

(1999) 06 GAU CK 0001

In the Gauhati High Court

Case No : Writ Appeal No. 64 of 1995 Arising out of Civil Rule No. 348 of 1993

State of Manipur and Others

APPELLANT

Vs

L. Raikham @ R.K. Leiri

RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Citation : (1999) 2 GLT 516

Hon'ble Judges : N. Surjamani Singh, J;J.N. Sharma, J

Bench : Division Bench

Advocate : Kh. Nimaichand Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—The order dated 16th June, 1994 passed by the learned Single Judge of this Court in Civil Rule No. 348 of 1993 is the subject matter under challenge in this Writ Appeal.

2. The facts of the case in a short compass are as follows:

The present writ Petitioner is the real elder brother of the deceased Shri Ngaranmi Tangkhul who was a Rifleman with No. 14422 of 5th Battelion Manipur Rifles and while he was in active service he died on 24th November, 1988 as he was killed in an encounter. The deceased rifleman left behind the following legal heirs:

1. Shri R.K. Matuinam, father of the deceased.
2. Smt. R.K. Paishola, mother of the deceased.
3. Shri Lekrei Raikham @ R.K. Lekrei, 31 yrs. elder brother of the deceased.
4. Shri Sokhalem Raikham @ R.K. Sokhalem 21 yrs. younger brother of the deceased.
5. Shri Joseph Raikham @ R.K. Joseph, 19 years, younger brother of deceased.

6. Miss Chingzar Raikham @ R.K. Chingzar, 17 years, sister of the deceased.

It is also the case of the Petitioner that he is looking after his old aged parents and the members of his family and no other member of the family of the deceased is employed in any Government Department and that Petitioner's family is now living under the poverty line without any adequate means of livelihood. It is also urged that the Petitioner submitted application to the Commandant, 5th Battalion Manipur Rifles, Imphal, the Deputy Inspector General of Police and the Secretary (Home), Govt. of Manipur on 12.11.1989, 8.10.1990 and 20.9.1992 respectively as in Annexures-A/5, A/6 and A/7 to the writ petition for affording appointment to the writ Petitioner in a Grade-IV post on compassionate grounds but the authority concerned did not pay heed too and having no alternative, he filed the writ petition being Civil Rule No. 348 of 1993 and this Court under the impugned order of 16th June, 1994 directed the Respondents to accommodate the Petitioner in any Grade-IV post commensurate with his educational qualification and further subject to his requisite possession for the purpose and it was to be done within a period of 3 months from the date of receipt of the said impugned order.

3. Being aggrieved by the impugned order of 16th June, 1994 as stated above, the present Appellants filed this writ Appeal. Mr. Kh. Nimaichand Singh, learned Additional Govt. Advocate for the State-Appellants submitted that the writ Petitioner suppressed the material facts while presenting the writ petition in as much as, Shri R.K. Mutuinam, the father of the deceased rifleman filed an application on 12th June, 1989 for affording appointment to his one of the sons namely. Shri Chuishem Raikham under die-in-harness scheme in lieu of his late son Ngaranmi Tangkhul (deceased rifleman) and the case of the said R.K. Matuinam was not entertained by the authority concerned on the ground that the deceased rifleman had not completed 5 years continuous service and, as such, the appointment under die-in-harness scheme of the said Chuishem Raikham is not admissible to the family of the deceased vide, office order/letter dated 14th December, 1989 bearing No. E/45/12(252)/89-PHO; Imphal as in Annexure-A/3 to the Memo of Appeal. It is also argued by the learned Additional Govt. Advocate that none of the representations as in Annexures-A/5, A/6 and A/7 to the main writ petition as alleged by the writ Petitioner, Respondent herein were, ever received by the Appellants at any point of time and as such, those representations are concocted and manipulated ones. The learned Addl. Govt. Advocate went on to contend that under the related scheme, the application for such appointment should be processed within one year from the death of the Government employee and that the Government employee should put 5 years regular continuous service with good records vide, para 12 and para 13 of the related office memorandum dated 2nd May, 1984 and the related notifications but the learned Single Judge without considering these important legal aspects passed the impugned order thus, directing the Appellants to accommodate the Petitioner in any Grade-IV post commensurate with his qualification, which is not tenable in the eye of law.

4. None appears for the Respondent (Writ Petitioner). Now, this Court is to see and examine as to whether the writ Petitioner, Respondent herein has enforceable legal right in the instant case or not or, whether the learned Single Judge of this Court rightly passed the impugned judgment and order in accordance with law or not?

5. Upon hearing the learned Counsel for the Appellants and also on perusal of the available materials on record including the impugned order, we are of the view that the impugned order is not tenable in the eye of law for the following reasons.

(i) For just determination of the real points in controversy between the parties, this Court is required to see the related provisions of the office memorandum pertaining to the appointment of son, daughter etc. of the Government servants who died-in-harness leaving behind his or her family in indigent circumstances, particularly as in paragraph Nos. 12 and 13 and, as such, these 2 (two) paragraphs namely paragraph 12 and 13 are quoted below:

12. Since the appointment under the scheme is meant only for giving immediate relief to the braved family, such proposal should be submitted to the Government of Manipur in the Department of Personnel and Administrative Reforms (Personnel Division) immediately after the expiry of the employees. The application should be processed within 1 (one) year from the date of expiry of the Govt. Employees and the appointment should normally be made within maximum period of 2 (two) years.

13. The above concession shall not be admissible if the deceased Government servant had not put in 5 (five) years continuous service under the Government of Manipur with good records. In case of those employees who died- in-harness i.e. those civilian Government employees/active service personnel who died-in-harness while encountering 5 (five) years continuous service may be relaxed, in accordance with the circumstances, with the prior concurrence of the Department of Personnel.

6. On bare perusal of these 2 (two) paragraphs of the related scheme, it shall be revealed that the related application for appointment under the die-in-harness scheme shall be processed within one year from the date of expiry of the Government employee and the appointment should normally be made within the maximum period of 2 (two) years and that such concession mentioned in paragraph 12 of the scheme shall not be admissible if the deceased Government servant shall not put in 5 (five) years continuous service under the Govt. of Manipur with good records but such period of 5 (five) years continuous service may be relaxed in case where the active government employee who died in harness while in encounter. But in the instant case, there is material on record that the deceased employee concerned committed suicide as per related document as in Annexure-A/1 to the Memo of Appeal wherein the informant J.C. No. 229 Jam. N. Tombi Singh J/Adjutant 5 Mr. TML reported to the Officer-in-

charge, Tamenglong Police Station, Tamenglong on 24th November, 1988 by stating that on 24.11.1988 at about 10:10 hrs. the Rifleman No. 14422, Ngaramai TKL of B. Coy 5 Mr. has committed suicide while himself was on duty near Sentry Post No. 2 of C.O.5 MR Guard by firing with his service 303 Rifle and, apart from this, the Petitioner did not seek for appointment to a suitable post under compassionate ground within time as required under the related scheme. Over and above this, the writ Petitioner had suppressed the material facts in as much as, the writ Petitioner did not disclose about factum of the rejection of the representation of his father seeking for appointment of one of his sons namely Shri Chuishem Raikham as reflected in the document marked as Annexure-A/2 and A/3 to the Memo of Appeal on the ground that the deceased Rifleman had not completed 5 (five) years continuous service and as a result of which appointment under die-in-harness scheme is not admissible to the family of the deceased Rifleman. It is well settled that falsity of fact and misleading statement is a good ground to reject a writ petition. In our considered view, there was/is a calculated suppression of material facts as discussed above which would have disentitled the present writ Petitioner to the extra ordinary remedy. On this ground alone the said writ petition deserves its outright rejection.

7. It is also an admitted fact that the Petitioner joined the service as Rifleman in the year 1985 and he died on 24th November, 1988, in other words, the deceased Rifleman did not render 5 (five) years continuous service in the post during his life time rather, his case could not be processed within one year from the date of death of the deceased Rifleman and, as such case of the writ Petitioner is hit by paragraphs 12 and 13 of the related scheme. Hence, we are of the view that the appointment on compassionate ground or under the die-in-harness scheme, it should be made in accordance with the related scheme and rules and it is not a method of regular appointment or recruitment but it is an appointment to afford immediate relief and rehabilitation of the family in distress for relieving the dependent family members from hardship and distress. In the instant case, no question of immediate rehabilitation or relief to the family of the deceased Rifleman ever arose or arises in view of the existing facts and circumstances of the case.

8. Considering the existing facts and circumstances of the case and the discussions made above, we are of the view that the court cannot direct the authority concerned to appoint a person or persons on compassionate ground to a post unless he or she is eligible under the related rule or under the related scheme. In the instant, case the Petitioner is not eligible for his appointment under the related die-in-harness scheme as followed and adopted by the Govt. of Manipur.

9. For the reasons, observations and discussions made above, the state-Appellants could make out a case to justify the interference with the impugned judgment and order passed by the learned Single Judge of this Court and, accordingly, the said impugned judgment and order is set aside thus, allowing

the writ appeal. The parties shall bear their own costs.