

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WA No. 80 of 2022

Smt. L. Nirmala Singh

...Appellant/s

Vs.

Union of India & 4 ors.

...Respondent/s

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

06-06-2023

(A. Bimol Singh,J)

Heard Mr. N. Ibotombi, learned senior counsel assisted by Ms. Babina, learned counsel appearing for the appellant and Mr. S. Vijayanad Sharma, learned senior panel counsel appearing for the respondents.

[2] The appellant filed a writ petition being WP(C) No. 909 of 2021 praying for issuing a writ of certiorari for quashing and setting aside the letter dated 25-11-2021 thereby staying the proceeding of the fresh Court of Inquiry (COI) initiated against her husband, who is a retired Brigadier of the Indian Army. The said writ petition was disposed of by the learned single judge with the following directions :-

"28. In the result,

(a) The writ petition is partly allowed.

(b) The respondents are directed to shift the inquiry place from Bengdubi Military Station, West Bengal to Leimakhong, Manipur (as agreed by them).

- (c) The prayer in respect of representation of a legal counsel during the COI proceedings stands dismissed.***
- (d) The respondent authorities are directed not to invoke the provisions of Section 123 of the Army Act nor DV ban at present.***
- (e) The petitioner's husband is directed to approach the Armed Forces Tribunal as per Section 2 read with Section 3(o) of the Armed Forces Act, 2007 for reimbursement of financial benefits in nature of commutation of pension, gratuity and other retiral benefits, if he so chooses.***
- (f) The petitioner's husband is directed to give his fullest co-operation in the COI for early completion of the inquiry.***
- (g) If the petitioner's husband failed to co-operate the COI proceedings, then the Presiding Officer of the COI is at liberty to proceed the inquiry further in accordance with law.***
- (h) The Presiding Officer of the COI is directed to complete the inquiry within a period of four months from the date of receipt of a copy of this order on day-to-day basis, for which the petitioner as well as the petitioner's husband are directed to co-operate with the COI.***
- (i) No costs."***

[3] Having been aggrieved, the appellant approached this Court again by filing the present appeal assailing the judgment and order passed by the learned single Judge and also praying for allowing the writ petition filed by her. During the pendency of the present writ appeal and despite the directions given by the learned Single Judge,

the authorities could not commence the COI due to the health condition of the husband of the appellant.

[4] On the request made by the authorities, this Court passed an interim order in the present appeal allowing the authorities to evaluate the health and mental condition of the husband of the appellant. Pursuant to the order passed by this Court, the husband of the appellant was subjected to medical examination by a Classified specialist (Psychiatrist) namely, Lt. Col.RK Bharat and that the Classified specialist extensively examined the appellant's husband on a day-to-day basis over a continuous period from 13-02-2023 until 23-02-2023 and thereafter gave a medical report that it has been convincingly established that the appellant's husband is suffering from depression with psychotic symptoms and paranoid schizophrenia and has shown no response to the treatment so far. On the basis of the said medical report, the authorities filed an additional affidavit and in the additional affidavit, it has been, inter alia, stated that since it is established that the husband of the appellant is suffering from a mental illness, he is not in a position to undergo an investigation in the nature of COI wherein he can appropriately defended himself against the allegations. Situated thus, the authorities cannot commence the COI against the husband of the appellant till today.

[5] Mr. N. Ibotombi, learned senior counsel, by referring to the provisions of Section 123 of the Army Act, 1950 submitted that as the authorities could not commence the COI against the husband of the

appellant even after the lapse of a period of 3(three) years after his retirement, by operation of law as provided under Sec. 123 of the Army Act, 1950, the authorities are debarred from proceeding with the COI against the husband of the appellant. The learned senior counsel accordingly, submitted that the present writ appeal may be allowed by issuing a direction not to proceed with the COI against the husband of the Appellant.

[6] Mr. S. Vijayanand Sharma, learned senior panel counsel appearing for the respondents fairly submitted that in view of the medical condition of the husband of the appellant and the medical report submitted by the concerned medical expert of the Army, it was not possible to commence the COI against the husband of the appellant till today. The learned counsel appearing for the respondents also fairly submitted that the period of 3(three) years as contemplated under the provision of section 123 of Army Act, 1950 have already lapsed, even after excluding the period during which stay order passed by this Court was in operation. The learned counsel also fairly submitted that because of the provisions of law as provided under section 123 of the Army Act, there is now no possibility of commencing the COI against the husband of the appellant.

[7] Taking into consideration the submissions advanced by the learned counsel appearing for the parties and after careful examination of the undisputed facts and circumstances of the present case and the provision of section 123 of the Army Act, 1950, wherein it

is provided, inter alia, that no person shall be tried for an offence committed under the Army Act, unless his trial commences within a period of three years after he had ceased to be subject to the said Act, we are of the considered view that the present writ appeal can be disposed of by directing the authorities not to proceed any further with the COI against the husband of the appellant. Ordered accordingly. The impugned judgment of the learned Single Judge is modified to the extent indicated above.

[8] with the aforesaid direction, the present writ appeal is disposed of. There will be no order as to cost.

JUDGE

JUDGE

Dhakeshori

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(WA)No. 30 of 2023

Smt. L. Nirmala Singh

...Applicant/s

Vs.

Union of India & 4 ors.

...Respondent/s

With

MC(WA)No. 135 of 2022

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

06-06-2023

(A. Bimol Singh,J)

In view of the order dated 06-06-2023 passed in the connected writ appeal being WA No. 80 of 2022, the present Misc. cases stand closed.

JUDGE

JUDGE

Dhakeshori