
(1999) 06 GAU CK 0002
In the Gauhati High Court
Case No : Writ Appeal No. 13 of 1994

State of Manipur	Vs	APPELLANT
K.H. Jasobanta Singh		RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Citation : (1999) 3 GLT 590

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

Bench : Division Bench

Advocate : T. Nandakumar Singh, for the Appellant; R.K. Nokulsana Singh, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—The judgment and order dated. 11th January, 1994 passed by the learned Single Judge of this Court in Civil Rule No. 547 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 father of the Writ Petitioner, the Respondent herein, was serving as Additional Chief Engineer in the Public Works Department died in harness on 22nd June, 1983 and at the relevant time the present Petitioner Shri Kh. Jasobanta Singh was aged about 9 years; he proceeded his studies with great difficulties and passed H.S.L.C. Examination in the year 1988 at the age of 15 years and thereafter he duly passed pre-University Examination in the year 1990 at the age of 17 years and attained the age of maturity of 18 years in the month of February, 1991; he became eligible for employment and, accordingly on 25th March, 1991 he applied for a suitable employment/job under the die-in-harness scheme by filing a petition to the Secretary (Works), Govt. of Manipur and the Chief Engineer (Bld.), P.W.D. Manipur but no tangible result was received from the end of the authority concerned and, accordingly the Petitioner approached this Court with a writ petition under Civil Rule No. 430 of 1993 and this Court

disposed of the said writ petition on 12th May, 1993 directing the authority concerned to dispose of the representation of the Petitioner within one month and in compliance with the related Court's order, the authority concerned disposed of the said representation informing the Petitioner that his claim for appointment under die-in-harness scheme cannot be considered under the related scheme as the Petitioner applied for such appointment after lapse of 7/8 years as seen in the document marked as Annexure-A/10 to the original Writ petition and, being aggrieved, the Petitioner approached this Court with the Writ petition being Civil Rule No. 547 of 1993. This Court by an order dated 11th January, 1994 (impugned order) passed in the connected Civil Rule No. 547 of 1993 directed the competent authority/Respondents to appoint the Petitioner against any existing vacancy and if there is no any vacancy, the Respondents/competent authority are further directed to create supernumerary post and accommodate the Petitioner, the Respondent herein, in that post and that shall be done within a period of 3 (three) months from the date of receipt of the copy of the related judgment. Being aggrieved by the impugned judgment and order dated 11th January, 1994 passed in the connected Civil Rule No. 547 of 1993 the present State Appellant filed this Writ Appeal.

3. Supporting the case of the State Appellant Mr. T. Nandakumar Singh, the learned Advocate General at the very outset submitted that the learned Single Judge has not considered the provisions of the related Government office memorandum pertaining to the appointment of son, daughter etc. etc. of the Government servant who died in harness leaving behind his/ her family in the indigent circumstances hereinafter referred to as die-in-harness scheme, particularly paragraph 11 of it which requires any appointment to the scheme is to be preceded by clearance/approval to be given by the Department of Personnel and Administrative Reforms (Personal Division) before the Administrative Department can act for such appointment despite the fact that such statement and contention was taken by the State Appellant in the related counter affidavit as well as the submissions advanced by the learned Counsel appearing for the State and, rather the learned Single Judge has not given any finding on this issue and, as such, the impugned judgment and order is not tenable in the eye of law.

4. It is also submitted by the learned Advocate General for the State Appellant that since the appointment under die-in-harness scheme is for immediate relief to the bereaved family, it does not intend to wait for a number of years to extend the benefit to a member of the bereaved family and the time limit of one year as contemplated in para 12 of the related scheme is inviolable and must be strictly adhered to, but the learned Single Judge had misappreciated rather misinterpreted the related provisions of the scheme made in paragraph 12 while passing the impugned order.

5. At the hearing Mr. R.K. Nokulsana Singh, learned Counsel for the Respondent contended that there is no infirmity or illegality in the impugned judgment and

order of the learned Single Judge in as much as, the learned Single Judge had considered the economic hardship of the family of the Petitioner due to the demise of the Petitioner's father who was the bread earner of the family and considering the situation and the claim of the Petitioner the learned Single Judge rightly held that the period of one year as visualised in paragraph 12 of the related scheme will run from the date on which the Petitioner attained the age of majority and not from the date of the death of deceased Govt. servant. It is also argued by Mr. R.K. Nakulsana Singh, learned Counsel for the Respondent that this Court rightly directed the State Respondents (in the main writ petition) to appoint the Petitioner (Respondent herein) against any existing vacancy and if there is no vacancy the State machineries are directed to create supernumerary post and accommodate the writ Petitioner in that post.

6. Now, we are to see and examine as to whether the writ Petitioner, the Respondent herein has enforceable legal rights 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? Upon hearing the learned Counsel for the parties and also on perusal of the available materials on record including the impugned judgment and order, we are of the view that the impugned judgment and order is not tenable in the eye of law with the following reasons:

(i) Para Nos. 11 and 12 of the related die-in-harness scheme/office memorandum are very important and material for just determination of the real points in controversy between the parties and, as such, these two paragraphs are quoted below:

11. Such appointments will be made by the Appointment Authorities concerned after getting clearance from the Government of Manipur in the Department of Personnel and Administrative Reforms (Personnel Division) by the Administrative Department concerned.

12. Since the appointment under the scheme is meant only for giving immediate relief to the bereaved family, such proposal should be submitted to the Government of Manipur in the Department of Personnel & 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. employee and the appointment should normally be made within maximum period of 2 (two) years.

The para 11 provides that any appointment under the related scheme shall be made by the appointing authorities concerned after getting clearance from the authority concerned mentioned above and for such appointment the related application should be processed within one year from the date of expiry of the Government employees and the appointment should normally be made within the maximum period of 2 (two) years.

7. In the instant case, the Petitioner's father had died on 22nd June, 1983 and

after his death the eldest son of the deceased, namely Shri Kh. Meghajit Singh applied for a suitable job under the die-in-harness scheme as soon as he attained the age of 18 years and the said application for appointment of Shri Kh. Meghajit Singh, the eldest son of the deceased could not be acceded to as per related rules. The application of the said Kh. Meghajit Singh was disposed of by the competent authority on 19th March, 1990 as seen in the document marked as Annexure-A/8 to the main writ petition. Thereafter, the present Petitioner filed an application/representation on 25th March, 1991 to the competent authority for a suitable employment under die-in-harness scheme and that too was rejected and not accepted by the competent authority on the ground that his case and claim for appointment under die-in-harness scheme could not be considered under the related scheme as the Petitioner applied for such appointment under the related scheme after a lapse of 7/8 years. In our considered view, the decision so far arrived by the competent authority as reflected in the document marked as Annexure-A/10 to the writ petition is a reasoned decision in view of the decision of the Apex Court rendered in *State of Rajasthan Vs . Chandra Narain Verma*;; (1994) 2 SCC 752 wherein the Apex Court held thus:

...It is one thing to say that a family member of the deceased is entitled to appointment on compassionate ground, but it is altogether a different thing to say that his appointment should be made regardless of the rules. Since he had crossed the maximum age prescribed for the post of Sub-Inspector of Police, the authorities were fully justified in offering him the post of Lower Division Clerk, which he should have accepted. We fail to see how the High Court could in the face of the rules direct the authorities to make his appointment as Sub-Inspector of Police. We, therefore, cannot allow the order to stand. We set aside the order of the learned Single Judge as well as the Division Bench and direct that the Respondent may join as Lower Division Clerk, if he so desires, within four weeks from today. Any appointment made on pain of contempt proceedings pursuant to the impugned judgment may be cancelled. The appeal is disposed of accordingly with no order as to costs.

This law of the land highlighted that Court cannot direct the Government to appoint a person on compassionate ground to a post of his or her choice for which he or she is eligible under the rules or under the related scheme; In the instant case, the Petitioner Shri Kh. Jaspbanta Singh is not eligible for his appointment under the related die-in-harness scheme as followed and adopted by the Govt. of Manipur.

8. Apart from the highlighted facts, it has also been related that the present Petitioner filed the application/representation for his appointment under die-in-harness scheme after the lapse of about more than 7 years after the demise of his father who died-in-harness on 22nd June, 1983. It is true that the related scheme was made by the State Government for mitigating the hardship due to death of the bread earner in the family and such appointment should, therefore,

be provided immediately to redeem the family in distress and it is improper to keep such case pending for years and even if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant as held by the Apex Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, From this established principle of law, it is seen that the appointment under the scheme is for an immediate relief to the bereaved family and it does not intend to wait for a number of years to extend such benefit to a member of the bereaved family of the Government employee and there should not be any delay in making such relief. But in the instant case the Petitioner approached the competent authority after lapse of more than 7 years after the death of his father for such appointment. This cannot accede to in view of the decision of the Apex Court rendered in Dhalla Ram, Petitioner v. Union of India and Ors., Respondents reported in AIR 1999 SC 564 wherein the Apex Court held thus:

...The very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who die- in - harness. There should be no difficulty to consider and eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on July 15, 1987 and the application was rejected on July 14, 1988. He filed the OA on July 12, 1993. In view of the long delay, after the refusal by the Government in filing the application, the same cannot be entertained. The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependant family members of the deceased employee from destitution.

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 Kh. Mani Singh ever arose or arises in view of the existing facts and circumstances of the case and, apart from it, we are further of the view that the Petitioner has a right to claim to be considered by the competent authority for such appointment under the related die-in-harness scheme but not with this Court as it is under the domain and wisdom of the competent authority in the matter.

9. It is also an admitted fact that the Petitioner is the son of the deceased Mani Singh who was working and serving as Additional Chief Engineer and, apart from it, the Petitioner belongs to a rich and affluent family. In our considered view, there is no economic needs in the family. Considering these aspects, the Petitioner shall not be entitled for benefits of appointment under die-in-harness scheme.

For the reasons, observations and discussions made above, the State Appellant 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.