
(2015) 06 TP CK 0018
In the Tripura High Court
Case No : Writ Petition (C) No. 222 of 2011

Sumen Shil

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 146 FLR 479 : (2016) LabIC 1161

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

Bench : Single Bench

Advocate : D.C. Roy, for the Appellant; A.S. Lodh, Addl. G.A., Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J.—By filing this writ petition the petitioner prayed for directing the respondents to provide him a suitable job under the respondents under die-in-harness scheme for the death of his father Milan Chandra Shil who died on 23.10.2005 while in service as a constable of police.

2. Heard learned counsel Mr. D.C. Roy for the petitioner and learned Addl. G.A., Ms. A.S. Lodh for the State-respondents.

3. The petitioner, inter alia, contended that his father Milan Chandra Shil was working as a constable of police under the Superintendent of Police, Dhalai (respondent No. 3) and he committed suicide on 23.10.2005 leaving behind two sons and two daughters namely (1) Sri Mani Sankar Shil, aged 24 years; (2) Sri Sumen Shil, aged 15 years (petitioner); (3) Smt. Uttama Shil, aged 26 years and (4) Smt. Ashima Shil, aged 35 years.

3.1 The petitioner contended that after the death of his father on 05.12.2005, he made an application to the O.C., Ambassa P.S. for providing financial assistance for performing "sradha" ceremony of his father but he was not informed about the die-in-harness scheme by the respondents and therefore, no step could be

taken for availing the benefits of the die-in-harness scheme. After the death of his father, family pension was settled and PPO was issued but they were never informed about the die-in-harness scheme that they are entitled to get a job under the scheme or cash amount of Rs. 50,000/- for the death of his father. It is contended that it was the duty of the respondents as per Memo dated 11.03.2005 (Annexure-10 to the writ petition) to inform the family of the deceased Govt. employee about the scheme so that the family members can take effective steps within stipulated time. Since they were never informed by the respondents about any die-in-harness scheme, they could not take effective steps for job. He passed Madhyamik examination in the year 2008 and thereafter on 28.10.2010 he submitted formal application to the respondent No. 3 to give him a job under the die-in-harness scheme. He did not get any response from the respondents and therefore he filed the writ petition seeking direction to the respondents to give him a job under the scheme.

4. The respondents by filing counter affidavit contended that Milan Chandra Shil, father of the petitioner committed suicide on 23.10.2005 while he was in service as a constable of police and the petitioner submitted a prayer for financial assistance on 24.07.2007 under die-in-harness scheme i.e. more than 2 years after the death of his father and that could not be considered since it was filed beyond one year of the stipulated period within which the petition ought to be filed. It is also contended that the petitioner submitted an application on 05.12.2005 for providing financial assistance for performing "sradha" ceremony of his father and the leave salary as was due in favour of late Milan Chandra Shil was granted. The application received on 24.07.2007 was rejected since it was not within time and there was no question of providing a job to the petitioner. It is also contended by the respondents that by a message dated 15.07.2006(Annexure-R/4 to the counter affidavit) the elder brother of the petitioner was informed about the die-in-harness scheme and so the stand of the petitioner that they were not informed about the scheme was not correct. The appointment on compassionate ground is not the source of recruitment and it is a concession given to the family members of the deceased employee to overcome the sudden financial crisis for the death of their only bread earner and by elapse of time, the purpose of providing such benefit becomes irrelevant. The petitioner since was not eligible and did not approach the respondents in time he was not entitled to get a job under the scheme and the petition should be dismissed.

5. It is undisputed rather an admitted position that the State Govt. formulated a scheme namely die-in-harness scheme under which in the event of death of a Govt. employee while in service, a job is provided to one of his family members or in the alternative Rs. 50,000/- is paid in cash. It is also an undisputed rather an admitted fact that the State Govt. by notification made it clear that every department in the event of having information about the death of any of their employee while in service should intimate the family members of the deceased employee about the benefits available under the die-in-harness scheme. In the

case at hand, the petitioner contended that after the death of his father, on 05.12.2005 he made an application to the O.C., Ambassa P.S. for financial help to perform "sradha" ceremony of his father. The respondents in their counter affidavit admitted that such application was submitted on 05.12.2005 for financial assistance and at that time, leave salary etc. was paid. The petitioner further alleged that the respondents did not inform him about the benefits available under the die-in-harness scheme and therefore, he could not make the application for a job in time. It is an admitted position that under the die-in-harness scheme one has to apply for the job within one year from the date of death of the deceased employee. The petitioner alleged that since he was not informed about the scheme by the respondents he could not make any application within stipulated time. The respondents by filing counter affidavit contended that by a message dated 15.07.2006 (Annexure-R/4 to the counter affidavit) the elder brother of the petitioner was informed about the die-in-harness scheme. The petitioner did not challenge that averment made by the respondents by filing rejoinder affidavit or otherwise and so it is brought on record that the family of the deceased employee was informed by the Superintendent of Police through O.C. Ambassa P.S. about the die-in-harness scheme. Moreover, as I find the petitioner was minor at the time of death of his father. His elder brother Mani Sankar Shil was major. There is nothing in the petition as to why his elder brother did not file any petition for the job. The petitioner brought on record his birth certificate which shows that he was born on 24.03.1990 and so he attained majority in the year 2008 and he passed Madhyamik examination in that year but he filed the petition for job on 28.10.2010 (Annexure 11 to the writ petition). He has only taken the excuse that since he was not informed by the respondents about the scheme he could not file the application for job. How he got the information in the year 2010 that has not been disclosed in his petition. The respondents contended that on 22.07.2007 there was a petition filed under the die-in-harness scheme that was rejected because it was a delayed petition.

6. It is a settled proposition that the compassionate employment under die-in-harness scheme cannot become a means of providing employment to the next kin of the Govt. employee. In such cases, the person seeking employment has to show that if he does not get employment, his family will suffer. Here in the case of the petitioner the petition is filed after 5(five) years seeking job but nothing is stated how the petitioner is suffering for the death of his father. The scheme is a benevolent scheme formulated to provide urgent relief to the family of a Govt. employee from financial crunch because of death of only bread earner. If there is any other bread earner in the family the scheme provides that there shall be no job available under the scheme. It is a settled position of law that it is not an alternative source of employment and that public employment should be made following proper procedure i.e. advertisement and selection etc. All those procedural aspects are withheld in a case of compassionate appointment only to meet the urgent need of the family of deceased family. While that is absent, the

purpose of providing employment no longer exists.

7. 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."

8. The petitioner since was minor at the time of death of his father and since there was other adult members in the family left by the deceased but none of them applied for employment and since the petitioner approached the respondents after 5(five) years of death of his father, obviously the petitioner's application for employment of job is devoid of merit. However, I find the scheme has provided payment of ex gratia of Rs. 50,000/- to the family of the deceased

employee. The petitioner in his writ petition alleged that even that Rs. 50,000/- was not given to the family member of the deceased employee. The respondents did not spare a single word in their counter affidavit on that allegation and thereby it is not disputed that no financial aid as per the scheme was given to the petitioner or other members of the family of the deceased employee. The respondents were under obligation to either provide an employment or to pay an ex gratia of Rs. 50,000/-. The petitioner since did not approach the authority within the stipulated time for the job, his prayer for providing him a job under the die-in-harness scheme cannot be entertained. But the other relief of providing an ex gratia of Rs. 50,000/- as per the scheme ought to be given to the family members of the deceased employee by the respondents. The respondents stated nothing as to why that amount of Rs. 50,000/- has not been given. Therefore, I think it appropriate to direct the respondents to pay the cash amount of Rs. 50,000/- as per the scheme within 45 days from today failing which it shall carry interest @6% per annum from the date of filing of the writ petition i.e. 04.06.2011 till the amount is paid by the respondents.

9. With this observation and direction, the writ petition stands disposed of.