
(2016) 12 TP CK 0003
In the Tripura High Court
Case No : Writ Petition (C). No. 232 of 2014

Smti. Sutapa Datta

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 NEJ 330

Hon'ble Judges : Mr. S. Talapatra, J.

Bench : Single Bench

Advocate : Mr. H.C. Chakraborty, Advocate, for the Petitioner; Mr. J. Majumder, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. S. Talapatra, J.(Oral) - Heard Mr. H. C. Chakraborty, learned counsel appearing for the petitioner as well as Mr. J. Majumder, learned counsel appearing for the respondents.

2. The petitioner had approached the respondent No. 2, the Director General of Police, for giving her appointment to a suitable post, commensurate to her qualifications, under the Die-in-harness Scheme for death of her father namely, Swapan Kumar Datta, who was a Naid Subedar in the Border Wing Home Guards Battalion, Home Department and died on 06.05.2011 while he was in service.

3. The petitioner was a dependent on the deceased employee after her marriage was dissolved by the decree of divorce dated 05.07.2010 delivered in T.S. (Divorce) 21 of 2010 by the Family Court, Agartala, West Tripura. There is no earning member in the family left by the deceased. From the Survival Certificate issued by the Sub-Divisional Magistrate, Sadar, West Tripura, it is pertinent that the family consists of 3 members, namely, Purnima Bhattacharji (Datta), widow of the deceased employee, Smt. Sutapa Datta, daughter of the deceased employee and Smt. Parul Datta, mother of the deceased employee.

4. The petitioner made the application for appointment under Die-in-harness Scheme firstly on 07.07.2011 to the respondent No. 2, the Director General of Police. By the Communication under No. F.1(8)-PD/2011 dated 02.03.2012, the Deputy Secretary to the Government of Tripura in the Home Department informed the Director General of Police that "as per the existing provision, the divorcee daughter is not eligible to get benefit under the Die-inharness Scheme".

5. Again, the petitioner approached the competent authority with all materials but no positive result yielded till date. Even the petitioner's mother namely, Purnima Bhattacharji (Datta) approached the respondent No. 2 for considering the appointment of the petitioner under Die-in-harness scheme and finally on 04.12.2013 the petitioner served a notice through her counsel demanding the appointment under Die-in-harness scheme within a period of 60 days. In that notice, it has been emphatically asserted that the divorcee-daughter is included within the meaning of "unmarried daughter".

6. In reply to the said notice, it was informed by the communication No. 193/R-153/DGP/LC/2013 dated 28.01.2014 (Annexure-P/14) that since the petitioner is a divorcee daughter of the deceased employee, she cannot claim any benefit under the Diein-harness scheme. Being aggrieved by that decision of the respondents No. 1-2, the petitioner has approached this Court for direction to the respondents to appoint her under the Die-in-harness scheme.

7. The respondents by filing an affidavit has stated in the Para-12 that the definition of "family" which was in force at the time of death of the deceased employee can be had from the memorandum dated 08.06.1988 where it has been provided as under:

" "Family" means a Government servant wife and husband, as the case may be, and legitimate children.

Note: (A) The term "children" includes sons and unmarried daughters.

(B) Married sons even if they live separately should be treated as a member of the family."

8. It has been also asserted that the Government framed another revised scheme in supersession of all previous instructions on the said subject by issuing the Memorandum dated 31.05.1995. Later, the Memorandum No. F.1(2)-GA/77 dated 13.08.1996 came into existence. Again on 18.11.1997, the Government by another Memorandum adopted the definition of "family" as provided in the Memorandum dated 08.01.1992.

9. Till 2011 the definiton of "family" did not change but later on by the Memorandum No. F.1 (1)-GA(P&T)/92(L) dated 24.09.2011, the definition of family was widened. The word "families" mentioned in Memorandum No. F.10 (14)-FIN(G)/07 dated 10.10.2007 relates to the definition of family mentioned in the Memorandum dated 08.01.1992. Moreover, the Memorandum dated 07.10.2007 relates to the documentation required for making application for

employment under the Die-in-harness scheme. It has been further asserted that the notification/circular by the Government of India dated 28.04.2011 is only to extend pensionary benefits to the divorcee daughter of the family; but, do not extend any provision to provide job to a divorcee daughter.

10. This Court is really surprised to note why the respondents have made such elaborate exercise to consider the case of the petitioner. The petitioner has furnished all the testimonials/ documents in respect of the Die-in-harness scheme to show that the petitioner is well covered by the said scheme which was in force at the time of death of the deceased employee.

11. However, the petitioner's claim technically cannot be considered under the memorandum dated 24.09.2011 which has apparently come into being after death of the deceased employee. But the definition as has been interpreted by the respondents, according to this Court, can be accepted.

12. Mr. Chakraborty, learned counsel appearing for the petitioner has submitted that for the purpose of extending the benefit under the Die-in-harness scheme, the divorcee-daughter shall be included within the meaning of "unmarried daughter" while determining her dependency, that part, even the respondents have conceded that this case is well covered by the memorandum dated 27.10.1983 (Annexure-P/9), which has been re-iterated and expended for benefit of the family of the deceased employee. By the memorandum dated 13.08.1996 (Annexure-P/10 to the writ petition) it has been provided as under:

" By way of partial modification of previous instruction on the subject mentioned above:

(1) (i) Employment may be provided to one member of the family, provided that 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."

13. It would be apparent that the petitioner was Class-XII passed at the time of death of the deceased employee. Thus, the petitioner and her family is well covered by the said memorandum dated 31.08.1996. In the said memorandum, it has been provided that when there is no vacancy existing in the department, the supernumerary post can also be created with prior concurrence of the Finance Department. But for that the purpose, the initiative has to be taken by the Head of the Department. In the case of supernumerary posts the reservation roster is not required to be observed.

14. That apart, it has been provided that when there is none in the family to get the appointment, the special financial assistance can also be provided in this case. But in this case, we are not concerned with the said special financial assistance as provided under Die-in-harness scheme as the petitioner was otherwise eligible for getting the compassionate appointment under the Die-in-

harness scheme. The only objection that has been projected by the respondents as represented by Mr. Majumder, learned counsel is that within the meaning of "unmarried daughter", divorcee daughter cannot be read and as such, the petitioner is not covered by the Diein-harness scheme.

15. Mr. J. Majumder, learned counsel appearing for the respondents has strenuously urged that "divorcee-daughter" cannot be read within the definition of the "unmarried daughter". Moreover, he has raised a unique question that appointment under the Die-inharness scheme by itself is infringement of Article 14 and 16 of the Constitution of India and as such, this Court may not extend any latitude in interpreting the provision of the scheme. The Court shall give a very strict interpretation so that the persons who are in the waiting for getting employment, their right is not further affected. To support that contention Mr. Majumder, learned counsel has relied on a decision of the Apex Court in Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.), reported in (1994) 2 SCC 718, where the Apex Court has observed as under:

"10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice":

"The quality of mercy is not strain'd; It droppeth, as the gentle rain from heaven Upon the place beneath it is twice bless'd; It blesseth him that gives, and him that takes;"

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

11. At this juncture we may usefully refer to Martin Burn Ltd. v. Corporation of Calcutta". At page 535 of the Report the following observations are found:

"A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not."

The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which we have 1 AIR 1966 SC 529, 535: (1966) 1 SCR 543 extracted above. The court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is

gainfully employed. Clause 4 of the circular dated January 20, 1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered".

[Emphasis added]

16. Having regard to the scheme, the question that falls for the consideration of this Court is whether the petitioner can be considered within the meaning of "unmarried daughter" or not?

17. According to this Court, when by the decree of divorce, the marriage has been dissolved, the petitioner is not related to the marriage anymore and as such, definitely the petitioner is bound to be considered within the definition of "unmarried daughter" as provided in the definition as was extant at the time of death of the deceased employee.

18. Mr. Chakraborty, learned counsel appearing for the petitioner has relied on a decision of Punjab and Haryana High Court in Lalita Rani v. State of Punjab and Others [judgment and order dated 12.01.2012, delivered in CWP. No. 1499 of 2010], where it has been observed as under:

"The divorcee daughter, in my considered view, deserves to be considered at par with unmarried daughter for the purpose of determining her dependency".

19. In another decision, Rajasthan High Court in Namisha v. State of Rajasthan and Ors, reported in 2015 0 Supreme (Raj) 410 [judgment and order dated 28.01.2015 in Civil Writ Petition No. 2004 of 2014] has held as under:

"Thus, to ignore a divorced daughter for compassionate appointment is highly arbitrary, discriminatory and without any rational. There is no reason to discriminate between a widowed daughter and a divorced daughter. As submitted earlier, a daughter reverts back to her parents' family after divorce and her situation is the same as prior to her marriage. As per definition of "divorced" provided in the Oxford Advanced Learner's Dictionary, the first meaning is "NO LONGER MARRIED", meaning thereby, that the situation of a divorced woman is that of an unmarried daughter and hence, "dependent" on her parents. Thus, it really does not matter, if the word "divorced" was not separately added in the rule as the above discussion shows that an "unmarried" daughter includes a "divorced" daughter".

20. This Court finds that these decisions as relied by Mr. Chakraborty, learned counsel, are quite reasonable and persuasive in nature and there cannot be any alternative approach in understanding the true meaning of the provision as provided in the form of definition of family in the Memorandum dated 06.08.1988 which has been adopted by the Memorandum dated 08.01.1992 and that definition continued till 24.09.2011.

21. Thus, this Court does not have any hesitation to hold that the petitioner does come within the definition of the family being the unmarried daughter and accordingly, the plea that has been taken by the respondents to exclude her from consideration for purpose of her appointment under the Die-in-harness scheme is entirely unsustainable being arbitrary and accordingly, the same is set aside.

22. The respondents No. 1 and 2 in particular are directed to consider the appointment of the petitioner under Die-in-harness scheme to a post, commensurate to her qualification that was available to her at the time of death of the deceased employee, within a period of 3 months from the day when the petitioner shall furnish a copy of this order to the respondent No. 2, the Director General of Police. If the respondents No. 1 and 2 for any reason do find that some more documentation is required, they should assist the petitioner to submit all those documents in order to accelerate the process of appointment as directed by this Court.

23. With these observations and directions, the writ petition stands allowed to the extent as indicated above. There shall be no order as to costs.