

Tripura High Court

Shri Subhojit Shil vs Shri Brijesh Pandey on 18 May, 2022

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HIGH COURT OF TRIPURA  
AGARTALA  
Cont. Cas(C) 31/2022

Shri Subhojit Shil, S/O Shri Sudhangshu Shil, resident of  
Ranirbazar, PO and PS: Ranirbazar Dist: West Tripura,  
PIN-799035

-----Petitioner(s)

Versus

1.Shri Brijesh Pandey, I.A.S. Finance Secretary and  
Education Secretary to the Govt. of Tripura, Civil  
Secretariat, PO and PS: NCC, West Tripura, Pin 799010

2.Smt Chandni Chandran, I.A.S, Director of Elementary  
Education, Tripura, PO: Agartala, District: West Tripura,  
Pin -799001

-----Respondent(s)

BEFORE

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

For the Petitioner(s)	:	Mr. S. Datta, Adv Mr. P. K. Pal, Adv Mr. H. Debbarma, Adv Mr. S. Baidya, Adv
For the Respondent(s)	:	Mr. D.Bhattacharjee, GA. Mr. S.Saha, Adv.
Date of Hearing & Delivery of Judgment	:	18.05.2022
Whether fit for reporting	:	Yes/No

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Judgment & Order (Oral)  
(S.G.Chattopadhyay,J)

[1] By means of this contempt petition filed under Section 12 of the Contempt of Courts Act, 1971, the petitioner has alleged non compliance of the order dated 13.12.2021 rendered by this Division Bench in Writ Appeal No.291 of 2021 [The State of Tripura Vs. Subhojit Shil].

[2] We have heard Mr.P.K.Pal, learned advocate appearing for the petitioner and Mr.D.Bhattacharjee, learned Government Advocate, appearing along with Mr.S.Saha, advocate for the respondent contemnors.

[3] The factual context of the case is as under:

By filing WP(C) No.572 of 2019, petitioner Subhojit Shil challenged the communication dated 25.09.2018 under which the officer on special duty for Director of Elementary Education, Government of Tripura conveyed to him that his request for providing employment under the Die in Harness scheme could

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not be granted as he was not eligible for employment under the said scheme. He was informed that instead of employment under the scheme he would be eligible for one time financial assistance of Rs.1,00,000/- (Rupees One Lakh) for which he could apply. The

background facts are that petitioner is a son of one Smt. Gita Debnath who died in harness on 24.11.2017 while she was working as an assistant teacher in the department of education, Government of Tripura. She left behind the petitioner who is her elder son, her husband and another son. When she died, petitioner was aged 16 years 10 months and 22 days as per his birth certificate. The father of the petitioner did not have a steady job who was working as a contractor in some private agency. Therefore, after the death of his mother petitioner was in urgent need of employment to maintain the family consisting of his unemployed father and younger brother. He was also eligible to be appointed to a class-III or class-IV post in terms of his

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educational qualification. Therefore, he applied for a job on compassionate ground. On 30.01.2018, he submitted required documents along with his application. Respondents, however, turned down his application by the impugned communication dated 25.09.2018. Aggrieved petitioner, therefore, approached this court by filing WP (C) 572 of 2019.

[4] Counsel of the petitioner argued before the

learned Single Judge that main ground for rejection of his petition was that petitioner was under age on the date of the death of his mother. Petitioner's counsel contended before the learned Single Judge that the Die- in-Harness scheme prescribed that the minimum age of the dependent of the Government servant shall not be less than 17 years for being eligible for employment on compassionate ground under the scheme. But in the present case, age of the petitioner fell short barely by 01 month and few days. Counsel contended that in view of the object of the Die-in-

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Harness scheme, the respondent could have relaxed the provision for valid reasons. Counsel of the petitioner also contended that the respondent never disputed the fact that petitioner was in urgent need of an employment after the death of his mother who was the sole bread winner of the family and who died in harness leaving the entire family in deep financial crisis. Counsel contended that in similar situation, this court issued direction to the state to give employment on compassionate ground.

[5] To nourish his contention, counsel relied on

the decision of the learned Single Judge of this court passed on 13.03.2018 in WP(C) No.150 of 2017 in the case of Diptanu Majumder Vs. State of Tripura and Others in which this court made the following observations:

"5. The object of the Die-in-harness scheme is to give succour to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole breadwinner. The intention of the rule making authority appears to give relief to the family of the Government servant

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from financial destitution and to assist it to get over the financial hardship.

6. Keeping in view of the above principles and the object of the Die-in-harness scheme into consideration, indisputably the petitioner has crossed the age of 18 years and the earlier impediment which was taken a note of the respondents in their impugned communication dt:19.12.2015 may not now hold good in the changed circumstances. At the same time, it is not the case of the respondents that the petitioner is not holding the minimum qualification for the post of Group-C even at the relevant point of time.

7. After having heard the counsel of the parties, in my considered view the impugned letter dt:19.12.2015 (Annexure-4) may not now hold good and deserves to be set aside and accordingly it is set aside. The respondents are directed to consider candidature of the petitioner for compassionate appointment under the Die-in-harness rules/scheme to any suitable post according to his qualification and necessary orders be passed within two months."

[6] Counsel of the petitioner therefore, argued that in view of the object of the scheme, the state

government should have relaxed the age of petitioner Subhojit Shil in exercise of the power provided under paragraph 15 of the scheme to provide him employment under Die-in-Harness scheme. Counsel therefore, urged before the learned single judge for directing the state respondent to provide employment

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to the petitioner on compassionate ground under the said scheme.

[7] The state counsel argued before the learned Single Judge that since the writ petitioner did not fulfill the criteria with regard to minimum age, he was not eligible for employment under Die in Harness scheme.

[8] It was contended by the state counsel that the Die-in-Harness scheme unambiguously prescribed that minimum age of the applicant must have to be 18 years on the date of the death of the government servant which is relaxable by 01(one) year. But in the present case petitioner did not even attain 17 years of age on the date of the death of his mother. Therefore, his application was rejected.

[9] Learned Single Judge, reproduced the Die-in-Harness scheme promulgated under Notification

dated 26.12.2015 in the Judgment which records the object of the Scheme as under:

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"OBJECT : The object of the Scheme is to extend benefits either by an appointment in Government service on compassionate ground or admissible Financial Assistance to an eligible dependant member of family of a deceased Government servant in the event of death while in service provided that there is no earning member in the family of the deceased. The intention is to relieve the family of the Government Servant from financial destitution and to help it get over the financial hardship. Employment would be provided to one of the eligible dependents of the deceased Government servant."".

[10] The Die-in-Harness scheme of the state government has made detailed provision with regard to the age limit, power of the government to relax the age limit, responsibilities of the government to dispose of the applications received under the scheme within a time frame etc. The relevant paragraphs of the said scheme read as under:

"6. Age limit - Minimum age is 18(eighteen) years and upper age limit is 40(forty) years. Upper age limit is relaxable by 5(five) years in case of SC/ST/PH candidates. 7. Relaxations on age limit -

(a) Minimum Age is relaxable by 1(one) year i.e. age of an applicant on the date of death of deceased Govt. servant shall not be less than 17 years to make him/her eligible to get the benefit of Government job under Die in harness scheme. It may be noted that

actual employment shall be provided on attaining the age of 18 years.

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(b) Upper age limit for the applicant(s) under Die-inharness Scheme is relaxable by 1(one) year i.e. for candidates of un-reserved category, age should not be more than 41(forty one) years and candidates of SC/ST/PH category should not be more than 46 (forty six) years to get the benefit of Govt. job under Die-in-harness Scheme.

(c) No age limit is prescribed for having the benefits of financial assistance under Die-in-harness Scheme.

(d) There will be no other relaxation in any provisions of Recruitment Rules of any particular post for the purpose of providing compassionate employment under the Scheme.

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#### 9. Limitations for making claim and dispose of cases under Die-in-harness Scheme -

Claims for employment/financial assistance under Die-in-harness Scheme should be submitted before the appropriate authority within 1(one) year from the date of death of the Government servant as per provisions contained under Para1(II) above. The eligibility in all respect shall be determined as on the date of death of the concerned employee.

#### 10. Responsibilities of the Department concerned:-

(i) The respective Department shall have to dispose of the cases of Die-in-harness where the application is complete in all respects within 6(six) months from the date of receipt of the claim/application submitted by the applicant.

(ii) Sometimes the members of the family of deceased may not be aware of the provisions of the Die-in-harness scheme and the formalities to be observed in submitting the application (i.e. time limit of submission of application, consequence of submission of false documents etc.) Therefore,



the Cont.Case (C)31 / 2022 Department, when they get information about the death of any of their employees, while in service shall immediately communicate in written to the respective family so that application for employment/financial assistance under Die-in- harness scheme from the family of the deceased should be submitted before the appropriate authority in prescribed manner within the stipulated period.

(iii) The concerned Department shall also intimate in written to the applicant(s) of die-inharness cases that they should not submit the false/fake documents for having the benefits of die-in- harness scheme.

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15. Powers to Relax: Where the State Government is of the opinion that if it is felt necessary or expedient to do so, it may, by order, for reasons to be recorded in writing relax any of the provisions of this scheme."

[11] On appreciation of the submissions of the counsel representing the parties and the materials placed before the court, the learned Single Judge held that that petitioner's age was only about 6 weeks short of the minimum age. Learned Single Judge, therefore, viewed that it was the fit case where the government should be asked to exercise the power of relaxation provided under the scheme. Having said so, the learned Single Judge set aside the impugned communication dated 25.09.2018 and directed the Cont.Case (C)31 / 2022 state respondents to consider petitioner's application for compassionate appointment on merit and communicate the decision to the petitioner within a period of 3 months from the date of the judgment. It would be appropriate to reproduce the observations of the learned Single Judge in paragraph 9 to 15 of the judgment which read as under:

"[9] It is undoubtedly true as has been held in a series of decisions of Supreme Court that the appointment on compassionate basis is not meant to be a parallel source of recruitment and such appointment can be made only subject to the provisions made in the Scheme upon finding that on account of sudden death of a Government servant the family is left in financial destitution. However, once the Government has framed the Scheme for such compassionate appointment, the interpretation of the terms of Scheme must be in consonance with the object for which the Scheme is framed namely, as in the present case, to extend the benefits by an appointment in Government service on compassionate ground or admissible financial assistance where there are no earning members in the family of the deceased in order to relieve the family of the Government servant from financial destitution and to help the family get over the financial hardships.

[10] As noted, Paragraph 6 of the Scheme prescribes a minimum age limit of 18 years and upper age limit of 40 years (relaxable by 5(five) years in case of SC/ST/PH candidates) for appointment under the Scheme. As per paragraph 9 of the Scheme, the application for appointment should be submitted within one year from the date of death of the Cont.Case (C)31 / 2022 Government

servant. Combining the provisions of minimum age limit of 18 years, as contained in Paragraph 6 and the time for making application of one year from the death of the Government servant for compassionate appointment contained in Paragraph 9, Paragraph 7(a) of the Scheme provides that the minimum age would be relaxable by 1(one) year i.e. the age of the applicant on the date of death of a Government servant should not be less than 17 years to make him or her eligible to get the benefit under the Scheme. However, actual employment would be provided upon him or her attaining the age of 18 years.

[11] Combined reading of Paragraphs 6, 7(a) and 9 of the said scheme would show that an aspirant for appointment on compassionate grounds under the Scheme, must make such an application within one year from the date of death of Government servant. On the date of appointment he or she must be of a minimum age of 18 years. Consequently, an application can be made by a person who is not below the age of 17 years on the date of death of the Government servant. However, actual appointment would be granted only upon completion of minimum age of 18 years.

[12] In my opinion, this requirement is not inviolable or inflexible. In a given case for sound reasons, minor deviation is not ruled out even as per the provisions of the Scheme. We have noticed the provisions of Paragraph 10 of the Scheme which require the concerned department to educate the members of the family about their right and entitlement to seek companionate appointment or financial assistance. This proceeds on the basis that when a Government servant suddenly dies leaving behind distressed family members, they may not be fully aware about their entitlement under the Scheme.

[13] Paragraph 15 of the Scheme which pertains to the power of the Government to relax the provisions of the Scheme, therefore, must be seen in light of these provisions. Paragraph 15 provides that if the Cont.Case (C)31 / 2022 State Government is of the opinion that it is necessary or expedient for the reasons to be recorded in writing, it may relax any of the provisions of the Scheme. This residuary power of relaxation is thus retained by the Government. For valid reasons to be recorded in writing, any provision of the Scheme can be relaxed. Learned Government Advocate is not correct in pointing out that in view of Clause (d) of Paragraph 7 there can be no further relaxation. What Clause (d) of Paragraph 7 refers to is the relaxation in any of the provisions of the recruitment rules of a particular post and does not refer to relaxation in terms of the Scheme. If Clause

(d) of Paragraph 7 is read in the manner the Government Advocate wants us to read, it would be directly in conflict with Paragraph 15 which vests the power in the Government to relax any of the provisions of the Scheme. Thus the Government undoubtedly has power to accept an application for compassionate appointment beyond the period of 1(one) year prescribed in Paragraph 9 of the Scheme. This of course can be done only on exceptional circumstances justifying exercise of such powers and as provided in Paragraph 15 by recording reasons for exercising the same.

[14] In the present case, we have noticed that the mother of the petitioner expired leaving behind the petitioner as her elder son who has just short of 17 years of age, a cut off provided in the Scheme for eligibility for making application for appointment on compassionate grounds. There was no

other older sibling. The petitioner had a younger brother. The petitioner's father was over aged and therefore, not eligible for appointment in any case. Considering such factors and in particular, considering the fact that the petitioner's age was only about 6 weeks short of the minimum age required for making application, in my opinion, it is the fit case where the Government should be asked to exercise the power of relaxation.

[15] Under the circumstances, impugned communication dated 25th September, 2018 is set aside. The petitioner's application for compassionate Cont.Case (C)31 / 2022 appointment shall be considered on merits with respect to which I have expressed no opinion. Decision on merits, whether to offer appointment on compassionate grounds on the basis of relevant considerations or not, shall be taken and communicated to the petitioner within a period of 3(three) months from today.

Petition is disposed of accordingly.

Pending application(s), if any also stands disposed of."

[12] The state respondent challenged the judgment of the learned Single Judge by filing Writ Appeal which was heard and disposed of by this Div.

Bench by an order dated 13.12.2021 in WA No.291 of 2021 which reads as under:

"Heard Mr. D. Bhattacharya, learned Govt. Advocate for the appellant.

The present writ appeal has come to be filed seeking to challenge the judgment dated 10.12.2019 passed in W.P(C) No.572 of 2019, inter alia, issuing the following directions:

"[15] Under the circumstances, impugned communication dated 25th September, 2018 is set aside. The petitioner's application for compassionate appointment shall be considered on merits with respect to which I have expressed no opinion. Decision on merits, whether to offer appointment on compassionate grounds on the basis of relevant considerations or not, shall be taken and communicated to the petitioner within a period of 3(three) months from today.

Petition is disposed of accordingly.

Cont.Case (C)31 / 2022 Pending application(s), if any also stands disposed of."

It is contended on behalf of the State that the date of birth of the petitioner was 02.01.2001 and he made an application for compassionate appointment on the death of his mother on 30th January, 2018. Learned Government Advocate submits that the minimum age that is required for making necessary application under the compassionate appointment scheme is 18 years and the State in accordance with its policy has the power of relaxation up to a period of one year. In other words,

what he submits is that had the applicant turned 17 by the time of his application, the State had the power of relaxation up to the period of one year.

On a bare reading of aforesaid dates as noted hereinabove, it appears that the applicant writ petitioner was 28 days short of his 17th birth day on the date of his application. In our considered view, this particular contention has lost all relevance in view of the direction issued by this Court by the judgment and order dated 10.12.2019. It is important to take note of the fact that by the time directions were issued by this Court, the applicant was already more than 18 years of age. The directions by this Court were to reconsider the petitioner's application for compassionate appointment on merit within a period of three months. In other words, by the day the directions were issued by the Hon'ble Single Judge, the applicant (writ petitioner) was already 18 plus.

Therefore, in view of the aforesaid finding arrived at thus, we are of the considered view that the present writ appeal is a pure and simple waste of the court's time and there was no justification whatsoever for filing the present appeal. We reiterate this view since the directions issued by this Court were in the year 2019 and the reconsideration directed by the said order effectively meant that the applicant was already a major more than 18 years of age. Consequently, no issue or even applying the principle of relaxation was necessitated by the date the directions were issued by this Court.

Cont.Case (C)31 / 2022 This Court takes a view in utter seriousness that this appeal serves no real purpose nor does it sub-serve the policy of the State in question. Undoubtedly, a litigant has a right to file an appeal but at the same time when the appellant is the State, it is expected that application of mind, issues of law that arise in the appeal as well as consequences of the same has to be considered. We may not forget that when Justice is done to a citizen, state suffers no loss, rather it is a victory of the State. While dismissing the present appeal, we direct compliance of the direction of the Hon'ble Single Judge within a period of four weeks from today positively.

In terms of the above, the appeal stands dismissed and the case is disposed of.

Pending application(s), if any, shall also stand disposed of."

[13] Before filing WA No. 291 of 2021, appellant Subhojit Shil entered into second round of litigation by filing another Writ Petition being WP(C) No.724 of 2021 for the same relief for compassionate appointment under Die-in-Harness scheme. In the course of hearing of said Writ Petition(C) No.724 of 2021 before the learned Single Judge, the state preferred the Writ Appeal No.291 of 2021 which was decided by this court by judgment and order dated 13.12.2021 as aforesaid and in view of the decision in the said Writ Appeal, the learned Single Judge by Cont.Case (C)31 / 2022 judgment and order dated 22.12.2021 decided the 2nd Writ Petition of the petitioner i.e WP(C) No.724 of 2021 viewing as under:

"5. In the emerged circumstances, this Court is of the view that the judgment of the learned Single Judge as delivered in W.A.No.291 of 2021 has clinched the controversy and as such, no fresh decision is called for in this writ petition. The respondents shall

act in terms of the order dated 13.12.2021 as noted above.

Having observed thus, this writ petition stands disposed of.

..... "

[14] In response to the notice issued from this court in the instant contempt matter, the respondent contemnners appeared. Learned GA submitted before the court that since the appointees under Die-in-

Harness scheme were to mandatorily undergo an induction level training for 10 days conducted by SIPARD from 1st January and 1st July of every calendar year, appointment orders under Die in Harness scheme are issued on those 2 dates. Pursuant to the direction of this court by order dated 10.05.2022, the Cont.Case (C)31 / 2022 state counsel has produced the relevant notification dated 03.09.2019 which reads as under:

"GOVERNMENT OF TRIPURA GENERAL ADMINISTRATION (PERSONNEL & TRAINING)  
DEPARTMENT NO.F.1(1)-GA(P&T)/18 Dated , Agartala the 3rd September,2019.

NOTIFICATION Subject: Scheme for Compassionate Appointment /Benefits for Government Employees of Tripura -Schedule for Appointment under the Scheme.

Attention is invited to the Notification vide No.F1(1)- GA(P&T)/18 dated 2nd March, 2019 on the subject cited above vide which the guidelines of the " Scheme for compassionate Appointment / Benefits for Government employees of Tripura" has been published to provide benefits to the next of kin of the deceased government servants who dies while in service/missing/ permanent invalidity of the government servant while on duty.

3. The matter has been examined and it has been decided that henceforth, all appointments under the 'Scheme' shall be made twice in a year i.e 1st January and 1st July of the Year. If the dates itself falls on government holiday then the appointment will be on the following working day.

4. On being appointed under this Scheme, all such appointee shall undergo induction level training for 10(ten) days to be conducted by the SIPARD from 1st January and 1st July of the year except Constable (recruited through "Scheme for Compassionate Appointment / Benefits for Government employees of Tripura" as per memorandum vide NoF.1(14)-GA(P&T)/18 dated 15th November, 2018). PHQ may arrange training for Constable as per their training system.

5. All Departments / Heads of Departments are therefore, requested to go by the above guidelines / direction of the Government in letter and spirit.

6. This will take immediate effect.

Cont.Case (C)31 / 2022 By order of the Governor, (Animesh Das) Deputy Secretary to the Government of Tripura"

[emphasis supplied] [15] The state counsel has argued that since offer cum posting order has been issued in favour of the petitioner asking him to report to SIPARD to undergo the induction level training with effect from 1st July, 2022, in terms of the said notification, a contempt petition against the respondents does not survive. Learned state counsel further contends that after the Div. Bench judgment was delivered on 13.12.2021 in WA No.291 of 2021, the respondents had immediately initiated process for providing appointment to the petitioner in Die-in-Harness scheme. Having referred to communication dated 02.02.2022 of the Directorate of Elementary Education at Annexure-4, counsel contends that petitioner was informed by this letter that the matter was taken up with the finance department for creation of 01 post Cont.Case (C)31 / 2022 for providing employment to him in terms of the order of the High Court.

[16] Thereafter, offer of appointment cum posting order dated 05.05.2022 [Annexure-R/2] was issued in favour of the petitioner for his appointment to the post of LDC [Group-C] under UR category on fixed pay basis and the petitioner was informed that if the offer of appointment was accepted by him, he could join in the office of the Director, SIPARD, A.D.Nagar, Agartala on 1st July,2022 for 10 days' induction training to be conducted by SIPARD and after completion of the training he would be instructed to join the office.

[17] Learned GA contends that there is no willful disobedience on the part of the respondent contemnors in complying with the order of this court because immediately after the order was passed, process to provide employment to the petitioner under Die-in-Harness scheme was initiated by the state Cont.Case (C)31 / 2022 respondent for which post was created and offer of appointment cum posting order was also issued to the petitioner.

[18] Mr.P.K.Pal, learned counsel appearing for the petitioner submits that this court by order dated 13.12.2021 in Writ Appeal No.291 of 2021 categorically directed the respondents [contemnors herein] for compliance of the direction of the learned Single Judge, issued in WP(C)No.572 of 2019 within 4 weeks from 13.12.2021 which expired on 10.01.2022.

Counsel contends that the state respondent [contemnors herein] neither applied for extension of time for complying with the order nor they complied with the said order within time. Counsel therefore, submits that this is a clear case of contempt for which appropriate action should be taken against the contemnors.

[19] We have considered the submissions of the counsel representing the parties. We have also Cont.Case (C)31 / 2022 perused the entire record and the surrounding facts and circumstances of the case. It is true that the state respondents [contemnors herein] did not comply with the order dated 13.12.2021 passed in WA No.291 of 2021 literally within the time frame. But we are not oblivious of the fact that there are certain essential formalities which have to be maintained for issuing appointment to a person in government service. The record would demonstrate that under communication dated 02.02.2022 issued from the Directorate of Elementary Education, the

petitioner was informed that matter was taken up with the Finance Department for creation of 01 post to provide him employment under the Die-in-Harness scheme. Therefore, the Revenue Department, Government of Tripura by Memo dated 02.05.2022 [Annexure-R/1] conveyed the approval of the Finance Department, Government of Tripura for appointment of the petitioner in the post of LDC [Group-C] under UR category on fixed pay basis Cont.Case (C)31 / 2022 and by Memo dated 05.05.2022[Annexure-R/2], Offer of Appointment cum posting order was issued to the petitioner asking him to join the office of the Director, SIPARD, at A.D.Nagar on 1st July,2022 to undergo the mandatory induction level training programme of 10 days conducted by SIPARD. He was informed that on completion of such training he would be instructed to join the office. Pursuant to the direction of this court, the Government Advocate also brought to our notice the Notification dated 03.09.2019 issued from the GA(P&T),Department which provides that all appointees recruited on compassionate ground shall undergo mandatory induction level training for 10 days w.e.f. 1st January and 1st July. Learned GA therefore, contended that in view of the said Memo dated 03.09.2019 appointment of the petitioner is given effect on 01.07.2022.

[20] Even though in our view, the said memorandum dated 03.09.2019 does not create any Cont.Case (C)31 / 2022 embargo in providing compassionate appointment from any other date in a year, in to totality of the given facts and circumstances of the case, we do not find any willful and intentional disobedience of the order dated 13.12.2021 passed by this court in WA No.291 of 2021. It is a settled proposition of law that if in the given facts and circumstances of the case the court is of the view that disobedience brought to the notice of the court is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemnor. In this regard the Apex Court in the case of NIAZ MOHAMMAD AND OTHERS Versus STATE OF HARYANA AND OTHERS reported in (1994) 6 SCC 332 has held as under:

"9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "willful disobedience to any judgment, decree, direction, order, writ, or other process of a court...". Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for Cont.Case (C)31 / 2022 initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional.

The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner."

[21] In view of the given facts and circumstances of the case, and the law laid down by Cont.Case (C)31 / 2022 the Apex Court in the judgment cited to supra, we are of the view that there is no willful and intentional disobedience on the part of the respondent contemnors in complying with the direction of this court in the judgment aforesaid. However, we make it clear that if the petitioner has by this time accepted the offer of appointment dated 05.05.2022, letter of appointment in clear terms shall be issued in his favour w.e.f. 01.07.2022 and he shall be entitled to pay and allowances w.e.f. 01.07.2022 and as indicated in his Offer of Appointment, the petitioner shall undergo induction level training in SIPARD for the period mentioned therein.

[22] In terms of the above, the contempt petition stands disposed of.

(S.G.CHATTOPADHYAY),J (INDRAJIT MAHANTY),CJ Saikat Sarma, PS-II Cont.Case (C)31 / 2022