
(2015) 12 TP CK 0025
In the Tripura High Court
Case No : W.P.(C) No. 361 of 2014

Rina Debbarma

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157
Penal Code, 1860 (IPC) — Section 34, 365

Citation : (2015) 12 TP CK 0025

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : K.N. Bhattacharji, Sr. Advocate and Kohinoor N. Bhattacharji, Advocate, for the Appellant; R. Guha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—Heard Mr. K.N. Bhattacharji, learned senior counsel, assisted by Mr. Kohinoor N. Bhattacharji, learned counsel appearing for the petitioner as well as Ms. R. Guha, learned counsel appearing for the respondents No. 1, 3 and 4. None appears for the respondent No. 2 when the matter is taken up for hearing.

2. As the petitioner was denied appointment after death of her husband, namely Paltu Debbarma in the extremist violence, she has approached this court by means of this writ petition.

3. The essential facts would be laid in the beginning.

Paltu Debbarma, the husband of the petitioner died on 23.01.2001. His whereabouts were last known when he was abducted by the extremist. On 23.01.2001, at about 0900 hours on his way back to his house at Jadhurambari, he was called by some unknown persons. Since then he was missing. One Sri Biswanath Debbarma, son of late Ram Singh Debbarma informed the matter to Salema police station and the said information was entered into the General Diary No. 855 on 25.01.2001. The investigation was carried out under Section

157 of the Cr.P.C. by one Sub-Inspector, namely Gajendra Biswas of that police station as the said police officer strongly suspected of commission of a cognizable offence. In the course of investigation, the said Investigating Officer carried out search and special operation in all probable places to recover the missing person, but he failed. The said Investigating Officer had submitted the final report on 30.07.2001 in respect of the said crime.

4. As the police could not recover said Paltu Debbarma, in terms of the Government policy, his death was deemed after two years from the date of his missing. Initiative was taken for providing the petitioner a job as the next kin of the person killed due to extremist violence in terms of the Memorandum dated 05.05.1999 (Annexure-P/1 to the writ petition), which makes the provision for Government employment for the death, due to extremist violence.

5. From the communication dated 11.09.2008 (Annexure-P/2 to the writ petition), made to the District Magistrate & Collector, Dhalai District by the Under Secretary to the Govt. of Tripura, Revenue Department, it appears that the petitioner applied for appointment to the Hon'ble Chief Minister, Tripura and the said Under Secretary requested the District Magistrate & Collector to look into the matter and furnish a factual report as regards the death and incident that took place. The said report was furnished by the communication dated 7.01.2009 (Annexure-P/3 to the writ petition), which provides as under :

"The report of the Sub-Divisional Magistrate, Kamalpur confirms the kidnap and the report of S.P. Dhalai confirms that the extremist kidnapped the person in Col. No. 3.

It is therefore, proposed that Smti. Rina Debbarma, may kindly be appointed as Group-D employee under the Department as shown in Col. No. 4."

In the column No. 3, the name of the petitioner's husband appears along with the police station case number being Salema P.S. Case No. 01/08 under Sections 365/34 of the IPC.

6. By the communication dated 11.12.2009 (Annexure-P/4 to the writ petition), the District Magistrate & Collector, Dhalai District, Ambassa, has also forwarded the original revisited E.V. form No. I & II in favour of the petitioner. By the memorandum dated 26.07.2010 issued by the Under Secretary to the Govt. of Tripura, Revenue Department, the following has been communicated to the Director of School Education, Govt. of Tripura :

"The undersigned is directed to convey the approval of the Government for appointment of Smt. Rina Debbarma, W/O, Lt. Paltu, Vill. Avanga, P.O. Avanga P.S. Salema, Dhalai District to the vacant post of Group-D in the Education Department on fixed pay basis under extremist violence scheme due to death of her husband Paltu Debbarma.

2. The Director of School Education, Government of Tripura, Agartala is requested to issue offer of appointment in favour of Smt. Rina Debbarma in

terms of Memorandum No. 11 (1)-FIN (G)/94 dated 19-02-1996, 27-07-1996 and No. F.10 (2)-FIN (G)/2005/PART-I dated 21-07-2009 of Finance Department and also in terms of Memorandum No. F.1 (1)-GA (P & T)/97 (L) dated 25-01-2002 and No. F.1(2)-GA (P&T)/2000 dated 14-06-2004 of GA (P&T) Department.

3. Copies of the relevant documents/certificates/testimonials along with Police Report of the case concerned are enclosed.

4. A copy of the appointment letter issued in favour of the above person may also be endorsed to the undersigned as well as DM & Collector, Dhalai District, Ambassa.

5. Further the joining date of the applicant may also be intimated to the undersigned as well as DM & Collector, Dhalai District, Ambassa."

7. From the memorandum dated 11.08.2010 (Annexure-P/6 to the writ petition), it appears that the verification of the original certificates were carried out and the petitioner was requested to furnish No Objection Certification, Declaration of maintaining the dependant family member and Original Transfer Certificate.

8. From the Memorandum dated 19.10.2011 (Annexure-P/7 to the writ petition), it appears that the petitioner did not file the documents as asked to be filed, till then. The District Magistrate & Collector, Dhalai District, Jawharnagar, by his communication dated 07.05.2012 (Annexure-P/9 to the writ petition), had requested the Director of School Education, Govt. of Tripura, Agartala to intimate him about the case of the petitioner. The inquiries were duly made by the various authorities. It was found that the petitioner was covered by the scheme for having employment as the victim of the extremist violence, as referred in the memorandum dated 05.05.1999.

9. By filing the counter-affidavit, the respondents No. 1, 3 and 4 have submitted that even though the issue of appointment of the petitioner as the Group-D employee in the Education Department was approved by the Revenue Department based on the inquiry made by two agencies namely the Sub-Divisional Magistrate, Kamalpur and the Superintendent of Police, Dhalai District, Ambassa, but when the request was made for creation of a post for Group-D employee for purpose of giving appointment of the petitioner, the Finance Department regretted the said proposal. On being asked, Ms. Guha, learned counsel appearing for those respondents, has produced the relevant File from where it appears that the reason for declining to concur to that proposal for creating the post for appointment is that the petitioner did not apply within time. Note No. 36 is the part of the common file maintained by the respondents for considering the appointment of the petitioner under the extremist violence scheme.

10. Ms. Guha, learned counsel has also submitted that it is only for the Finance Department's inability to concur the proposal for creating the post of Group-D in

the Education Department, the respondents No. 1, 3 and 4 could not appoint the petitioner and the same was communicated to her.

11. Mr. Bhattacharji, learned senior counsel, has submitted that there is no prescription of time in making the application under the extremist violence scheme. Having regard to the memorandum dated 05.05.1999 (Annexure-P/1 to the writ petition), he has submitted that it is the duty of the concerned officers to complete the process and the process has been provided in details in para (ii) of the said memorandum dated 05.05.1999. It has been provided that within a month of the date of death such employment shall be made to enable the family of the victim tide over the serious financial uncertainty that they might face for the sudden death of their kin in the hands of the extremists. The procedure as laid down in the memorandum dated 05.05.1999 is as follows :

"2. With the above in view it has been decided that:--

i) Soon after a death due to extremist violence is reported, the concerned District Magistrate would detail a responsible officer, preferably of the rank of a Deputy Collector, who should visit the place of occurrence, meet the surviving kins of the deceased within a week's time and initiate proposals for providing immediate relief. The District Magistrate should also call for a police report from the concerned SP who will furnish the same within fifteen days.

ii) The visiting official will take into account the details of the survivors in the family of the deceased in such a manner as to ensure that need for further inspection is minimized for issue of survival certificate by the concerned Sub-Divisional Officer.

iii) In case there is only one surviving member eligible for government job in the family of the deceased the visiting official should collect the application form from the concerned person and arrange for making the same available to the concerned Sub-Divisional Officer within 14(fourteen) days" of the date of occurrence.

iv) In case there is more than one surviving member eligible for government job in the family of the deceased, the visiting official should consult them and help in reaching a consensus, opinion as to who amongst them should be provided with the government job. Once they decide, a No Objection Certificate from such eligible persons in the family who decide not to apply for government job should be obtained either jointly or separately and forwarded to the Sub Divisional Officer along with the application form duly filled in.

v) It is imperative that the application as also inspection shall have to be done as per proforma prescribed for the purpose. It is emphasized about the marital status of the deceased as well as the candidate.

vi) The Sub-Divisional Officer, on receipt of the report of the inspecting official, should arrange for collection of all necessary documents such as (i) survival certificate, (ii) certificate of educational qualification etc. and (iii) citizenship certificate and such other documents as may be required to support the

candidature of the person applying for job.

vii) Once certificates and documents as stated herein above have been collected, the Sub Divisional Officer should arrange for their verification, if considered necessary and on being satisfied that the papers are genuine and complete in all respect, send the application to the concerned District Magistrate in such a way as to reach him by the 21st day of the date of concurrence.

viii) On receipt of the papers from the Sub Divisional Officer, the District Magistrate should undertake necessary scrutiny of the application as also the SP's report, conduct such further inquiries as he may consider necessary and being satisfied that the application is complete in all respect, shall forward the same to the Under Secretary (by Name) Revenue Deptt. Along with recommendations in the prescribed form. It has to be ensured that the papers from the District Magistrate's office reach the Revenue Department not later than the 25th day of the date of occurrence.

ix) The proposal, when received in the Revenue Department should be put up by the 3rd day of the date of receipt, while putting up the case the check list showing the particulars of the candidates, the status of the papers forwarded by the District Magistrate & Collectors etc. should be prepared individually for each case and kept in the file for record. Simultaneously, particulars of the case should be entered into the relevant register soon for the purpose in the department.

x) Soon after approval of the government is obtained on a proposal for providing employment to next of the kin of a person killed by extremist violence, the same should be communicated to the concerned District Magistrate & Collector and the Head of the Department under which the person is approved to be employed, and such communication must be dispatched within a period of two days of the date of approval.

xi) On receipt of the approval as above, the Head of the Department should arrange for appointment of the person(s) against vacant post(s) available in the department within seven days. In case no vacant post(s) is(are) available, immediate steps for creation of supernumerary post(s) should be taken to avoid delay in making the appointment and consequent hardship to the distressed family."

12. There cannot be any difference of opinion, when Mr. Bhattacharji, learned senior counsel has submitted that in the entire memorandum dated 05.05.1999, evidently, it has cast any obligation on the beneficiary of that scheme to make approach by way of filing an application within certain period of time.

13. Thus, according to this court, the reasons as provided by the Finance Department in the Note No. 36 declining to create a post of Group-D for purpose of appointing the petitioner, cannot be accepted and as such the respondents herein are directed to appoint the petitioner in a Group-D post within a period of 4(four) months from today, as this court after scrutiny of records has found that

all the necessary documents as were asked from the petitioner have been filed by her including the declaration that she would maintain her children and other dependants of Paltu Debbarma, since deceased, husband of the petitioner.

14. With this observation and direction, this writ petition stands allowed to the extent as indicated above. It is made clear that even though the Secretary, Finance Department has not been made party in this petition, this decision shall be binding on it as the State is represented adequately.

This court records its appreciation for the assistance rendered by Ms. R. Guha, learned counsel appearing for the respondents No. 1, 3 and 4.

A copy of this order be furnished to Ms. R. Guha, learned counsel for her doing the needful.