

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No. 1120 of 2016

Smt. Namita Datta (Dey),
wife of late Nirmal kumar Dey,
resident of village- Netaji Palli, P.O. Belonia,
P.S. Belonia, District- South Tripura

... *Petitioner*

- **Versus** -

1. **The State of Tripura,**
represented by the Secretary/Commissioner,
Public Works Department (R&B), Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District- West Tripura
2. **The Chief Engineer,**
Public Works Department (R&B), Government of Tripura,
P.O. & P.S. Agartala, District- West Tripura
3. **The Additional Chief Engineer,**
DWS, Planning Circle , Government of Tripura, Gurkhabasti,
P.O. Agartala, P.S. New Capital Complex, Dist. West Tripura
4. **The Engineering Officer,**
Public Works Department (Drinking Water and Sanitation),
Government of Tripura, Office of the Chief Engineer,
PWD (R&B), P.O. Agartala, P.S. West Agartala,
District- West Tripura

... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. DC Roy, Advocate
For respondents : Mr. Samarjit Bhattacharji, Adv.
Date of hearing & delivery
of Judgment and Order : **31.01.2017**
Whether fit for reporting : NO

JUDGEMENT AND ORDER (ORAL)

Heard Mr. DC Roy, learned counsel appearing for the petitioner as well as Mr. Samarjit Bhattacharji, learned counsel appearing for the respondents.

2. By means of this writ petition, the petitioner has questioned the action of the respondents by denying him a suitable job commensurate to her qualification under the die-in-

harness scheme for death of her husband namely Nirmal kumar Dey who died on 19.08.2009 while serving as Lower Division Clerk. He was appointed in the said capacity by the office order dated 25.10.2008 (Annexure P-1 to the writ petition) on regularizing his long casual employment in the same department. According to the petitioner, she had submitted an application revealing the death of her husband within seven days of his death i.e. on 26.08.2009 to the respondent no.3 and simultaneously praying for compassionate appointment under the die-in-harness scheme. Based on the said application dated 26.08.2009 (Annexure P-4 to the writ petition) the respondent did not take any positive action and as consequence of which the petitioner was persuaded to file two representations on 18.09.2009 and 07.11.2009. Even those representations did not yield in any outcome. Finally, on 14.06.2013 the petitioner persuaded the respondent no.3 for her appointment under the die-in-harness scheme. The petitioner has however admitted that in response to the letter dated 14.08.2013 (Annexure P-5 to the writ petition) the respondent no.4 had sent her a letter on 16.08.2013 (Annexure P-6 to the writ petition) asking her to give clarification why she had made delay in applying for the job under the die-in-harness scheme. Without any delay, the petitioner made her reply on 21.08.2013 (Annexure P-7 to the writ petition). In that reply dated 21.08.2013, the petitioner gave references of all the earlier applications and the communications she made to the respondents. The petitioner

has also stated in the said reply that the Sub Divisional Magistrate, Belonia had delayed the issuance of survival certificate and that was the reason why she could not submit the said certificate but the initial application for the job which was made on 26.08.2009 was within the time limit prescribed by the scheme. The petitioner in the paragraph 12 of the writ petition has categorically stated that in her family there is no earning member and the petitioner only can be appointed under the die-in-harness scheme to a post commensurate with her qualification.

3. By filing the reply, the respondents represented by Mr. Samarjit Bhattacharji, learned counsel has submitted that the purported application that was filed on 26.08.2009 cannot be treated as the application as that was not filed in the format as prescribed. Moreover, the supporting documents were also not available with the said application. Having considered that aspect of the matter, on 13.10.2009 the Superintending Engineer, DWS asked the petitioner to transmit all the necessary documents. The respondents have admitted that the said letter could not be delivered to the petitioner. Subsequently on 13.10.2009 they wrote another letter to the petitioner requesting her to submit copies of survival certificate and succession certificate in respect of the deceased employee. They have taken a stand that mere intimation of death cannot *ipso facto* be treated as the application for die-in-harness scheme. Moreover, according to the respondents, the delay as occurred has been

admitted by the petitioner and as such since the petitioner and her family has survived for last seven years, this court may direct the respondent for making an appointment under the die-in-harness scheme in favour of the petitioner.

4. Mr. DC Roy, learned counsel appearing for the petitioner has refuted by saying that the very attitude of the respondents is against the object of the scheme else the respondents would not have taken the stand which has been reflected in the paragraph 11 of their reply that no such prayer or application for employment under the die-in-harness scheme was made in time as well as in the prescribed format by the petitioner. Mr. Roy, learned counsel has thus submitted that the prescribed limitation cannot be applied in this case on such ground.

5. Having appreciated the submissions made by the learned counsel for the parties as well as scrutinized the documents placed with the writ petition along and the counter affidavit, this court is of the view that the respondents themselves have taken a policy in 2011 that it is the duty of the department concerned to assist the family of the deceased employee to make the proper application for having appointment under the die-in-harness scheme or for having any benefit emanating therefrom. It has not been denied by the respondents that on 26.08.2009 by filing an application the petitioner sought for appointment under the die-in-harness scheme. When a particular scheme is framed for welfare, technicality is alien to its interpretation. The interpretation of the provisions of the scheme has to be made in

order to achieve the object for achieving the welfare of the persons who are to recover its case. The respondents have no doubt invoked an approach which this court is constrained to observe that should not have been the approach of the respondents in view of their own policy as adopted in 2011.

6. Having regard to that aspects of the matter, since it appears that now the petitioner has submitted all the required documents for consideration of her appointment under the die-in-harness scheme, the respondents are directed to consider the appointment of the petitioner within a period of 3(three) months from the day when the petitioner shall submit a copy of this order to the respondent No.2. It is made clear that if it is found that there is any defect in the application, the respondents shall ask the petitioner to remove those defects. In such circumstances the time frame as prescribed shall start from the date when those defects shall be removed by the petitioner.

7. With this observation and direction, this writ petition stands allowed to the extent as indicated above. There shall be no order as to costs.

8. A copy of this order be furnished to Mr. Samarjit Bhattacharji, learned counsel appearing for the respondents.

JUDGE

Saikat