also found that the Respondents did not give any reply to this letter. Mr. Das, has therefore, argued that the policy which was in existence at the time when the Petitioner's husband died should be adhered to and not the subsequent policy which was issued in the year 1996. Mr. Das has drawn my attention to the Memo dated 8th January, 1992 contained in Annexure-A and submitted that this Memo was actually in force at the time when the Petitioner's husband died and that this Memo does not in any way create any bar to provide a job in die-in-harness case due to age bar. It may therefore, be advantageous at this stage to quote the aforesaid Memo which reads:

MEMORANDUM

Subject : Revised Employment Policy-clarification thereof.

The undersigned is directed to refer to the item (vi) of the Appointment & Services Department Memorandum of even number dated 8th June, 1988 on the subject mentioned above wherein it has been mentioned that in case when a Government servant die-in-harness, one of the dependent of the Government servant shall be given employment. The appointment should be made straightway by the Department concerned to a son/daughter or a relative who

look after the family according to the qualification prescribed in Recruitment Rules against the vacancies and inform the Employment Exchange.

2. It has been brought to the notice of the Government that claim for employment in the-in-harness cases are being preferred several years after the death of the Government servant. In view of this it is clarified that claims for employment in die-in-harness cases should be preferred within one year after the death of the Government servant.

3. All Departments/Heads of Departments including Appointing Authorities are now requested to ensure that the above instructions are followed in letter and spirit.

Sd/- R.K. Mathur 8.1.92 Secretary Government of Tripura.

8. A perusal of this Memo shows that the Government issued this Memo for the purpose of providing a job to one of the dependents of the Government servant 1 who died-in-harness and it gave a clear direction to the concerned Department to offer the job to a son/daughter or relative who can look after the family according to the qualification prescribed in the Recruitment Rules. This memo does not indicate in any manner that a member of such family which is otherwise qualified to be appointed to a post can be refused on the ground of age bar.

9. Learned Government Advocate has, however, argued that the revised employment policy contained in Annexure-"A" will show that upper age limit for general category shall be 37 years. It is true that Annexure-"A/1" bearing No. F. 1 (2)-GA/77, dated 31.5.1995 shows that upper age limit for general category is 37 years. But this Memo indicates that the Government issued separate policy in respect of die-in-harness cases which is available under Clause-4. The Clause-4 of the aforesaid Memo reads:

(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 Government Servant. Such employment would be provided only if there is not other member of the family already in the employment of the State Govt. or the Central Government 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.

10. This Clause does not indicate that there was any limit of upper age so far as

die-in-harness case is concerned. Learned Government Advocate has argued that as per the revised policy contained in Annexure-R/1 the Petitioner is entitled to get an amount of Rs. 50,000/- only, According to him the Petitioner was not eligible to be provided with any job. In interpreting Clause-3(i) of the aforesaid Memo Mr. Saha has contended that this Clause was made only for the persons of such family who are not eligible to get any post. It is true that this Clause shows that in case no member of such a family is eligible then a sum of Rs. 50,000/- will be provided as financial assistance. As for a person may die-in-harness leaving a son age 10 or 12 years only. Therefore, this clause cannot be interpreted in the way that the member who is age barred is also not eligible. This Memo may, however, be quoted as under for better appreciation:

MEMORANDUM

Subject : Assistance in the event of death of the State Government employees while in service (Die-in-harness cases).

In partial modification of previous instructions on the subject mentioned above, the Governor is pleased to order that the following procedure should be observed in providing employment/assistance to an eligible member of the family of an employee, who dies while in service:

(1)(i) 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.

(ii) The eligibility shall be determined as on the date of death of the concerned employee.

(2)(i) Supernumerary posts should be created with Finance concurrence in the Departments where eligible member of a family cannot be provided employment for want of posts, which fact is to be certified by the Head of the Department personally. These posts would be personal to the incumbents and shall lapse with the vacation of the posts by the persons.

(ii) While filling up the Supernumerary posts created reservation/roster norms need not be followed.

(iii) However, the persons appointed against the Supernumerary posts should be absorbed against regular posts/vacancies, as and when the first vacancy arises in the Department against appropriate category i.e. SC/ST/UK following reservation/roster norms. The supernumerary posts shall stand abolished on such regularization against regular posts. A register of supernumerary posts created should be maintained in each Department and the abolition of the post should be certified in the register by the Head of the Department personally.

(3)(i) Financial assistance should be paid to the family in cases where no (persons) could be provided employment due to absence of eligible (persons). In such cases an amount of Rs. 50,000/- (Rupees fifty thousand) will be provided as

financial assistance and will be kept in fixed deposit with a post office and interest from which can be earned by the family.

(ii) The financial assistance as mentioned above will be paid by the Department to which the employee who died-in-harness belonged. In the case of the Government employee of the Secretariat, S.A. Department will make the payment.

II. This shall be effective from 1st June, 1996 but will be extended to all pending cases where employment has not be provided so far.

Sd/- U. Venkateswarlu Secretary to the Government of Tripura.

11. A perusal of this Memo shows that the Government issued it out of pure humanitarian consideration taking into consideration the fact that unless some sorts of livelihood is provided the family would not be able to make both the ends meet. The object of this Memo appears to grant compassionate employment to enable the family to tide over the sudden crisis. Clause-1(ii) of the aforesaid Memo shows that eligibility shall be determined as on the date of death of the concerned employee. It has already been stated that the Petitioner's husband died on 31.10.93 when the age of the Petitioner was 37 years 3 months approximately. The Petitioner approached within a period of one month of the death of her husband. But the Director of Education did not consider that application. The contention of Mr. Das is that at the relevant time the Petitioner's case could have been considered in view of Annexure-A. There is no dispute that Annexure-A/1 and Annexure-R/1 were issued long after the death of the Petitioner's husband.

12. Mr. Saha. the learned Government Advocate has, however, argued that the High Court cannot pass any order directing the Government to appoint any one of such cases in view of the decision rendered in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, It is true that in that decision the Supreme Court observed that High Court should not have directed to appoint on compassionate ground. But it should have merely directed for consideration of the claim of the second Respondent. However, the inference that can be drawn from the submission of learned Govt. Advocate is that this Court can give a direction to the Respondents for consideration of the claim of the Petitioner for her appointment.

13. The next decision referred to by the learned Govt. Advocate is a decision of the Supreme Court rendered in the case of State of Rajasthan Vs . Chandra Narain Verma;, (1994) 2 SCC 752 Placing reliance upon this decision what learned Government Advocate has emphasized is that upper age cannot be relaxed. But on going through the judgment it is found that the father of the Petitioner of that case died while he was holding the post of Sub-Inspector of Police. The Petitioner, therefore, claimed to be appointed as Sub-Inspector of Police ignoring the age limit prescribed under the Rajasthan Police Subordinate Service Rules, 1989. The Supreme Court, therefore, made the observation that it

is one thing to say that a family member of the deceased is entitled to appointment on compassionate ground, but it is altogether a different thing to say that the appointment should be made regardless of the rules. The Petitioner in that case was offered the post of Lower Division Clerk. The Supreme Court, therefore, directed that the Petitioner may join as L.D. Clerk if he so desired. The inference that can be drawn from this decision is that even though the Petitioner of this case crossed the upper age limited he was allowed to be appointed as L.D. Clerk.

14. The next decision referred to by learned Government Advocate is the decision of the Supreme Court rendered in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, Relying on this decision Mr. Saha has argued that the claim of the Petitioner cannot be granted after such a long period. In the judgment Their Lordships held that compassionate employment cannot be granted after lapse of a reasonable period which must be specified in the rules. But in the instant case, it would be quite apparent from the Annexure-B document that the Petitioner submitted application within a month of the death of her husband. Moreover, in the aforesaid judgment Their Lordships made an observation under para 2 that the post of Class-III and Class-IV are the lowest posts in the 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 a lowest post by making an exception to the rule is justifiable and valid since it is not discriminatory.

15. In the case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, the Supreme Court made the following observation:

It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the Applicant.

16. In the present case, it has been already stated above that the Petitioner approached the authority within a month of the death of her husband. But the authority did not pay heed to that application (Annexure-B).

17. Mr. Das, the learned senior counsel has placed reliance upon a decision of the Supreme Court rendered in the case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and submitted that in appropriate case the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India has the power to issue a writ of mandamus or a writ in the nature of mandamus where the Government authority

either failed to exercise the powers or wrongly exercised the discretion conferred upon it by the Statutes. In the aforesaid case the Supreme Court held:

The High Courts exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of writ of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

18. In the present case, it is an admitted fact that the Petitioner submitted her application (Annexure-B) on 22.11.93 to appoint her to any post to save her from starvation. But the Director of Education to whom this application was submitted did not give any reply whatsoever. Annexure-"A" Memo was issued on 8.1.92 and this Memo was issued in connection with the appointment of a member of the family of an employee who died-in-harness. A perusal of this Memo clearly indicates that it imposes responsibility upon the concerned Head of the Department to appoint one of the dependents of the Government servant who died-in-harness according to the qualifications prescribed in the recruitment rules. But the Director of Education did not adhere to the instructions given in this Memo. In the above quoted paragraph it will be seen that the Supreme Court held that a writ of mandamus or a writ in the nature of mandamus can be issued where a Government or a public authority has failed to exercise the discretion conferred upon it by a statute or a rule or a policy decision of the Government. Therefore, in view of the law laid down by the Supreme Court in the aforesaid decision I see no reason why a writ in the nature of mandamus should not be granted directing the Respondents to appoint the Petitioner to a post commensurate with her qualification. Accordingly, I direct the Respondents to appoint the Petitioner to a post commensurate with her qualification within a period of four (4) weeks from today, No costs.