
(2006) 04 GAU CK 0013
In the Gauhati High Court
Case No : C.R. No. 175 of 1997

Priyabala Biswas and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Citation : (2006) 2 GLT 723

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : B. Das and D. Chakraborty, for the Appellant; U.B. Saha and D.C. Nath, for the Respondent

Judgement

A.B. Pal, J.—To what extent the benefit of a die-in-harness scheme can be enforced by the court is the solitary question, this Court is called upon to decide in the present writ petition.

2.I have heard Mr. B. Das, learned senior counsel, assisted by Mr. D. Chakraborty, learned Counsel for the Petitioners and Mr. U.B. Saha, learned senior government Advocate, assisted by Mr. D.C. Nath, learned Counsel for the Respondents.

3. The fact not in dispute is that, one Anil Chandra Biswas while in service in the Animal Resources Development Department of the State Government died on 19.7.1989. He was survived by his wife, the Petitioner No. 1, his son, the Petitioner No. 2 and five more children. The two Petitioners have claimed that at the time of death of Anil Chandra Biswas, a die-in-harness scheme for providing employment of one eligible member of the family of the deceased as formulated by the State Government was in force. As all her children including the second Petitioner were minor, the first Petitioner, being wife of the deceased and eligible for a Group-D post, submitted application to the Director of the said Department for a suitable job. On the first Petitioner was asked to submit certain documents, which were accordingly done in the first week of February, 1990. Thereafter, her

long wait and repeated representations could show no light at the end of the tunnel of her misery. Disappointment and dejection resulting from poverty with a burden of six children made her sick. On 20.7.1996 she made another representation to the said authority to provide a suitable job to her son, the second Petitioner herein, who became major by the time. But, her plight had no end, as her second prayer was also given no sympathetic consideration. Aggrieved, the present writ petition has been filed seeking a direction to the Respondents to provide a suitable job to the second Petitioner.

4. In their counter-affidavit, the State-Respondents contended inter alia that mere death of an employee does not entitle his family members to compassionate employment beyond the policy framed by the Government for assistance in the event of death of a Government employee while in service. It has been admitted that the council of Ministers of the State Government approved the proposal to relax the age of the first Petitioner in its meeting on 18.03.1992 for providing a job to her in Grade-IV (Group-D). Though the Respondents were willing and had decided to provide her with the job, unfortunately there was no vacancy in un-reserved category and only for that reason the decision could not be implemented. It has been admitted that on 20.7.1996 another prayer was received by the third Respondent for employment of the second Petitioner but by that time the die-in-harness scheme had undergone a change. According to the new scheme, the eligibility of the Petitioner seeking a job is to be determined on date of death of the concerned employee. The new scheme so formulated provides at para (1)(ii) as follows:

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

Again in para (3)(iii) of the said scheme, all pending cases where employment has not been provided has been sought to be covered. The said provision reads as follows:

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

In view of the provisions in the said scheme, it is contended that the second Petitioner cannot be provided with a job, as he was a minor at the time of death of his father. It has, however, been stated that the Respondents may consider grant of financial assistance to the tune of Rs. 50,000/- to the Petitioners as per provision made in the new scheme dated 13.8.1996.

5. The submission advanced by Mr. Das, learned senior counsel for the Petitioners is that the contention of the Respondents that for want of vacancy in Group-D category, the first Petitioner could not be provided with the job though she was eligible and the age restriction was relaxed by the council of Ministers is nothing but a ruse to deny her the benefit and frustrate the Government decision. Even if it is accepted that there was no vacancy for general category in Group-D, it was possible for the concerned Respondent to absorb her against any

unreserved vacancy and carry forward the same as per rules with necessary approval of the State Government. Once the council of Ministers decided to provide her with a job relaxing her age, it should have been understood that for implementation of such a decision every necessary step including creation of supernumerary post or de-reservation of a post was called for. By not doing so, the concerned Respondent had shown utter indifference and negligence towards the family of the deceased, which was all on a sudden thrown on the verge of severe financial predicament. It is the submission of Mr. Das that though belated, the principles of justice and equity demand that the second Petitioner is provided with a suitable job.

6. Mr. U.B. Saha, learned senior Govt. Advocate controverted the submission of Mr. Das with great vigour setting his gun on the strict provisions of the scheme which were applicable at the relevant time. According to him, the scheme which was applicable at the time of death of Anil Chandra Biswas had no provision for creation of any supernumerary post for providing a job to a member of the family of the deceased. The revised employment policy issued on 31st may, 1995 (Annexure-A) on which reliance has been placed by the Petitioners in support of their claim has categorically provided that such employment would be subject to the availability of vacancies of the appropriate category. Clause (4) of the said policy provides as follows:

4. Employment to dependents of persons who die in harness. In order to ensure that the family of a Government servant who died 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 no other member of the family already in the employment of the State Government 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 appointment 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.

His further submission is that, it would be a generous gesture on the part of the State-Respondent to provide the financial assistance in terms of the Memorandum dated 13th August, 1996(Annexure-R/1). He pointed out that in a line of decisions, the Supreme Court has repeatedly held that employment to a member of the family of the deceased is not an enforceable right and that die-in harness scheme being a beneficial policy of the State Government can be pressed into service only when the eligibility provisions are strictly complied with.

7. It would be seen from the rival pleadings and submissions that while Anil

Chandra Biswas died on 19.7.1989, the employment policy at Annexure-A, on the basis of which the Petitioners have advanced their claim, was issued on 31st May, 1995. Even if it is accepted that the said Policy was applicable in the case on hand, it would appear from para (4) of that Policy that the benefits of employment to a member of the family of the deceased was subject to availability of vacancy with no provision to create a new post if vacancy was not available or to de-reserve any reserved post. However, the memorandum which was issued on 13th August, 1996 makes a provision that in the case" of non-availability of any vacancy, supernumerary post should be created with the concurrence of the Finance Department. The claim of the second Petitioner who became major only in the year 1996 could not be considered under the new scheme, which makes a provision that the eligibility should be determined as on the date of death of the concerned employee. Admittedly, the second Petitioner was a minor and, therefore, not eligible for employment in terms of the new scheme. It is, however, made clear by the State-Respondents that though no job can be offered to the second Petitioner on the question of eligibility, the financial assistance to the tune of Rs. 50,000/- as contained in the said memorandum would be admissible to the Petitioners.

8. In view of the above discussion, it is evident that the second Petitioner cannot be given employment either under the old employment policy or under the new die-in-harness scheme of 1996. But, in terms of the new scheme, the Petitioners are entitled to the benefit of Rs. 50,000/- as financial assistance. This writ petition is, therefore, closed with a direction to the State-Respondents to grant Rs. 50,000/- (Rupees Fifty thousand) only as financial assistance to the Petitioners within a period of 2(two) months from the date of passing of this judgment and order. No cost.