

(2006) 08 GAU CK 0051
In the Gauhati High Court

Thokchom (N) Mutum (O) Memcha Devi	APPELLANT
Vs	
National Hydro Electric Power Corporation Ltd.and Anr.	RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Citation : (2006) 08 GAU CK 0051

Hon'ble Judges : Amitava Roy, J and M.B.K.Singh, J

Bench : Division Bench

Advocate : N.K.Singh, Tarun Kumar, Advocates appearing for Parties

Judgement

Amitava Roy, J.—The judgment and order dated 6/3/2006 passed in WP(C) 943/2005 directing the appellants to provide appointment to the writ petitioner under die in harness scheme is in challenge in the instant appeal.

2. We have heard Dr. NK Singh, learned Counsel for the appellant and Mr. Tarunkumar, learned Counsel for the writ petitioner/respondent.

3. The facts in bare essential necessary for disposing of the appeal are that the petitioner's husband late Ibocha Singh while engaged as a Black Smith with the National Hydroelectric Power Corporation Ltd., (hereafter referred to as the Corporation) and posted at Loktak Hydroelectric Project, Manipur, died in harness on 1/10/1999. The petitioner after the demise of her husband submitted an application to the Chief Engineer, Loktak Hydroelectric Project, Manipur, with a request for appointment to a suitable post commensurate to her educational qualification under the die in harness scheme. Though the application was forwarded to the Chairman cum Managing Director of the Corporation, the exercise did not yield any positive result.

4. Being aggrieved, she submitted a representation on 15/1/2004 before the Chairman cum Managing Director of the Corporation reiterating her request inter alia pointing out that persons similarly situated have in the meantime been provided with appointments under the scheme. The petitioner asserted that the Corporation had adopted the guidelines/scheme dated 30/6/1987 framed by the

Government of India for such appointments. After a fruitless wait, for some time thereafter, she approached this Court.

5. In course of the hearing of the writ proceedings the learned Counsel for the appellant Corporation also submitted that the die in harness scheme prepared by the Central Government had been adopted by the Corporation. Noticing the above stand and having regard to the pleaded facts, the learned Single Judge disposed of the writ petition directing the respondent Corporation to "expedite case of the petitioner for appointment under the dieinharness scheme." A deadline of three months was fixed to comply with the order. Being aggrieved, the Corporation is in appeal.

6. Dr. Singh has submitted that apart from the fact that the Corporation at no point of time had adopted the dieinharness scheme evolved by the Central Government for dealing with the request for compassionate appointment of its employees, its existing scheme for the said purpose has been replaced by the LumpSum Payment Scheme based on the Memorandum of Understanding dated 24/6/2005 executed by the authorised representatives of the Management of the Corporation and the All India NHPC Employees' and Workers' Council. As the past eligible cases for appointment under the erstwhile dieinharness scheme were to be covered by the new scheme, the directions contained in the impugned judgment and order ought to be suitably modified he urged. Dr. Singh attributed lack of communication between the Corporation and its Counsel on the date of the impugned decision to be the reason for the erroneous concession. In any case, the learned Counsel for the appellant has submitted that, the same, in view of the above facts, is not binding on the Corporation.

7. Mr. Tarunkumar in reply has submitted that the action of the Corporation in filing the appeal with an endeavour to deny the respondent writ petitioner the benefit of appointment under the dieinharness scheme existing before being replaced by the new scheme is per se arbitrary and lacks bonafide. According to him, the learned Counsel for the Corporation having conceded that the dieinharness scheme of the Central Government is applicable to the employees of the Central Government, the Corporation is estopped from resiling from the said stand. As the Corporation has without any justification delayed to process the respondent writ petitioner's claim for appointment under erstwhile the dieinharness scheme, it is not open for it to take shelter under the new scheme.

8. We have carefully weighed the rival submissions. Apparently the directions issued by the learned Single Judge were on the premise that the dieinharness scheme of the Central Government was applicable to the Corporation. As no counter was filed before the learned Single Judge at the time of the disposal of writ proceeding, there was no occasion for him to dwell on the new scheme that in the meantime had come into existence. Noticeably the LumpSum Payment Scheme in lieu of the earlier scheme of compassionate appointment was framed on the basis of the memorandum of understanding dated 24/6/2005 is not under challenge. As a matter of fact, the writ petitioner had structured her case on the

plea that the dieinharness scheme of the Central Government had been adopted by the Corporation. It cannot be gainsaid that appointment under the dieinharness scheme or for that matter, any appointment on compassionate consideration can not be equated with one following a legally prescribed recruitment process. In other words, compassionate appointment is not an alternate mode of recruitment in service. This is only a kind of a palliative that is provided to a needy family reeling in financial distress on the sudden demise of its only bread earner. Logically, therefore, any claim for appointment on compassionate ground has to be essentially guided and governed by the scheme, if any, contemplated and framed for such purpose.

9. Indubitably, the LumpSum Payment Scheme on the basis of the memorandum of agreement dated 24/6/2005 entered into between the various representatives of the Management of the Corporation and its employees have come into force w.e.f. that date. A bare perusal of the contents thereof makes it abundantly clear that it is a one time exercise to clear all pending applications/past eligible cases for compassionate appointment. The conditions of eligibility and the benefits to be extended thereunder have been unambiguously set out in details. The corporation has sought to explain the delay in dealing with the respondent writ petitioner's application for appointment by contending that the same was defective and that while the process was on to remedy the defects, the new policy had been framed. By an affidavit filed by the learned Counsel for the Corporation appearing before the learned Single Judge in the writ proceedings, it has been sought to be explained that the concession with regard to the applicability of the dieinharness scheme of the Central Government to the Corporation was due to a communication gap. The learned Counsel has endeavoured in his affidavit to assert that such scheme had never been adopted by the Corporation. We feel inclined to accept the explanation on both counts.

10. On a consideration of the facts and circumstances of the case and the materials on record presently before us in their entirety, we do not feel persuaded to sustain the directions contained in the impugned judgment and order. As it is, the respondent writ petitioner's right to claim appointment under the dieinharness scheme or on compassionate consideration has to be examined and evaluated in terms of the scheme in existence. True it is that there has been a delay on the part of the Corporation to process her claim. But in view of the substitution of the earlier dieinharness scheme by the present one and the explanation provided for delay, we do not feel inclined to issue a writ of mandamus to the Corporation in the face of the current scheme to consider her case in terms of the earlier scheme which admittedly is not in existence as on date.

11. In the above view of the matter, the appeal is allowed. The appellant Corporation will now consider the case of the petitioner in accordance with the LumpSum Payment Scheme referred to above and provide her with the necessary benefits comprehended thereunder. As the petitioner is waiting for

long, we direct that the exercise in this regard should be completed within a period of six weeks herefrom. The impugned judgment and order stands modified to the extent indicated hereinabove. No costs.