

**HIGH COURT OF TRIPURA
AGARTALA**

W.P. (C) No.546/2015

Sri Ajoy Das,
S/O. – Late Basanta Das,
Resident of Ishanpur, P.O. – Panchabati,
P.S. – Sidhai, Mohanpur,
West Tripura, PIN – 799212.

----- Petitioner(s).

Versus

1. The State of Tripura
To be represented by the Commissioner-cum-Secretary,
Department of School Education, Government of Tripura,
Civil Secretariat Complex, P.O. – Kunjaban,
Agartala, West Tripura, PIN - 799006.
2. The Secretary,
GA (P & T) Department,
Government of Tripura, Civil Secretariat Complex,
P.O. – Kunjaban, Agartala, West Tripura, PIN - 799006.
3. The Additional Secretary to the Government of Tripura,
Department of School Education,
Civil Secretariat Complex, P.O. – Kunjaban,
Agartala, West Tripura, PIN - 799006.
4. The Director of School Education,
Government of Tripura, Akhaura Road,
Agartala, P.O. – Agartala, P.S. – West Agartala,
District – West Tripura, PIN - 799001.
5. The Sub-Divisional Magistrate,
Mohanpur Sub-Division,
P.O. & P.S. – Mohanpur, West Tripura.
PIN – 799212.

----- Respondent(s).

For Petitioner(s)	:	Mr. P. Roy Barman, Advocate. Mr. K. Nath, Advocate. Mr. Samarjit Bhattacharjee, Advocate. Ms. A. Debbarma, Advocate.
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For Respondent(s)	:	Mr. N. Choudhury, GA.
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HON'BLE THE CHIEF JUSTICE MR. AJAY RASTOGI

Order

31/08/2018.

The petitioner is a dependant family member of the deceased
Rekha Rani Das, who was mother of the petitioner died in harness on

09.05.2012. Since the petitioner's father died prior thereto, the survival certificate of the family, which was issued after the death on 10.07.2012 indicate the name of three children, the petitioner's elder brother Bijoy Das, his elder sister Ruma Das and the petitioner as reveals from Annexure-P/8. After the death of her mother, the petitioner as her dependant family member of the deceased submitted his application for seeking compassionate appointment under the die-in-harness scheme but that came to be rejected by the respondents under its order dt.23.11.2014 (Annexure-P/12) only on the ground that his elder brother Bijoy Das, the elder son of the deceased is a Government employee.

2. The counsel for the petitioner has placed a compendium before me of die-in-harness scheme which were published by the Government of Tripura from time to time, but to shorten the litigation, the definition of family was redefined by the respondents for entitlement of the benefits of the die-in-harness scheme vide its Memorandum dt. 24.09.2011 in supersession of all earlier instructions. This Court considers it appropriate to quote the definition of the term of family defined under memorandum dt. 24.09.2011 (Annexure-P/5) is as under:

"Government of Tripura
General Administration (Personnel & Training)
Department
No. F. 1(1)-GA(P& T)/92(L) Dated, Agartala, the
24th September, 2011.

Memorandum

Subject: Definition of "family" –Entitlement of benefits under the Die-in-harness and Extremists/Ethnic violence Schemes.

The undersigned is directed to state that it has been observed that the existing definition of "family" for the purpose of extending benefits under both die-in-harness and extremist/ethnic violence schemes has been depriving some families who lost their near and dear ones in harness, because of non-availabilities of eligible family member, even if

dependant widow daughter is there in the family of the deceased Govt. employee/person.

2. Now, the definition of the term "family" for the purpose of providing employment/financial assistance both in die-in-harness and extremist/ethnic violence schemes has been reviewed by the Government and it is proposed to amend the definition of "family" as in the following manner:-

- (i) his wife or her husband, as the case may be
- (ii) legitimate children excluding a married son or married daughter or daughter-in-law, if he/she lives separately from other members of the family
- (iii) step Children,
- (iv) adopted children,
- (v) dependent daughter-in-law
- (vi) dependent parents,
- (vii) dependent unmarried brother(s) and unmarried sister(s) and
- (viii) dependent widow daughter(s).

3. The above amended definition of "family" for the purpose of providing employment/financial assistance in die-inharness and extremist/ethnic violence schemes will have immediate effect.

4. The above modified definition of "family" is issued in supersession of all earlier instructions issued on the definition of the term "family" from this Department in connection with Die-inharness scheme and Extremists/Ethnic violence Schemes.

(R. P. Datta)
Deputy Secretary to the
Government of Tripura."

3. After communication of the Memorandum dt. 24.09.2011 and in supersession of the earlier schemes published by the Govt. of Tripura from time to time under the die-in-harness scheme came to be notified on 26.12.2015. This Court considers it appropriate to quote the definition of term "family" defined under Para-2 of the die-in-harness scheme introduced by the notification dt. 26.12.2015 is as under:

"2. Dependent family members shall cover the following:

- (i) Wife or husband, as the case may be
- (ii) Legitimate children

- (iii) Legitimate step children
- (iv) Adopted Children
- (v) Dependent daughter-in-law
- (vi) Dependent parents
- (vii) Dependent unmarried brother(s)
- (viii) Dependent unmarried sister(s) and
- (ix) Dependent widowed daughter (s).

Provided that a married son or daughter-in-law or widowed daughter, if he/she lives/used to live separately from other members of the family on or before the death of the Government employee Page - 5 of 7 shall not be considered as family member and at the same time he/she shall not be treated as earning member of the family of the Government employee for the purpose of providing benefits under the Scheme only."

4. The definition of "family" under the circular dt. 24.09.2011 or under the revised scheme published in supersession of all earlier schemes dt. 26.12.2015 is almost the same. Under the definition of "family" it includes the legitimate children, step children, adopted children dependent daughter-in-law, dependent parents including unmarried brothers/sisters and dependent widow daughters excluding a married son or a married daughter or daughter-in-law provided lives separately from other members of the family.

5. The solitary reason to deny the case of the petitioner from being considered for employment under the die-in-harness scheme was that his brother is a Government employee. On the last date of hearing, when the matter came before the court on 21.06.2018, this court directed the petitioner's counsel to file affidavit disclosing the status of his brother, who is in Government employment.

6. In compliance of order of the court, additional affidavit has been filed by the petitioner indicating the fact that his elder brother Bijoy Das is 10 years elder to him and was appointed as Under Graduate Teacher on 23.06.1997 and got married on 16.03.2001 and living separately since 2003.

7. In the given circumstances, the facts which the petitioner disclosed in affidavit about the brother of the petitioner, at least, a presumption can be drawn that his brother much before the death of the Govt. employee created a separate unit and was not a dependant member of the deceased family as on the date of her death on 09.05.2012.

8. The object of the scheme has been clearly envisages that it is a beneficial scheme although there is no right to seek compassionate appointment but still it has to be liberally construed in providing employment to one of the dependent member of the deceased family as they have lost their breadwinner, who served the institution for sufficient longtime and rendered his/her valuable services and the government take a social responsibility in protecting and securing the interest of the left out dependent members of the family of the deceased government employee who died while in service leaving dependants in harness.

9. In the given facts and circumstances, what has been stated in an affidavit filed by the petitioner, at least, his elder brother Bijoy Das could not be considered to be a dependant member of the deceased, who died in harness on 09.05.2012 and the only reason assigned was the employment of his elder brother which in the given

facts and circumstances taking note of the definition of the family as being reflected from the circular issued by the respondent dt.14.09.2011 and also under scheme dt.26.12.2015, at least his elder brother merely because of his employment could not be considered to be a dependant member of the family of the deceased, which may disentitle the claim of the petitioner as a dependent member for consideration of compassionate appointment under die-in-harness scheme.

10. Consequently, the writ petition succeeds and is allowed. The communication dt.23.11.2014 is hereby quashed and set aside. The respondents are directed to consider case of the petitioner for compassionate appointment under die-in-harness scheme for Group-C or Group-D according to his qualification and overall suitability. The respondents shall ensure compliance within 2(two) months. No costs.

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CHIEF JUSTICE

Certificate:- All corrections made in the judgment/order have been incorporated in the judgment/order

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