
(2017) 12 MAN CK 0004
In the Manipur High Court
Case No : 1034 of 2016

Karunkumar Brahmachari

APPELLANT

Vs

The State of Manipur & Ors.

RESPONDENT

Date of Decision : 05-12-2017

Acts Referred:

[Constitution of India](#), [Article 16](#) -
Dissolution of a District or a Regional Council

Citation : (2017) 12 MAN CK 0004

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Th. Roson, K. Jagat

Judgement

1. Heard Shri Th. Roson, the learned counsel appearing for the petitioners and Shri K. Jagat, the learned Government Advocate appearing for the respondents.
2. The common order dated 09-11-2016 issued by the Director of Education (S), Government of Manipur is under challenge in these writ petitions and since the aforesaid writ petitions have arisen out of a similar set of facts, the same are being disposed of by this common judgment and order. W.P. (C) No. 1034 of 2016:
3. According to the petitioner, he is educationally well-qualified and eligible for appointment to any Grade-III/ Grade-IV post under the scheme of Die-in-harness formulated by the Government of Manipur. On 17-08-2003 his father, Late Shri B. Ibomcha Sharma who was working as the Asstt. Head Master at Leirenjao Girls High School on regular basis under the Department of Education (S), Government of Manipur, expired while in service and in consequence thereof, the Commissioner (Education/S), Government of Manipur issued an order dated 22-09-2003 thereby terminating his father's service w.e.f. 17-08-2003. On 01-02-2007 his mother submitted an application along with the relevant documents to the competent authority for consideration of his appointment to any suitable post under the Die-in-harness Scheme. As a follow up and in

connection with the consideration for his appointment, on 12-03-2007 the Additional Director of Education (V), Government of Manipur requested the Manager, District Industries Centre, Imphal-East requesting him to inform as to whether the petitioner was given any facility under the Prime Minister Rozgar Yozna or any other scheme meant for the un-employed youth. After about nine years from the date of application, the petitioner, in response to the notification dated 08-06-2016, submitted a fresh application dated 14-06-2016 enclosing therewith copies of the earlier application and the relevant documents for taking appropriate steps as regards the consideration for his appointment under the Die-in-harness Scheme. W.P. (C) No. 1035 of 2016:

4. According to the petitioner, she is educationally well-qualified and eligible for appointment to any Grade-III/ Grade-IV post under the relevant Die-in-harness Scheme formulated by the Government of Manipur. Her father, Late Shri R.K. Bijoychandra Singh who was serving as a Lecturer (Physics) at T.G. Higher Secondary School on regular basis, expired on 28-05-2004 and in consequence thereof, the Deputy Secretary (Edn./S), Government of Manipur issued an order dated 10-08-2004 thereby terminating her father's service w.e.f. 28-05-2004. Accordingly, the petitioner submitted an application along with the relevant documents to the competent authority for consideration of her appointment to any suitable post under the Die-in-harness Scheme. On 06-02-2011 after a verification being conducted by the Sub-Deputy Collector, Imphal West, a report was submitted to the Sub-Divisional Officer, Lamphel, Imphal-West for taking further necessary action. W.P. (C) No. 1036 of 2016:.

5. According to the petitioner, he is educationally well-qualified and eligible for appointment to any Grade-III/ Grade-IV post under the relevant Die-in-harness Scheme formulated by the Government of Manipur. His father, Late Shri Ch. Mani Singh who was serving as a Chawkidar at Kongpal Mayai Leikai Primary School on regular basis under the Department of Education (S), Government of Manipur, expired on 22-09-2004 and in consequence thereof, the Director of Education (S), Government of Manipur issued an order dated 25-09-2004 thereby terminating his father's service w.e.f. 22-09-2004. In the meantime, the petitioner had submitted an application dated 24-09-2004 along with the relevant documents to the competent authority for consideration of his appointment to any suitable post under the Die-in-harness Scheme. On 23-11-2009 the Addl. Director of Education (S/V), Government of Manipur requested the Sub-Divisional Officer, Imphal-East to furnish certain documents i.e., Income of the family, Non-Employment Certificate, Land Valuation Certificate, etc. in respect of the petitioner and the same were duly submitted by the SDO, Imphal East vide its letter dated 13-01-2010. Thereafter, on 02-05-2016 the Additional Director of Education (V), Government of Manipur requested the General Manager, District Industries Centre, Imphal East to inform whether the petitioner was given any facility under the Prime Minister Rozgar Yozna and any other scheme extended to the un-employed youths of the State for taking necessary action. On 17-09-2016 the Addl. Director of Education (S/V)

addressed a letter to the A.O, the Directorate of Education enclosing therewith the Performa "B" form duly filled in along with required documents for appointment of the petitioner to any suitable post. W.P. (C) No. 113 of 2017:

6. According to the petitioner, he is educationally well-qualified and eligible for appointment to any Grade-III/ Grade-IV post under the relevant Die-in-harness Scheme formulated by the Government of Manipur. His father, Late Shri Ch. Ramananda Singh who was serving as the Asstt. Science Graduate Teacher at Madhumati Jr. High School, Irengbam on regular basis under the Department of Education (S), Government of Manipur, expired on 18-07-2003 and in consequence thereof, the Director of Education (S), Government of Manipur issued an order dated 29-07-2003 thereby terminating his father's service w.e.f. 18-07-2003. Thereafter, the petitioner's mother submitted an application dated 21-08-2003 along with the relevant documents to the competent authority for consideration of his appointment to any suitable post under the Die-in-harness Scheme. However, with the restoration of the said scheme in December 2006, the humble petitioner again submitted a fresh application on 23-03-2007 to the Director of Education (S), Government of Manipur for consideration of his appointment to any suitable post under the Die-in-harness Scheme. On 23-11-2009 the Addl. Director of Education (S/V), Government of Manipur requested the Deputy Commissioner, Bishnupur to furnish certain documents i.e., Income of the family, Non-Employment Certificate, Land Valuation Certificate, List of family members, etc. in respect of the petitioner and the same were duly furnished by the Additional Deputy Commissioner, Bishnupur as per the report submitted by the Sub-Divisional Officer, Nambol for taking necessary action. On 08-06-2016 the Director of Education (S), Government of Manipur issued a Notification informing that all Die-in-harness applicants listed at Annexure enclosed therewith, are requested to submit copies of their documents and in response thereto, the petitioner submitted the required documents to the Director of Education (S), Government of Manipur.

7. While the petitioners were eagerly waiting for their appointment under the scheme of Die-in-harness but to their utter shock and surprise, the Director of Education (S), Government of Manipur issued an order dated 09-11-2016 whereby 306 (three hundred and six) applications submitted by various persons including that of the petitioners, were declared to have been rejected on the grounds mentioned against their respective names. Being aggrieved by the said order dated 09-11-2016, these writ petitions have been filed on the inter-alia grounds that the said order is bad in law, since the petitioners are eligible under the order dated 16-12-2006 and moreover, as per clause (iv) of the OM dated 06-06-2007, the Head of the Department was required to submit a complete proposal for appointment under the scheme or to reject the application within a year from the date of such application which it failed to do so and therefore, the said order dated 09-11-2016 deserves to be quashed and set aside by this court. In order to contest the aforesaid writ petitions, the affidavits-in-opposition on behalf of the respondent Nos. 1 and 3 have been filed in the said writ petitions

and the stand of the State Government as indicated therein, is that the petitioners are not eligible for consideration under the O.M. dated 06-06-2007 which has not been challenged by them.

8. The question that arises for consideration by this court is as to whether, in the facts and circumstances, the petitioners are eligible for appointment under the Die-in-harness scheme or not and in other words, the subject matter in issue relates to the interpretation of the provisions of the order dated 16-12-2006 and OM dated 06-06-2007 issued by the Department of Personnel, Government of Manipur. It is not in dispute that some time ago, a scheme known as the Die-in-harness scheme was formulated by the State Government with a view to mitigate the hardship suffered by the bereaved family on account of the sudden demise of the Government servant or in other words, to extend a helping hand on compassionate grounds and in supersession of all previous orders/ instructions/ guidelines/ office memoranda issued earlier, the Under Secretary (DP), Government of Manipur issued an O.M. dated 01-12-1995 laying down the guidelines/ instructions to be governed in all Die-in-harness cases followed by the O.M. dated 13-01-1999 enlarging the scope of the existing scheme of compassionate appointment and to streamline the implementation thereof. Thereafter, an O.M. dated 04-10-2001 was issued by the Commissioner (DP), Government of Manipur revising the scheme of Die-in-harness in view of the observations made by the Hon"ble Supreme Court and the various High Courts in the country keeping in mind the financial health of the State. But the said scheme was abolished vide order dated 15-06-2002 and in continuation thereof, an O.M. dated 29-10-2002 was issued thereby directing that no application for appointment under the Die-in-harness scheme should be received. However, after about four years from the date of abolition thereof, the said scheme for appointment under Die-in-harness was restored vide an order dated 16-12-2006 issued by the Under Secretary (DP), Government of Manipur subject to the conditions mentioned therein, a copy which is reproduced herein below:-
"GOVERNMENT OF MANIPUR

DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS

(PERSONNEL DIVISION)

ORDER BY THE GOVERNOR: MANIPUR

Imphal, the 16th December, 2006

No. 20/15/2002-DIH/DP: The Governor of Manipur is pleased to order the restoration of the Die-in-harness Scheme which was abolished vide order No. 20/1/85-DP dated 15/06/2002 subject to the following conditions: -

1. To restrict the entry into Government Service through this Scheme to only 5% of the direct recruitment vacancies of Grade-III & IV posts occurring in a recruitment year in the department concerned with immediate effect.
2. However, in case of Grade-III post, the appointment under the die-in-harness

scheme will be considered only at the lowest level of the Grade-III posts of that department.

3. The families of the Government servants who died in harness during the period from 15/06/2002 up to the date of restoration of the Die-in-harness Scheme will also be covered under the scheme with immediate effect.

By orders & in the name of Governor

(K.C. Laishram)

Under Secretary (DP),

Government of Manipur

Copy to:

1. Secretary to Governor, Raj Bhavan, Manipur.
2. Secretary to Chief Minister, Manipur.
3. P.P.S. to all Ministers, Manipur.
4. Chief Secretary, Govt. of Manipur.
5. Addl. Chief Secretary, Govt. of Manipur.
6. All Principal Secretaries, Govt. of Manipur.
7. Chief Electoral Officer, Manipur.
8. All Commissioners/Secretaries, Govt. of Manipur.
9. Accountant General, Manipur.
10. All Deputy Commissioners, Manipur.
11. All Heads of Departments, Manipur.
12. Guard File."

For the purpose of early disposal of the cases, an O.M. dated 06-06-2007 came to be issued in the form of clarification which is reproduced hereinbelow -

"GOVERNMENT OF MANIPUR

DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS

(PERSONNEL DIVISION)

OFFICE MEMORANDUM

Imphal, the 6th June, 2007

Subject: Appointments under the Die-In-harness Scheme.

No.20/15/2002-DIH/DP: Consequent upon the restoration of the Die-In-harness Scheme vide Government Order of even number dated 16/12/2006 the following clarification is issued to address the issues relevant to early disposal of the claims:-

- i. The Die-In-harness scheme was abolished vide orders dated 15.6.2002. The OM of even No. dated 29.10.2002 clearly states that no application for appointment under the Die-In-harness scheme should be received. Therefore, all applications submitted in between 15.6.2002 and 16.12.2006 shall be treated as invalid applications.
- ii. Applications whose applications have been treated invalid as above should submit fresh applications to the concerned Department within 2(two) months from the date of issue of this OM.
- iii. The seniority of the applicants shall be prepared based on the date of expiry of the deceased government servant in respect of the above group of applicant. In respect of deaths, which occurred after 16.12.2006, the seniority shall be based on the date of receipt of applications.
- iv. The Head of Department concerned after considering the applications received should either submit the completed proposal to the Government for appointment under the Die-In-harness scheme or reject the application within one year from the date of receipt of the application.
- v. The applicants should possess the essential qualification and should not be underage or overage as prescribed under the Recruitment Rules for the proposed post at the time when proposal in its complete form is submitted to the Government.
- vi. Concurrence of Department of Personnel is to be invariably obtained for appointment under Die-In-harness Scheme.
- vii. The cases of applications received in between 4.10.2001 and 15.6.2002 shall continue to be governed by the OM dated 4.10.2001 i.e. appointment under the Die-In-harness Scheme shall be restricted to only 5% of the vacancies in Grade-IV.
- viii. The relaxation provided for by the Government of India, Department of Personnel & Training vide its O.M. No. 14014/3/2005-Estt.(D) dated 09-10-2006 regarding calculation of 5% of the vacancies in respect of small departments is adopted.
- ix. The provision to transfer the case of applicant from one department to another through the Deptt. of Personnel when no vacancy exists or is likely to occur in the next 6 months will continue to be in force.

Further, to facilitate and expedite disposal of cases referred to the Dept. of Personnel the following guidelines/instructions are reiterated.

i. The files referred to Dept. of Personnel for concurrence should clearly indicate the vacancies available and the vacancies that have already been accounted for (under the 5% criteria every appointment under the Scheme will mean deduction of 20 (twenty) vacancies from the total vacancies.)

ii. The noting in the files referred to Dept. of Personnel for concurrence should clearly indicate the name of the post and place a copy of the relevant Recruitment Rules.

iii. The applicant should give an undertaking in the form of an affidavit that he/she would look after the surviving members of the family who were earlier dependent on the deceased employee even after his/her marital status is changed subsequently. The undertaking should also state that the Government will have the authority to dismiss/terminate him/her from the service on the grounds of failure to do so.

(K.C. Laishram)

Under Secretary (DP),

Government of Manipur

Copy to:

1. Secretary to Governor, Manipur Raj Bhavan, Manipur.
2. Secretary to Chief Minister, Manipur.
3. PPS to all Ministers, Manipur.
4. Chief Secretary, Government of Manipur.
5. Addl. Chief Secretary, Government of Manipur.
6. All Prin. Secretaries/ Commissioners/ Secretaries, Government of Manipur.
7. Secretary (Law), Government of Manipur.
8. Accountant General, Manipur, Imphal.
9. All Heads of Department, Manipur.
10. All Treasury Officers/Sub-Treasury Officers, Manipur.
11. Orders Book/ Guard File."

9. On perusal of the order dated 16-12-2006, it is absolutely clear that the Die-in-harness Scheme which was abolished on 15-06-2002, has been restored to its earlier position subject to three conditions mentioned therein. The clause 3 provides that the families of the Government servant who died in harness during the period from 15-06-2002 upto the date of restoration of the Die-in-harness Scheme will also be covered under the scheme with immediate effect. This

provision is plain, simple and requires no interpretation at all. In order to dispose of various claims at an early date, the said OM dated 06-06-2007 was issued with certain clarifications, of which clause (i), (ii) and (iii) are relevant for the purpose of deciding the issue involved herein. The clause (i) provides that in view of the order dated 15-06-2002 abolishing the Die-in-harness Scheme and the OM dated 29-10-2002 which states that no application should be received, all applications submitted in between 15-06-2002 and 16-12-2006 shall be treated as invalid applications. However, the clause (ii) has provided that the applicants whose applications have been treated invalid, should submit fresh applications to the concerned department within two months from the date of issue of the said OM. After the fresh applications being received under clause (i), their seniority shall be based on the date of expiry of the deceased Government servant under the clause (iii). The conjoint reading of the order dated 16-12-2006 and the OM dated 06-06-2007 makes it very clear that the Die-in-harness Scheme has been restored to its earlier position, resulting in the continuation of the same, with the only difference that in respect of the applicants whose applications were submitted during the period of abolition, an opportunity was given to them to submit their applications within two months from the date of the OM.

10. There is one aspect which has not been dealt with by the said OM dated 06-06-2007. It may be noted that after the Die-in-harness Scheme having been abolished on 15-06-2002, an OM dated 29-10-2002 was issued with the direction that no application should be received meaning thereby that no application can be submitted by any person. But it appears that the applications were received by the concerned departments as is evident from the OM dated 06-06-2007, as a result of which the persons who wish to apply for appointment under the Die-in-harness Scheme, have been categorised into two - one, those who have submitted applications during the period of abolition of the scheme despite the OM dated 29-10-2002 being issued by the State Government and two, those who have not submitted applications thereby obeying the instructions contained in the OM dated 29-10-2002. The OM dated 06-06-2007 deals with the first category of persons only, being completely silent about the second category of persons, although the policy decision as contained in the order dated 16-12-2006 states that it would apply to the families of the Government servants who died in harness during the period of abolition of the scheme. In fact, the order dated 16-12-2006 does not make any difference between the said two categories of persons. The benefit intended to be granted under the order dated 16-12-2006, has been taken away by the OM dated 06-06-2007 in the form clarification in respect of the second category of persons and in other words, those who obeyed the instructions contained in the OM dated 29-10-2002, have been denied the opportunity of submitting their applications after the scheme being restored by the State Government. This distinction created by the OM dated 06-06-2007 is unfortunate and unreasonable for the reason that the State Government being an institution, ought to act fairly and reasonably. It will not make any difference to the State Government whether a person or any other person is appointed

under the scheme and the only thing to be ensured by the State Government, is that no one who is ineligible, shall be appointed and that equal opportunity as guaranteed under Article 16 of the Constitution of India shall be given to all. Moreover, the Die-in-harness Scheme is a part of the welfare programme, in a democratic country, formulated in the interest of the general public and therefore, the State Government shall not be too technical in its approach towards the procedure to be followed except on merit. It appears to be true that the validity and correctness of the OM dated 06-06-2007 has not been challenged by any of the petitioners and therefore, taking advantage of the OM dated 06-06-2007, the State Government has taken the stand that the applications submitted by the petitioners are received beyond the valid period. But the State Government has not given any reason as to how the applications of the petitioners can be said to have been received beyond the valid period, when no valid period is stipulated in the order dated 16-12-2006 for submitting application by a person whose father had died during the abolition of the Scheme. It may further be noted that the order dated 16-12-2006 has not been superseded by the OM dated 06-06-2007 which only clarifies it and while doing that, the State Government has committed a mistake of discrimination. It is well settled principles of law that the State Government cannot take advantage of its own mistake. It is unfortunate that the petitioners were being penalised when the State Government was unable to implement its own OM dated 29-10-2002. Had the OM dated 29-10-2002 been implemented by the State Government, there would have been no such problem, as seen in the present cases, which could have been avoided without creating any problem.

11. Coming to the facts of the present cases, it is seen that in respect of the petitioner in WP(C) No.1034 of 2016, the application dated 01-02-2007 was received on 05-02-2007 immediately after the Die-in-harness Scheme being restored vide order dated 16-12-2006. In terms of the order dated 09-11-2016, impugned herein, the application of the petitioner in WP(C) No.1035 of 2016 was received on 04-01-2007 while that of the petitioner in WP(C) No.1036 of 2016 being received on 06-01-2007 and the application of the petitioner in WP(C) No.113 of 2017 was received on 28-03-2007, although his mother had submitted the earlier application on 21-08-2003. It may be noted that in all these cases, the Government servants died during the abolition of the Die-in-harness Scheme but because of the OM dated 29-10-2002, the petitioners could not have submitted their applications. But they could submit their applications only after the said scheme being restored vide order dated 16-12-2006. It is only the OM dated 06-06-2007 which has created discrimination by allowing only those who submitted their applications in the teeth of the OM dated 29-10-2002 which prohibited the receipt of any application during the abolition of the scheme, to submit their fresh applications while denying the same to the petitioners. The persons who submitted their applications during the abolition of the scheme and the petitioners are similarly situated but on account of the OM dated 06-06-2007, the petitioners have been denied the benefit, for no fault of theirs,

of submitting their applications and in other words, they have been denied the equal opportunity as guaranteed under the provisions of Article 16 of the Constitution of India. In the facts and circumstances, this court is of the view that there is no reason as to why the petitioners be denied the equal opportunity of being considered for appointment under the Die-in-harness Scheme.

12. In view of the above and for the reasons stated hereinabove, all the writ petitions are allowed and consequently, the order dated 09-11-2016 is quashed in respect of the present petitioners with the following directions:- (a) The applications submitted by the petitioners shall be treated as valid;

(b) The cases of the petitioners shall be considered by the respondents, within a period of two months from the date of receipt of a copy of this judgment and order, in terms of the Die-in-harness Scheme as restored vide order dated 16-12-2006 subject to other conditions mentioned therein like educational qualification, seniority etc. and they shall be appointed, if they are found to have fulfilled the said conditions. There shall be no order as to costs.