

(2014) 08 TP CK 0025
In the Tripura High Court
Case No : W.A. 43 of 2014

Sagar Singh Rawat VsThe State of Tripura

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2014) 08 TP CK 0025

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : A.K. Bhowmik, Sr. Advocate and R. Datta, Advocate for the Appellant; T.D. Majumder, G.A, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.—This writ appeal is directed against the judgment dated 28-04-2014 passed by a learned Single Judge of this Court whereby the writ petition filed by the appellant praying that he be granted employment on compassionate grounds was rejected.

2. The undisputed facts are that Sri Prem Singh Rawat, father of the petitioner, was working as a Fireman under the Directorate of Fire Services, Government of Tripura. It is alleged that the grandfather of the petitioner was also an employee of this very department. On 05-09-2009 when Prem Singh Rawat was posted at Panisagar, he was murdered. At that time, the petitioner along with his mother and sisters were living in their ancestral home at Uttaranchal. According to the petitioner, he was studying in Class-IX in the year 2009 and was aged about 21 years at that time. It is alleged in the petition that the petitioner came to Tripura and filed an application on 02-02-2010 seeking compassionate employment under the "Die-in-harness" scheme framed by the Government of Tripura. According to the petitioner, that petition was not in prescribed format and was not accompanied with all the documents and the same was rejected.

3. The petitioner alleges that prior to his father's transfer to Panisagar, his father had been residing at Belonia and at that time, the petitioner was also residing with his father. When the father was transferred to Panisagar, the petitioner, his

mother and sisters left for Uttaranchal and started residing there. According to the petitioner, since along with the application for employment under the "Die-in-harness" scheme he was required to produce the ration card, permanent resident certificate, Adhar card etc. The petitioner spent a lot of time collecting these documents and finally, an application in prescribed format with all supporting documents was filed on 01-09-2012, almost three years after the death of the father.

4. The application of the petitioner was rejected on 14-08-2013 only on the ground that the same had not been filed within time, i.e. a period of one year from the date of death of his father. The stand of the State is that no application was filed on 02-02-2010 and no such application was available on the record of the State. Petitioner challenged this rejection by filing the writ petition which has been dismissed. Hence, this writ appeal.

5. We have heard Sri A.K. Bhowmik, learned Senior Counsel for the appellant, and Sri T.D. Majumder, learned G.A. for the State.

6. Employment under the "Die-in-harness" scheme is meant as compassionate employment to help the families who are in financial distress to overcome the crisis which has hit the family on account of the death of the sole bread earner. The learned Single Judge has rightly held that such employment is an exception to the general policy of recruitment. It is well settled law that the "Die-in-harness" scheme cannot become one source of employment for the next of kin of the government employees. Employment under the "Die-in-harness" scheme is only to be granted where the family is left in a financial crisis and the Government feels that it is necessary to grant employment to one of the members of the family of the deceased employee.

7. The petitioner has failed to prove that he filed an application on 02-02-2010. If he had filed such an application on 02-02-2010, he would have made some communication with the department thereafter. He has neither produced any receipt of filing of this application nor produced any contemporaneous evidence to show that any reference was made to this application purportedly filed on 02-02-2010. In this behalf, it would be pertinent to mention that even in the application filed in the year 2012, there is no reference to any earlier application having been filed. This story of an application being filed on 02-02-2010 has come out for the first time in the writ petition.

8. Assuming for the sake of deciding the case that the petitioner had filed an application on 02-02-2010, he himself states that the said application was not in prescribed format and was not considered by the department. The petitioner has given no explanation as to what he was doing from 02-02-2010 till 01-09-2012 for more than 2 1/2 years. When did he apply for the ration card and other documents? There are no clear cut averments made in this behalf.

9. The petitioner has stated that he was studying in Class-IX at the time of his father's death but no proof of the same has been produced. The petitioner states

that he passed his Class-X examination in April, 2012 from the National Institute of Open Schooling. It is only after he passed the Secondary School examination from the National Institute of Open Schooling that he filed the application. The petitioner and his family survived for almost three years without any assistance from the State and, therefore, we can presume that they were not in such dire straits that without financial assistance they could not survive. The fact that they existed for three years without employment itself indicates that their financial condition was not that bad. The petitioner in this case has given no plausible explanation for the undue delay in filing the application for employment and, therefore, we are in agreement with the learned Single Judge that the petitioner is not entitled to any relief.

10. However, we would like to make it clear that we are not in agreement with the finding of the learned Single Judge that the time is the essence of the "Die-in-harness" scheme. Each case will have to be decided on its own facts and normally an application under the "Die-in-harness" scheme should be submitted within one year after the death of the concerned employee but even if it is not filed within one year, the claim cannot be rejected only on this ground. None of the parties has been able to inform us as to when this limitation of one year was incorporated but reference has been made to the memorandum dated 26-12-2011. That memorandum would not apply to the present case because the death of the employee had taken place in the year 2009. Clause (ii) of this memorandum is very important. It reads as follows:-

"ii. Sometimes the members of the family of deceased may not be aware of the provisions of the Die-in-harness scheme and the formalities to be observed in submitting the application (i.e. time limit of submission of application, consequence of submission of false documents etc.).

Therefore, the Department, when they get information about the death of any of their employees, while in service shall immediately communicate in written to the respective family so that application for employment/financial assistance under Die-in-harness scheme from the family of the deceased should be submitted before the appropriate authority in prescribed manner within the stipulated period."

11. Supposing the department does not take action in terms of this memorandum and does not inform the members of the family of the deceased that they are entitled to certain benefits under the "Die-in-harness" scheme. In such an eventuality, limitation cannot come in the way of the person claiming employment. There may be cases where the employees are totally illiterate or living in very distant places and they may apply at a later stage. Therefore, there can be no blanket order that all terms and conditions of this memo have to be considered with the same rigour. We, therefore, make it clear that we are not rejecting the claim of the petitioner on the ground that since he did not approach the Department within one year, he is not entitled to get the benefit of a job under this scheme. The memorandum in question also imposes a duty on the

department where the deceased employee is working to guide the members of the family. This has not been done in the present case.

12. However, as far as the present case is concerned, even according to the petitioner, he was aware of the "Die-in-harness" scheme as early as 2010. He has given no explanation for the long delay in filing the application and, therefore, on this ground we hold that the application filed by him was belated and was rightly rejected by the Government.

13. Therefore, the writ appeal is dismissed but with the clarifications on the point of law made hereinabove.