
(2008) 03 GAU CK 0049
In the Gauhati High Court

Suniti Balakar and Another	Vs	APPELLANT
State of Tripura and Another		RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2009) 2 GLR 910 : (2008) 2 GLT 145

Hon'ble Judges : Mutum B.K. Singh, J

Bench : Single Bench

Judgement

Mutum B.K. Singh, J.—This writ petition has been filed for giving a direction to the respondents to issue the letter of appointment in favour of petitioner No. 2 and in the event of failure to do so, to pay a consolidated compensation of Rs. 2,00,000/-.

Pleaded facts, in brief, are that the petitioner No. 1 (since deceased) was the mother and the petitioner No. 2 is an unmarried sister of one Amarendra Kar, who died-in-harness on 12.09.1993 while working as Head Clerk in the Office of respondent No. 2. The petitioner No. 1, after the death of his son, applied for appointment of petitioner No. 2 to any suitable post on compassionate ground. On 21.12.1994, the respondent No. 2 issued an offer of appointment to appoint the petitioner No. 2 as L.D.C. under the terms and conditions appended therein. The petitioner No. 2, as per Clause 6 of the offer of appointment, submitted her acceptance along with all necessary certificates and testimonials to the authority concerned on 23.12.1994. However, no letter of appointment in favour of the petitioner No. 2 has been issued in spite of repeated requests and representations made to the respondent No. 2. The matter was kept in dark all along. However, on 06.06.1998, the respondent No. 2 issued a Memorandum sanctioning a sum of Rs. 50,000/- as financial assistance in favour of the petitioner No. 1 in lieu of Government appointment in die-in-harness case. The offer of appointment dated 22.12.1994 has not been cancelled and the certificates and testimonials were not returned to the petitioner No. 2 till the date

of filing of this petition. The petitioner No. 2 was under the reasonable expectation of getting a job pursuant to the said offer of appointment but the respondent No. 2 has acted on the contrary. Thus, the petitioner No. 2 claims for adequate damages in case of failure to appoint her in terms of the offer of appointment. Hence this petition.

2. The respondents admitted the issuance of the offer of appointment to the petitioner No. 2 but contested the case contending, inter alia, that the petitioner No. 2, on scrutiny of her testimonials, was found to be ineligible for appointment to the post of Lower Division Clerk. Her age was found to be above the upper age limit prescribed in the Government policy for appointment as LDC. Her date of birth is 02.01.1955 and she was 38 years 8 months 10 days on the date of death of her brother. Her matter was even referred to the Government for relaxation of age but it was turned down. As per employment policy of the Government, the respondent No. 2, thus, sanctioned a sum of Rs. 50,000/- in favour of the petitioner No. 1 in lieu of Government employment. Thus, the petition is not maintainable.

3. Heard Mr. D.K. Biswas, learned Counsel appearing for the petitioners and Mr. A. Ghosh, learned Advocate appearing for the State-respondents.

4. That, before I enter into the merit of the case, it may be useful to look into the aim and object of the introduction of policy for appointment on compassionate ground. It has been well settled that appointments in public services are to be made strictly on the basis of open invitation of application and merit as envisaged under Article 16(1) of the Constitution. The Government, from time to time, made policies for appointment of the dependants of the employees, who died-in-harness, leaving behind the dependants in penury and without any means of livelihood as an exception to Article 16(1) of the Constitution. Such policies are made to ensure that the family of a Government servant, who dies in harness, does not suffer from extreme financial hardships/difficulties and the family gets the benefit of having at least one salaried person. In other words, such Government policies are made to save the dependents from the hand of starvation after the death of sole earning member. In *General Manager (D and PB) and Others Vs. Kunti Tiwary and Another*, the Hon'ble Apex Court observed that the criteria of penury has to be applied and only in cases where the condition of family is without any means of livelihood and living hand to mouth, the compassionate appointment was required to be granted. It is also well settled that such compassionate appointment shall be made at the earliest taking into consideration the financial condition of the dependents, the grant of compassionate appointment after many years, except in special circumstances, is always against the aim and object of the policy.

5. That, in the above backdrops, the Government of Tripura also made policy for giving appointment to one of the dependents of the employee, who died-in-harness and the policy was revised from time to time depending upon the decisions of the Government. In the case at hand, the revised employment policy

of the Government of Tripura and instructions thereof dated 08.06.1988 is applicable though the said policy was further revised in 1995. As per Clause (IV) of the said revised employment policy, 1988, the upper age limit for appointment has been fixed as 35 years for the General Candidate and relaxable for 5 years for ST & SC candidates. Clause (VI) of the said policy provides that in case when a Government servant dies-in-harness, one of the dependents of Government servant shall be given employment. The appointment should be made straight way by the department concerned to a son/daughter or a relative, who looks after the family according to qualification prescribed in the recruitment rules against the vacancies.

6. That, Mr. D.K. Biswas, learned Counsel appearing for the petitioners has contended that since the offer of appointment dated 21.12.1994 has been accepted by the petitioner No. 2, the respondent No. 2 is under obligation to appoint the petitioner No. 2 on compassionate ground by relaxing her age. According to the learned Counsel, non-issuance of appointment order of the petitioner No. 2 is discriminatory, mala fide, unfair and against the reasonable expectation of getting her Government job under the Government policy. With the efflux of time, the petitioner No. 2 is aged about 52 years by now, but she is still willing to work if the appointment is given with effect from 1994, by foregoing the salary and other entitlements of the past years. and in case of failure to appoint her as offered by the respondent No. 2, she is entitled to adequate compensation for breach of contract, the learned Counsel strenuously urged.

7. That, Mr. A. Ghosh, learned Counsel for the respondents, per contra, submits that the petitioner No. 2, on scrutiny of her testimonials, was found to be ineligible for appointment under the Government policy as her age was exceeded 35 years on the date of death of her brother. The proposal of the respondent No. 2 for relaxation of her age was also not accepted by the Government, and hence, as per policy of the Government a sum of Rs. 50,000/- was sanctioned in favour of the petitioner No. 1 in lieu of the Government job. Hence, the petition deserves dismissal.

8. That, from the arguments canvassed by both sides it is unambiguously clear that an offer of appointment in favour of the petitioner No. 2 was issued and the same was accepted but no letter of appointment has been issued. However, relevant Government policy reveals that in case of failure to appoint a dependent of the Government employee, who die-in-harness, financial assistance as determined by the Government shall be extended to the dependants of the deceased Government employee. In the present case, the petitioners admitted that vide Memorandum dated 06.06.1998 the respondent No. 2 sent an offer of Rs. 50,000/- as financial assistance to the petitioner No. 1. From the said Memorandum, Annexure-A/1 to the writ petition, it can be irresistibly inferred that the said amount was offered instead of Government employment in die-in-harness case. There is no assertion in the petition as to whether the said

financial assistance has been actually given to the petitioner No. 1 or not though the petitioners' learned Counsel submitted that the said financial assistance was not accepted by the petitioner No. 1. It is implicit from the said Memorandum dated 06.06.1998 that the offer of appointment issued in favour of the petitioner No. 2 has been turned down by the department even in the absence of separate official order cancelling the said offer of appointment.

9. The policy of the Government is first to appoint a dependent of the deceased employee to a suitable post if he or she is found to be eligible in terms of the policy otherwise to extend financial assistance in lieu of Government employment, as the case may be. Thus, it is clear that the dependent of the deceased Government employee who applied for such employment shall be eligible for; appointment in terms of the Government policy. Hence, it is imperative on the part of the appointing authority to verify whether the person sought for appointment under the said policy is eligible in terms of the policy or not.

10. That, the question now arises for de-termination in this case is whether the petitioner No. 2 is eligible for appointment to the post of L.D.C. in terms of the relevant Government policy or in the alternative, whether the petitioner No. 2 has got legally enforceable right for appointment to the post of L.D.C. pursuant to the offer of appointment issued in her favour which was accepted by her. Admittedly, the date of birth of the petitioner No. 2 is 02.01.1955 and as per relevant Government policy for appointment under the die-in-harness scheme, the upper age limit for such appointment is 35 years on the date of death of the deceased Government employee. The upper age limit for entering into service under the scheme was subsequently increased to 37 years for the General category candidates vide Memorandum dated 31st May, 1995 issued by the Government of Tripura. The age of the petitioner No. 2 is found to be above the prescribed upper age limit and the proposal for relaxation of her age was turned down by the Government and hence, the petitioner No. 2 cannot be said to be eligible for appointment in terms of the Government policy. The learned Counsel appearing for the petitioners, however, contended that nothing has been mentioned about the upper age limit for entering into service in the offer of appointment issued to the petitioner No. 2 and as such the question of over-age for employment is not applicable in the present case.

11. The above contention is hardly acceptable in my considered view, for the reason that the petitioner No. 2 sought for appointment under the die-in-harness scheme on the death of her brother and accordingly, the appointment shall be governed by the terms and conditions contained in the relevant Government policy. Further, I feel it not necessary to mention all the terms and conditions of the scheme in the offer of appointment as the same was not issued after verifying the eligibility criteria for entering into public service and on merit. It is the authority concerned to verify whether the person claiming for appointment under such scheme is eligible or not for appointment in terms and conditions of

the Government policy after receiving the certificates and other documents. from the side of the offeree.

12. On such verification, if the offeree is found to be eligible for appointment in terms of the Government policy, the offeree has every right to obtain letter of appointment.

13. That, I am further of the view that in the present case the petitioner No. 2 has got no enforceable legal right for appointment merely on the basis of the offer of appointment issued in her favour unless the non-issuance of the appointment letter is found to be arbitrary, mala fide, discriminatory and unjust. The compassionate appointment, of course, is an exception to Article 16(1) of the Constitution but such appointment shall be in terms of the Government policy. As observed hereinabove that the petitioner is not eligible for appointment in terms of the Government policy, the non-issuance of the letter of appointment in favour of the petitioner No. 2 pursuant to the offer of appointment cannot be held to be unjust, illegal and unfair. It is not obligatory on the part of the respondents, in such circumstances, to issue the letter of appointment pursuant to the earlier offer of appointment.

14. That, it is, however, highly expected that the concerned Department shall dispose of such matter at the earliest not to frustrate the policy of the Government. But in the instant case no order cancelling the offer of appointment has been issued even after filing the present writ petition. With a great shock and dissatisfaction, I find no explanation from the side of the authority concerned why such matter which requires urgent and immediate attention, has been kept pending for such a long period. Simultaneously, it is also not discernible from the pleading about the financial condition of the petitioners whereas the financial condition is the sole criteria for grant of appointment in die-in-harness case. This case was filed in 1998 and amended petition was filed in 1999 and thereafter, it was next listed on 24.01.2008. In between 1999 to 24.01.2008, the case was neither put up before the Bench nor pursued from the side of the petitioners for early disposal. It is an admitted fact that the offer of appointment was made in 1994 and a sum of Rs. 50,000/- was sanctioned in 1998 as financial assistance in favour of the petitioner No. 1 instead of Government employment. During the said period, the petitioners were kept in dark and till the date of hearing the learned Addl. Govt. Advocate could not produce any effective decision of the respondents in this respect.

15. That, having regard to the above observations and discussions, I am of the view that the petitioner No. 2 has no legally enforceable right for appointment and the respondents are not obligatory to issue the letter of appointment pursuant to the offer of appointment made in favour of the petitioner No. 2, in the facts and circumstances of the present case. Besides, after the lapse of so many years it would not be appropriate and just to issue a writ of mandamus to consider for appointment of the petitioner No. 2 who may be above 50 years old by now.

16. That, the learned Counsel for the petitioners has submitted that the said sum of Rs. 50,000/- sanctioned in favour of the petitioner No. 1 was not accepted by the petitioner No. 1. However, I am of the opinion that it would meet the ends of justice in directing the respondents to pay the said amount, if not already paid to any of the dependants of the deceased Government employee, together with such additional amount which the authority may determine just and reasonable by way of compensation for causing delay in disposal of the matter, to the petitioner No. 2 within a period of 2 (two) months from the date of receipt of the copy of this order. Accordingly, I do. Resultantly; this case is disposed of with the above directions. No order as to costs.