

(1995) 06 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 1073 of 1994

Maibram Ningol Ahongsangbam Ongbi Ibecha Devi	APPELLANT
Vs	
Commissioner/Secretary, (Veterinary), Govt of Manipur	RESPONDENT

Date of Decision : 15-06-1995

Acts Referred:

Citation : (1995) 2 GLJ 476

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : Jagat Chandra Singh, A.Nilamani Singh, L.Shyam kishore Singh,
Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed by the petitioner with a prayer for issuing an appropriate writ directing the respondents to appoint her to any suitable post commensurate with her educational qualification.

2. I have heard Mr. A. Nilamoni Singh, the learned counsel appearing on behalf of the petitioner and Mr. L. Shyamkishore Singh, the learned Government Advocate for the respondents and Mr. Jagatchandra, the learned Government Advocate appearing on behalf of the Education Department.

3. To appreciate the controversy involved in this case the facts necessary and relevant for the purpose may briefly be stated as under :

The petitioner's husband late Ahongsangbam Ibohal Singh was an UD Clerk in the District Veterinary Office, Churachandpur. He died on 2.1.90 while in service leaving the petitioner as widow and 3 minor children. The petitioner approached the respondents particularly the Government in the Veterinary Department for her appointment to a suitable post, but she was offered a post of Grade IV which she declined to accept. It is stated further that the petitioner submitted a representation to the Director of Veterinary and Animal Husbandry Department requesting him to appoint her in a vacant post of LD Clerk in his office. But her

representation has not yet been considered. Hence, this petition.

4. Mr. A. Nilamoni Singh, the learned senior counsel appearing on behalf of the petitioner has at the very outset submitted that the very purpose of dieinharness scheme has been frustrated in this case as it would appear from the writ petition that the petitioner's husband died as far back as on 2.1.1990 and even though the petitioner repeatedly approached the authority for appointing her to a post of LD Clerk under the aforesaid dieinharness scheme the authority could not consider her case for appointment to the post of LD Clerk.

5. Mr. L. Shyamkishore Singh, the learned Government Advocate submitted that it is true that the Government made this scheme of dieinharness but the petitioner is not entitled to claim to get any particular post. In support of his contention Mr. Shyamkishore has referred a decision of the Supreme Court in the case of State of Madhya Pradesh & others vs. Ramesh Kumar Sharma reported in AIR 1994 SC 845. In this case their Lordships under para 3 of the judgment made an observation that the applicant has no right to any particular post of his choice, he can only claim to be considered for that post. Laying emphasis on this observation Mr. Shyamkishore the learned Govt Advocate submits that the petitioner is not entitled to get the post of LD Clerk. The respondent filed no counter.

6. But Mr. Nilamoni Singh, the learned senior counsel for the petitioner has however repelled the contention of Mr. Shyamkoshore Singh by drawing my attention to the decision of the Supreme Court in the case of Smti Sushma Gosain & others vs. Union of India & others reported in AIR 1989 SC 1976 and another decision of the Supreme Court in the case of Smti Phoolwati vs. Union of India & others reported in AIR 1991 SC 469.

7. In the case viz. Smti Sushma Gosain (supra) their Lordships under para 9 of the judgment made the following observation :

?We consider that it must be stated unequivocally that in all claim for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.?

8. It would, therefore, be quite apparent from the observation quoted above that when a case comes under the dieinharness scheme the Government should not make any sort of delay in providing him or her a post so that the family might be saved. In the instant case it is an admitted fact that UDC post which fell vacant due to death of the husband of the petitioner has already been filled up by, promotion and consequently a post LDC fell vacant. The dieinharness scheme is a welfare scheme to save a family from starvation when the sole bread earner

dies. I am therefore of opinion that it was incumbent upon the Director of Veterinary and Animal Husbandary Department to ascertain from the petitioner if she was qualified to hold the post of LDC before filling up that resultant vacancy. But it does not appear that any step in that direction was taken on behalf of the respondents.

9. In the letter case viz. Smti Phoolwati (supra) their Lordships held under the last paragraph of the judgment as follows :

?Accordingly, we direct the Union of India to take immediate steps for employing the second son of the applicant in a suitable post commensurate with his educational qualification within a period of one month from the date of this order. The appellant shall be permitted to stay in the quarter where she is at present residing with the members of her family.?

10. Placing reliance upon these decisions Mr. Nilamoni, learned senior counsel submits that from the above observations of the Supreme court it would be quite apparent that in a case of dieinharness the petitioner should always be appointed to a post commensurate with his/her educational qualification without any delay. The further contention of Mr. Nilamoni in this context is that the case referred to by Mr. L. Shyamkishore, the learned Government Advocate is distinguishable because the petitioner therein approached the authority at first for the post of SubInspector and thereafter he claimed the post of APP Grade 2 and in that case learned counsel for the respondent could not show any rule or Government instruction under which the respondent could claim the post of APP Grade II. Mr. Nilamoni's contention is that Annexure A/3 office memorandum of the Government of Manipur will show that minimum educational qualification for the post of LDA is Matriculation in any office other than Secretariat. Notification dated 4th February, 1978 issued from the Department of Personal and Administrative Reforms, Govt of Manipur further show that minimum qualification for LDA is Matriculation or its equivalent qualification of a recognised University/ Board. This notification also shows that a candidate must know typing and his/her minimum speed must be 30 per minute. Para 8 of Annexure A/3 further shows that as regards appointment to the post of LDA the nominee will not be required to sit for the initial recruitment examination. However, he must possess the minimum educational qualification prescribed for the post of LDA and he should qualify himself in typing speed within one year from the date of his appointment failing which his/her services are liable to be terminated forthwith.

11. From all these Government notifications it is clear that for the post of LDA in any office other than the Secretariat the minimum educational qualification is Matriculation or its equivalent. In the present case, it is not disputed that the petitioner is having the qualification of PUC 2 Years Course. I, therefore, see no reason why the petitioner should not be entitled to claim for the post of LD Clerk.

12. Mr. Nilamoni, the learned counsel for the petitioner further submits that still there are vacancies in the Veterinary Department in the post of LDC as per

Annexure A/8, Mr. Shyamkishore is however, unable to make any submission with respect to the position of vacancy in the Department of Veterinary. But as already stated it can not be disputed that on account of the death of husband of the petitioner a post of UDC fell vacant and that post being filled up by promotion there was a resultant vacancy in LDC. I therefore, see no reason why the petitioner should not be offered to a post of LDC in the Department of Veterinary. However, in case there is no post lying vacant in the Veterinary Department at present, this petitioner may be offered a Class III post in the Education Department.

13. In view of the facts and circumstances I direct the respondents to appoint the petitioner to a post of LDC either in the Department of Veterinary or in the Department of Education within a period of one month from today. It is further made clear that if there is no suitable post for appointing the petitioner in Grade III then a supernumerary post should be created to accommodate the applicant.

14. With the above observation and directions this writ petition is disposed of with no costs.