
(2015) 06 TP CK 0014
In the Tripura High Court
Case No : WP(C) No. 462 of 2014

Parul Begam

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 146 FLR 482

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : Somik Deb and D. Dutta, for the Appellant; R. Guha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—The writ petition is taken up for disposal at the admission stage itself on the submission of learned counsel of both side.

2. Heard learned counsel, Mr. Somik Deb for the petitioner and learned counsel, Ms. R. Guha for the respondents.

3. By filing this writ petition the petitioner prayed for directing the respondents to provide a job to her son, Atikul Islam for the death of her husband, Const. Mubarak Hossain Miah, while in Government employment under the respondents.

4. It is, inter alia, contended by the petitioner that her husband, Mubarak Hossain Miah was serving as a constable of police and he died on 15.08.2013, while in service, leaving behind herself as the wife and three sons, namely Atikul Islam, Sadikul Islam and Amirul Islam and one daughter, namely Mamata Begum. The petitioner further contended that they all were dependent on the income of her deceased husband and therefore after the death of her husband she made an application to the respondents on 18.12.2013 praying for providing a job to her son, Atikul Islam under die-in-harness scheme but the respondents by writing a letter dated 16.07.2014 (Annexure-C1 to the writ petition) informed

the petitioner that Atikul Islam had been living separately from the family of the deceased Government servant and therefore not entitled to get a job under the die-in-harness scheme and she may get financial assistance under the scheme.

5. Felt aggrieved, the present writ petition is filed challenging letter dated 16.07.2014 and further praying for directing the respondents to provide a Government job to the son of the petitioner, namely Atikul Islam.

6. The respondents contended that the application filed by the petitioner for providing job to her son, Atikul Islam has been enquired by the Sub-Divisional Magistrate and it is contended that Atikul Islam is found to be having a separate ration card than that of his deceased father and he was found to be living separately from the family of his deceased father and therefore he cannot be provided with a job under the scheme. It is also contended by the respondents that "family" has been defined for the purpose of die-in-harness scheme under Memo. dated 24.09.2011 wherein it is clearly stipulated that a legitimate children who is living separately from the family of the deceased person, cannot be treated as a member of the family of the deceased person and therefore cannot be provided with a job under the scheme.

7. Die-in-harness scheme, made by the Government is a welfare scheme to provide assistance to the family of a Government servant to overcome urgent financial crisis because of the death of Government servant. An employment, it is a settled law should be given following the procedures prescribed by law, i.e. giving open advertisement and after following a selection process. An employment under the die-in-harness scheme is a deviation from the normal process. Since it is a benevolent scheme to give urgent relief to the family of the deceased Government employee, such relief should be given strictly as per the scheme formulated by the Government.

8. The Supreme Court in the case of Union of India (UOI) and Another Vs. Shashank Goswami and Another, AIR 2012 SC 2294 : (2012) 5 SCALE 740 : (2012) 11 SCC 307 : (2013) 1 SCC(L&S) 51 : (2012) 3 SLJ 218 : (2012) AIRSCW 3257 : (2012) 4 Supreme 94 , relying on its earlier decisions, in the case of Govind Prakash Verma v. Life Insurance Corporation of India and Ors. reported in (2005) 10 SCC 289 , Punjab National Bank and Others Vs. Ashwini Kumar Taneja, AIR 2004 SC 4155 : (2004) 102 FLR 1023 : (2004) 6 JT 418 : (2004) 3 LLJ 536 : (2004) 7 SCALE 16 : (2004) 7 SCC 265 : (2004) SCC(L&S) 938 : (2004) 3 SCR 597 Supp : (2005) 1 SLJ 30 : (2004) AIRSCW 4602 : (2004) 6 Supreme 180 , General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, (2004) 3 LLJ 1136 : (2004) 7 SCALE 155 : (2004) 7 SCC 271 : (2004) SCC(L&S) 943 , Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, (2008) 117 FLR 565 : (2008) 4 JT 512 : (2008) 4 SCALE 637 : (2008) 11 SCC 384 : (2008) 2 SCC(L&S) 1077 : (2008) 3 SLJ 433 , has categorically held that compassionate employment cannot be claimed as of right. Claim for such appointment has to be considered in accordance with rules, regulations or administrative instructions taking into consideration financial and other factors.

We may gainfully refer here para 9 of the judgment which reads as follows:--

"9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, 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. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

9. In the present case, the petitioner simply stated that her husband left behind herself, three sons including Atikul Islam for whom she sought the job and a daughter, namely Mamata Begum and further stated they were dependant on the income of the deceased husband. She has produced no document to show that her son Atikul Islam was a member of the family of her deceased husband. Annexure-R2 to the counter affidavit has defined the family for the purpose of die-in-harness scheme and other such benevolent schemes wherein a married son living separately from other members of the family has been clearly excluded and so the claim of job made by the petitioner for the death of her husband has been refused by the State respondents. Annexure-R1 is the report submitted by Sub-Divisional Magistrate which shows that Atikul Islam is a married man aged 33(thirty three) years and he has an occupation of ration shop Manager having monthly income of Rs. 4,000/- (rupees four thousand) and that he is not found to be in the family ration card No. 982(AMC) of the deceased Government employee, Mubarak Hossain Miah. It is also mentioned that the job seeker has got ration card No. 746 of F.P. shop No. 95 of AMC. The petitioner produced no evidence at all to show that her son Atikul Islam is a member of the family of her deceased husband. Since it is the definite criteria under the scheme that the job seeker must be a member of the family of the deceased Government employee, the petitioner's prayer could not be considered by the respondents for giving employment to her son, Atikul Islam who is a married person and having his separate family with separate ration card and separate income.

10. Mr. Deb, learned counsel for the petitioner has submitted that the inquiry report submitted by SDM cannot be binding on the petitioner since the inquiry

report was made behind her back and that respondents may be directed to allow the petitioner to submit documents in support of her claim.

11. The petitioner submitted writ petition seeking job under the scheme. While the petitioner submitted the writ petition in support of her claim she was supposed to adduce evidence also so that her case may be considered by the Court taking into account the terms and conditions of the die-in-harness scheme. The petitioner adduced no evidence to show that Atikul Islam, son of the petitioner is/was a member of the family of the deceased Government employee at the time of his death. Under such circumstances, I find no justification at all to accept the submission of learned counsel, Mr. Deb to remand the matter to the respondents for reconsideration.

12. The writ petition, is therefore, found devoid of any merit and hence stands rejected.