

(2009) 01 GAU CK 0003
In the Gauhati High Court
Case No : Write Petitioner (C) No. 106 of 2007

Konjengbam Ibomcha Singh

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Manipur Services (Special Pension) Rules, 1982 — Rule 10, 4, 49, 9

Citation : (2009) 2 GLT 644

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : Kh. Tarunkumar, for the Appellant; S. Nepolean, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—The challenge in this writ petition is to the order of the Government of Manipur being No. 12 (HC)/7/2001-SE(S) PT, Imphal the 04.10.2006 cancelling the order of the Director of Education (S), dated 22.07.2002 and also order dated 22.05.2004 for adjustment of the appointment as Primary teacher for that the Petitioner cannot be appointed under the die-in-harness scheme when his siser in law Smt. K. Atem Devi, w/o Late K. Shamu Singh has been allowed to enjoy special pension and also that learned Counsel for the Petitioner has admitted in the writ appeal being W.A. No. 208 of 2002 filed by the State government that the Petitioner was not entitled to get appointment under the die-in-harness scheme in connection with the death of his elder brother namely, K. Shamu Singh inasmuch as wife of the deceased was getting special pension under Rule 4 of the Manipur Services (Special Pension) Rules, 1982.

2. Heard Mr. Kh. Tarunkumar, learned Counsel for the Petitioner as well as Mr. S. Nepolean, learned GA appearing for the Respondents.

3. FACTUAL BACKGROUND

The Petitioner is the younger brother of late K. Shamu Singh who was serving as constable in the Manipur Police Department being No. 867008 and killed by the extremists on 04.06.1994 while on duty. The Government of Manipur prepared schemes for appointment of a dependant of the government servant who died in harness on compassionate ground in the Grade-in and IV posts from time to time. The scheme which was in force at the relevant time i.e. as on 4.6.1994 was the scheme under office memorandum being No. 20/1/85-DP Imphal, 31.8.1992 under which appointment under the scheme will be applicable only to the wife/husband/real son/ real daughter/real brothers/ real sister of the government servant who died in harness leaving behind his/her family in the immediate need of assistance and when there is no earning member of the family. The relevant portion of the die-in-harness scheme under the said office memorandum dated 31.08.1992 is quoted hereunder :

Government of Manipur Department of Personnel and Administrative Reforms (Personnel Division) Office Memorandum Imphal, the 31st August, 1992

Subject: Appointment of Son/Daughter/ Real Brother/Real Sister/Wife/Husband of the Government servants who die-in-harness leaving behind his/her family indigent circumstances regarding.

No. 20/1/85-DP: In partial modification as all previous Orders issued in this regard, the undersigned is directed to say that in view of several instances of attempted misuse of the family in government service under die-in-harness scheme especially in respect of adoption and retirement on invalid pension, the question of modification of the existing guidelines instructions relating to the appointment under the scheme of die-in-harness has been under consideration of the government for sometime past. After due consideration and examination of the existing Guidelines/Instructions it has been decided to issue a revised (Guidelines/Instructions), besides being a consolidation of all the instructions issued by this Department from time to time contains modifications in respect of adoption and retirement on Medical ground(invalid pension) at para 2 and 7 of the revised instructions. Further a proforma is also appended as in Annexure "B" for concerned Heads of Department for ascertaining necessary information and processing the cases for die-in-harness appointments. The duly filled in proforma is to be signed only by the Heads of Departments.

2. The revised Guidelines/Instructions and Proforma will come into force with immediate effect and with the issue of the revised Guidelines/Instructions and Proforma the existing (present) guidelines/instructions will be taken as superseded. However, earlier cases which occurred before the issue of the O.M. will be processed and examined under the guidelines/ instructions which were in force at that time.

3.

Subject: Appointment of son/daughter/ real brother/real sister/wife/husband of Government servant who die-in-harness leaving behind his/her family in indigent

circumstances Guidelines/instructions regarding -

(1) The appointment under the die-in-harness scheme shall be applicable only to Class III and IV post which are not within the purview of the Manipur Public Service Commission. For technical post which requires technical qualifications, proposal may be considered only if the applicant possesses the required technical qualification prescribed under the recruitment rules of the post.

(2) The appointment under the Scheme will be applicable only to the wife/husband/real son/real daughter/real brother/real sister of the Government servant who die-in-harness leaving his/her family in immediate need of assistance and when there is no other earning member of the family:

(3) The Scheme shall be applicable only to the Government employees against substantive vacancies falling under direct recruitment quota available in the Department in which the deceased employees worked or retired under the valid pension as the case may be.

(4)

(5) In order to ascertain the eligibility of the applicant/nominee proposed for appointment under the scheme, the Department should enclosed attested copy of latest approved requirement rules for the post against which the applicant is proposed for appointment. The Department should also submit the attested/original certificate of the person concerned. Appointment under the scheme will not require the recommendation of the Department promotion committee.

(6) To ascertain the age of the applicant/nominee original/attested copy of Matriculation/HSLC etc. certificate as the case may be, should accompany the proposal.

(7) In exceptional cases when a department is satisfied that the condition of the family is indigent and is in great distress, the benefit of appointment under the scheme may be extended to one of the family members of a Government servant retired on medical grounds under Rule.....(Pension) Rules.....Regulations before attaining the age of 55 years.

(8) For appointment to the post of LDC the nominee will not be required to.....for the initial recruitment examination. However, it should possess the educational qualifications prescribed for the post of and he should qualify himself in typing speed within a year from the date of his appointment failing which his/her service will be liable to be terminated forthwith.

(9) An income certificate issued by the SDO/SDC should be furnished accepted subject to the satisfaction of the Head of Department (Appointing Authority).

(10) The Scheme will be applicable if no other member of the family is serving under the Government any capacity. Preference for appointment will be give to grade-IV, HI post in that order after deciding the vacancies in a year.

(11) Such appointment will be made by the appoint authority concerned after getting clearance from the Government of Manipur in the Department of Personnel Administrative Reforms (Personnel Division) by the Administrative Department concerned.

(12) Since the appointment under the Scheme is made only for giving immediate relief to the bereaved family the application compete in all respect should be submitted to the concerned Department within one year ... the date of expiry of the deceased Government servant.

Provided that the applicant has not crossed the maximum age limit prescribed under the R.R. at time when proposed in its complete form is submit the Government and the

Under the previous instructions in this.... a Government servant was required to be in service.....Maximum period of 5 years to be eligible under this ... This condition has been relaxed subject to the That the relaxation will not be applicable to those cases which have been referred to the Department of Personnel and rejected by its under the earlier conditions. Such cases would not be reconsidered/reopened.

(13)

(14)

.....

(15) The proposal for appointment under the die-in-harness scheme should be forwarded by the Department concerned to the Administrative Department along with prescribed Proforma "B" filed in along with all the required documents.

4. The Petitioner being the real brother of late K. Shamu Singh filed representation dated 25.6.1994 to the Superintendent of Police, Government of Manipur for appointing him to the post of ASI under the said die-in-harness scheme dated 31.08.1992. The Additional Secretary (H), Government of Manipur, under this letter dated 20.03.1998 requested the Deputy Secretary (DP), Government of Manipur for taking further necessary action for appointment of the Petitioner i.e. younger brother of late K. Shamu Singh i.e. constable No. 867008 as Primary Teacher in Education Department under the die-in-harness and the Deputy Secretary (DP), Government of Manipur under his letter dated 1.3.1999 requested the Secretary, Education (S), Government of Manipur to consider the Petitioner for appointment to any suitable post in the Education Department under the die-in-harness. Even after many correspondences between the Home Department and the Education Department, Government of Manipur for appointing the Petitioner to any suitable post in the Education Department, Government of Manipur, the Education Department did not consider the Petitioner for appointment to any suitable post. Aggrieved, the Petitioner approached this Court by filing WP(C) No. 68 of 2001 before this Court for giving necessary direction to the State Respondents to appointment Petitioner to any

suitable post. The said writ petition was disposed of by a common judgment and order dated 14.3.2001 passed in WP(C) No. 68 of 2001 and batch directing the State Respondents to afford appointment to those writ Petitioners in whose favour approval letters had been issued by the Government for appointment under the die-in-harness scheme commensurate with their educational qualification. Later on, pursuant to the said common judgment and order of this Court dated 14.3.2001 the Director, Education (S), Government of Manipur in pursuance of the approval of the Government under their letter No. 12(HC)/306/2001-SE(S) Pt dated 20.07.2002 issued order being No. 46/10/2002-ED (V) Imphal, 22nd July 2002 for appointing the Petitioner as Grade-IV under the die-in-harness scheme in the Eastern Ideal Girls' High School. The Petitioner, who is eligible for appointment as primary teacher, was later on adjusted by the Director of Education (S), Government of Manipur by issuing appointment order/adjustment order being No. 46/10/2002-ED(V) Imphal 22nd May 2004 to the post of Primary Teacher in Tulihal Primary School vice Shri T. Ibohal Singh.

5. The Governor of Manipur in exercise of power conferred by proviso to Article 309 of the Constitution of India makes the rule called "Manipur Services (Special Pension) Rules, 1982 vide notification dated 19.1.1983. Under Rule 4 of the said Special Pension Rules, 1982, in the event of death of a Government servant in connection with the affair of the State of Manipur caused by violence or wrongful act of a person or the person believed to be a member of extremist organization, the wife of that Government servant would draw special pension equivalent to the total emolument (including dearness allowance and compensatory allowance) last drawn by the Government servant. Rule 49 and 10 of the Special Pension Rules, are quoted hereunder:

4.(i) In the event of the death of a Government servant defined in Rule (2)(i) serving in connection with the affairs of the State of Manipur caused by violence, or wrongful acts of a person or persons believed to be members of an extremist organization, the Governor of Manipur, shall, subject to the provision of these rules, sanction a Special Pension equivalent to the "Total emoluments" (including Dearness allowance and Compensatory allowance) last drawn by the deceased Government servant to the persons entitled to draw his family pension under the Pension Rules governing the deceased Govt. servant. This pension shall continue till the date when the deceased Govt. servant would, if living, have attained the age of superannuation under his terms of service. In respect of persons who are killed while on extraordinary leave/half pay leave, the determination of total emoluments (including Dearness Allowance and all Compensatory allowances) will be made by the Government having regard to facts and circumstances of each case under Rule 9. Reliefs sanctioned by the Government to other Pensioners under Family Pension Rules shall not be admissible to the Pensions under these rules.

(ii) The report of the District Magistrate concerned to the effect that the death of the deceased Government servant was caused by a member of members known

or unknown, of an extremist Organisation shall be the conclusive proof in this behalf. This report shall be in Form MPS-I.

9. Where the Governor is satisfied that the operation of any of these rules causes undue hardship in any particular case or class of cases, he may, by order in the official gazette, dispense with or relax the application of that rule to such extent and subject to such conditions as he may consider necessary.

10. With the coming into force of these rules, the liberalized pensionary awards granted under the Home Department's O.M. No. 13(1)/27-78H(2) dated 17th February, 1981, shall be deemed to have been granted under these rules, and the said O.M. shall stand superseded.

6. As the Petitioner's sister-in-law was eligible to draw special pension under the said Special Pension Rules, 1982 she was allowed to enjoy the special pension. In nowhere of the Special Pension Rules, it is mentioned that the real brother of the Government servant who died in harness and eligible for appointment under the said die-in-harness scheme of the Government of Manipur dated 31.08.1992 would not be appointed on the compassionate ground in case wife of the deceased government employee has been allowed to enjoy special pension.

7. The State Respondents filed appeal i.e. W.A. No. 209 of 2002 against the said common judgment and order of the learned single Judge dated 14.3.2000 passed in WP(C) No. 68 of 2001 and batch before this Court; while pending the appeal, the Appellant (Respondent in WP(C) No. 68 of 2001) had appointed the Petitioner to the post of Primary Teacher under the said order of the Director, Education (S), Government of Manipur dated 22.07.2002 and 22.05.2004. When the said W.A. No. 209 of 2002 was taken up for hearing, learned Counsel for the Petitioner who had no idea about the subsequent development of appointing the Petitioner to the post of Primary Teacher under the said order of the Director, Education (S), Government of Manipur had made certain admissions to the case of the Appellant/Respondent in the writ petition i.e. WP(C) No. 68 of 2001 that the Petitioner was not entitled to get appointment under the die-in-harness scheme in connection with the death of his elder brother late K. Shamu Singh in as much as the wife of the deceased was getting special pension under Rule 4 of the Manipur Services (Special Pension) Rules, 1982, and, accordingly, writ appeal was allowed by setting aside the judgment and order of the learned single Judge dated 14.3.2001 passed in WP(C) No. 68 of 2001 vide judgment and order of the Division Bench dated 3.07.2006. Consequent to the judgment and order of the learned Division Bench dated 13.07.2006 passed in WA No. 209 of 2002, the Government of Manipur issued impugned order dated 4.10.2006 for cancelling appointment of the Petitioner.

8. The Petitioner, only after receiving the impugned order dated 4.10.2006 came to know that the Writ Appeal No. 209 of 2002 had been allowed due to wrong concession or admission on the question of law made before the division Bench by his Counsel, filed review petition No. 1 of 2004 before the Division Bench for

reviewing the judgment and order of the Division Bench dated 13.7.2006 passed in WA No. 209 of 2002 in as much as wrong concession or admission on the question of law made before the Court by his Counsel is not binding to him and also that there are errors apparent on the face of the record in the said judgment and order of the division bench in as much as there is no clause in the die-in-harness scheme under the said office memorandum dated 31.08.1992 that the dependant of the government employee, who is eligible for appointment under the die-in-harness under the said office memorandum dated 31.8.1992 cannot be appointed in case wife of that deceased government employee was getting special pension under Rule 4 of the Manipur Services (Special Pension) Rules, 1982. In support of this contention of the Petitioner, heavy reliance is placed on the decision of the Apex Court in *The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari*, wherein the Apex Court held that "if the learned Counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party." Para 12 and 13 of the SCC in *Central Council for Research in Ayurveda and Siddha's case* (supra) read as follows:

12. In the instant case, the selection was made by the Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter se merit and ability of the candidates and prepared the select list on that basis. The Respondent, though senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of: merit-cum-seniority" had been applied by the Departmental Promotion Committee. The Respondent has no grievance that there were any mala fides on the part of the departmental Promotion Committee. The only contention urged by the Respondent is that the Departmental Promotion Committee did not follow the principle of "seniority-cum-fit-ness". In the High Court, the Appellants herein failed to point out that the promotion is in respect of a "selection post" and the principle to be applied is "merit-cum-seniority". Had the Appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the Respondent. If the learned Counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party.

13. This Court in *Uptron India Limited Vs. Shammi Bhan and Another*, pointed out that a wrong concession on question of law made by Counsel is not binding on his client and such concession cannot constitute a just ground for a binding precedent.

9. To the contra, learned GA appearing for the Respondent in the review petition had contended that the review petition was not maintainable inasmuch as the judgment and order of the division bench sought to be reviewed had already been implemented. The learned GA had placed heavy reliance on the decision of the Apex Court made in *State of Nagaland and Another Vs. Toulvi Kibami and*

Another, The division Bench in consideration of the ratio laid down by the apex Court in State of Nagaland and Anr. (supra) had dismissed the review petition as the judgment and order of this Court (division bench) dated 13.7.2006 passed in WA No. 209 of 2002 had already been acted upon but with certain observation and direction that "However, in the interest of justice and having regards to all the relevant considerations, it will be open to the writ Petitioner to challenge the said order dated 4th October, 2006 afresh by filing a separate petition under Article 226 of the Constitution of India, if he is so advised. In case, such a petition is filed, the same shall be entertained and decided on merit. We leave all questions of law open to be decided in the case" vide judgment and order of the division bench dated 31.01.2008 passed in the review petition No. 1 of 2008, hence, this writ petition.

10. On plain perusal of the impugned order dated 4.10.2006 it is clear that the reasons for cancellation of the said appointment of the Petitioner under the die-in-harness are that; since Smt. K. Atem Devi, w/o Late K. Shamu Singh has enjoyed special pension, the Petitioner, real brother of late K. Shamu Singh cannot be appointed under the die-in-harness scheme and that the division bench had already made the finding in the said judgment and order dated 13.7.2008 passed in WA No. 209 of 2002 that "there is no dispute that the writ Petitioner was not entitled to get appointment under the die-in-harness scheme in connection with the death of his elder brother namely K. Shamu Singh inasmuch as the wife of the deceased was getting special pension under Rule 4 of the Manipur Services (Special Pension) Rules 1982." For easy reference the impugned order dated 4.10.2006 (Annexure A/10) is quoted hereunder:

Government of Manipur Secretariat: Education Department (School Section)
Orders by the Governor: Manipur, Imphal, the 4th October, 2006

No. 12 (HQ/7/2001-SE(S) Pt: Whereas Shri K. Shamu Singh elder brother of Shri K. Ibomcha Singh, was killed by suspected underground activists on 04.06.1994 while he was serving as police constable in Manipur Police.

Whereas Shri K. Ibomcha Singh obtained directive of the Hon"ble Gauhati High Court order on 14.3.2001 in WP(C) No. 68 of 2001 directing the Respondents to afford appointment (under die-in-harness scheme) to the Writ petition preferably within a period of 2(two) months from the date of receipt of this judgment and order.

Whereas Shri K. Ibomcha Singh also filed Contempt Case No. 318 of 2001 against noncompliance of the order of the Hon"ble Court mentioned above. In view of the Contempt case and also in compliance with the order of the Hon"ble Court, Shri K. Ibomcha Singh was appointed as Grade-IV vide Director of Education (S) order No. 46/10/2002-ED(V) dated 22.7.2002 along with other 4(four) incumbents subject to the outcome of the Writ Appeal if any.

Whereas the appointment of Shri K. Ibomcha Singh as Grade-IV was found adjusted against the Post of primary teacher vide D.E(S) Order No. 46/10/2002-

ED(V) dated 22.5.2004.

Whereas, Director General of police (HQs) under his letter No. E/45/12/(54)/94-PHQ(Adm) dated 6.6.2006 has submitted that Smt. K. Atem Devi, w/o late K. Shamu Singh has enjoyed special pension.

Whereas the State Government filed Writ Appeal No. 208 of 2002 before the Hon"ble Court and the Hon"ble Division Bench was pleased to order that -

there is no dispute that the Writ Petitioner was not entitled to get appointment under the die-in-harness scheme connection with the death of his elder brother namely K. Shamu Singh inasmuch as the wife of the deceased was getting special pension under Rule 4 of the Manipur Services (Special Pension) Rules 1982. It is also brought to our notice that as per provisions of para-1(3) of the Office Memorandum dated 13.1.1999 issued by the State Government if the family of a deceased Government servant gives option for or receives pension under the Manipur Services (Special Pension) Rules, 1982 no dependant/member in the said family will be entitled to compassionate appointment under the scheme.

Having regard to all the relevant considerations, we have no hesitation in holding that the impugned order directing the present Appellants to appoint the Writ Petitioner (Respondent) under the die-in-harness scheme is not sustainable in the eye of law.

Accordingly, the impugned order is set aside. This appeal is allowed as mentioned above.

In view of the above facts and circumstances and also after careful examination, the Government of Manipur is pleased to order that, the Director of Education (S) orders No. 46/10/ 2002-ED(V) dated 22.7.2002 and also the adjustment of the appointment vide order No. 46/ 10/2002-ED(V) dated 22.05.2004 in respect of Shri K. Ibomcha Singh is reviewed and the same are cancelled with immediate effect.

By orders and in the name of Governor

Sd/- (S. Budhichandra Singh) Commissioner, Education (S), Government of Manipur

11. The Respondents filed their affidavit-in-opposition in the present writ petition stating that the said die-in-harness scheme under office memorandum dated 31.08.1992 had been revised by a subsequent memorandum dated 13.1.1999, at para 1 (iii) of which it is provided that if the family of the deceased government servant gives option or receives pension under the Manipur Services (Special Pension) Rules 1982 no dependant/member of the said family would be entitled to compassionate appointment under the scheme and that enjoyment of special pension under the Manipur Services (Special Pension) Rules, 1982 shall be taken as employment when construing para 2 of the die-in-harness under the

said office memorandum dated 31.08.1992, para 2 of which reads thus; "appointment under the scheme will be applicable only to the wife/husband/real son/real daughter/real brother/real sister of the government servant who died in harness leaving behind his/her family in immediate need of assistance and when there is no earning member of the family and also the Respondents in their affidavit-in-opposition, further stated that "real sister/real brother" mentioned in para 2 of the said die-in-harness scheme dated 31.08.1992 would mean the "real brother/real sister of the government employee expired unmarried".

12. The said three main grounds taken in the counter affidavit for justifying or supporting the impugned order dated 4.10.2006 are neither mentioned in the impugned order itself nor in the said die-in-harness under the office memorandum dated 31.8.1992 nor in the Manipur Services (Special Pension) Rules, 1982.

13. Mr. Tarunkumar, learned Counsel for the Petitioner contends that validity or other-wise of the order is to be tested on the basis of the reasoning contained therein, not on the fresh reasons supplemented in the affidavit-in-opposition or otherwise. In support of his contention he relied on the decision of this Court (incidentally, this Court is the author): (1) Thanglet Vaiphei Vs. Union of India (UOI) and Others, as well as the decision of the Apex Court in (2) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, (3) Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another, (4) Union of India (UOI) and Another Vs. G.T.C. Industries Limited., Bombay,

Para 9,11 and 12 in Thanglet Vaiphei's case (supra) read as follows:

9. The learned Counsel appearing for the Petitioner submits that non-mentioning of reasons for invalidating the Petitioner out of service in the impugned movement order which will invalidate the impugned order itself cannot be supplemented by way of filing affidavit-in-opposition before the Court. In support of his contention, the learned Counsel has placed reliance on the decision of the Apex Court (CB) in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and decision of this Court (Division Bench) in Laishram Tomba Singh v. State of Manipur and Ors. reported in (1984) 2 GLR 225. The Apex Court in Mohinder Singh Gill (supra) held that validity of an order is to be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it come to Court on account of a challenge, get validated by additional grounds later brought out. Para-8 of the AIR in Mohinder Singh Gill (supra) reads as follows:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time

it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (atp.l8):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older. A Caveat.

.....

11. When the writ petition challenging the said order of the Governor of Manipur dated 1.6.79 was filed before this Court, the State Respondents filed the affidavit-in-opposition mentioning the reasons for justifying the said order of the Governor of Manipur dated 1.6.79, but this Court did not accept the reasons mentioned in the affidavit-in-opposition. Para-8 of the GLR in Laishram Tomba Singh v. State of Manipur and Ors. (supra) reads as follows:

The Respondents sought to justify the order by giving reasons in the affidavit in Paragraphs 11 and 12 of the counter affidavit which we have already referred to earlier. In our opinion, giving reasons in the affidavit cannot cure the illegality of the impugned order. The Supreme Court in Mohinder Singh (supra) quoted with approval the observation of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, which reads as follows:

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Krishna Iyer, J. proceeded further with observations as:

Orders are not like old wine becoming better as they grow older.

The above authorities of the Supreme Court are sufficient to reinforce our finding that the impugned order is invalid being without any reason. The first question, therefore, has to be answered against the Respondents and we hold the impugned order to be invalid.

12. The learned Counsel appearing for the Petitioner in order to substantiate the case of the Petitioner that non-mentioning the reasons in the impugned movement order for invalidating the Petitioner out of service would invalidate the

impugned movement order has also referred to the decision of the Apex Court in Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another, The Apex Court in a clear term had laid down the ratio in the Cyril Lasrado (dead) by LRS and Ors. (supra) that "Failure to give reasons amounts to denial of justice", Para 12 of SCC in Cyril Lasrado (dead) by LRS and Ors. (supra) reads as follows:

Para-12. Even in respect of administrative orders Lord Denning, M.R. Breen v. Amalgamated Engg. Union observed (All ER po. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. "Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that if affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

Para 13 of the SCC in GTC Industrie's case (supra) reads as follows:

13. Counsel for the Appellants failed to displace the finding recorded by the High Court on this point. Contention of the Counsel for the Union of India that the order of the Collector should be sustained by ignoring the submissions/statement of Shri Sailo as there was other sufficient material on record to sustain and justify the said order cannot be accepted. It may not be possible for us to separate or disentangle the submissions of Shri Sailo from other material evidence on record. It is well settled that a quasi-judicial order has to be judged on the basis of reasoning contained therein and not on the basis of pleas put forward by the person seeking to sustain the order in its counter affidavit or oral arguments before the Court.

14. Keeping in view of the decisions of the Apex Court and this Court discussed above, this Court in the given case of the present writ petition, is of considered view that reasons not mentioned in the impugned order dated 4.10.2006 cannot be looked into for deciding the validity or otherwise of the same.

15. This Court is of considered view that the word not mentioned in the said die-in-hamess under office memorandum dated 31.8.1992 and also the Manipur Services (Special Pension) Rules, 1982 cannot be borrowed or supplemented for interpreting the said office memorandum and special pension in the manner the

State Respondents construed in issuing the impugned order dated 4.10.2006 for the reasons mentioned hereunder:

16. It is cardinal rule of construction that no word should be construed redundant or surplus in interpreting the provision of a statute, or rule (Ref: Dinesh Chandra Sangma Vs. State of Assam and Others, The Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, held that it is too well known principle of construction of statute that the legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons.

17. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being (sic) unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras 24,25 and 26 of the Bhavnagar University's case (supra) read as follows:

24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, Unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it.

18. It is fairly well settled principles of interpretation of rules that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. The Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court would not go to its aid to correct the legislature's defective phrasing of an Act. Para 13 of the SCC in Dadi Jagannadham Vs. Jammulu Ramulu and Others, reads as follows:

13. We have construed the submissions made by the parties. The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the

obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot add the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

19. Lastly, the submission of learned GA that as the said die-in-harness under the said office memorandum dated 31.08.1992 had been revised by subsequent memorandum dated 13.1.1999 wherein it is stated that if the family of the deceased government servant gives option for or receives pension under the Manipur Services (Special Pension) Rules, 1982 no dependent or member in the said family will be entitled to compassionate appointment under the scheme; the appointment of the Petitioner appointed under the said office memorandum dated 31.08.1992 is liable to be cancelled is not sustainable in the eye of law for the reason that the subsequent office memorandum dated 13.1.1999 came into force with immediate effect i.e. w.e.f. 1999. The Apex Court in *Sonia Vs. Oriental Insurance Co. Ltd. and Others*, held that administrative order/decision or/office memorandum cannot have a retrospective effect until and unless intention of the authorities to make it as such is revealed expressly or by necessary implication. Para 11 of the SCC in *Sonia's* case (*supra*) reads as follows:

11. In the present case, admittedly, while inviting applications, the Respondents advertised the number of vacancies required to be filled under various categories. Notice inviting application also mentioned that if under a particular category an eligible candidate was not available, exchange of vacancies between the two categories was permitted. The Appellant acted on the basis of the aforesaid advertisement which permitted her to apply for the post and in fact she was permitted to sit in the examination and was subsequently also found to be a successful candidate in the said examination. Therefore, in view of the aforesaid decision in *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, we are of the view that OM dated 6.11.2003 cannot have any retrospective effect and the date on which the applications were invited should be the relevant date for consideration whether exchange of Scheduled Caste and Scheduled Tribes candidates was permissible. The decision in *NT Devin Katti v. Karnataka Public Service Commission* has also been echoed by a decision of this Court in *P. Mahendran and others Vs. State of Karnataka and others*, . In any view of the matter, law is well settled that an office memorandum cannot have a retrospective effect unless and until intention of the authorities to make it as such is revealed expressly or by necessary implication in the office memorandum. On the other hand from the office memorandum, as noted hereinabove, we find that the candidates who had already been selected, the case of such candidates would not be reopened.

20. For the foregoing reasons, this Court has no alternative except to interfere

with the impugned order dated 4.10.2006. Accordingly, it is hereby set aside.
Writ petition is allowed.