

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P.(C) No. 436 of 2022

Shri Ksh. Romen Singh, aged about 36 years, S/o (L) Ksh. Iboyaima Singh, resident of Singjamei Wangma Kshetri Leikai, P.O. Kakwa, P.S. Singjamei and District Imphal East, Manipur.

... Petitioner

-Versus -

1. The State of Manipur through the Principal Secretary (Power) Govt. of Manipur, Imphal, Manipur.
2. The Chief Secretary (DP in charge), Government of Manipur, Imphal, Manipur.
3. The Administrative Officer (Power), Govt. of Manipur, Electricity Junction, Imphal Manipur-795001.
4. The Manipur State Power Distribution Company Limited (MSPDCL) through the Managing Director, MSPDCL, Manipur, New Directorate Building near 2nd M.R. Gate, Imphal-Dimapur Road, Imphal, Manipur-795001.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner	:	Mr. Th. Khagemba, Adv.
For the respondents	:	Mr. A. Vashum, G.A.
Date of Hearing	:	30.03.2023
Date of Judgment & Order	:	18.04.2023

Judgment & Order

[1] Heard Mr. Th. Khagemba, learned counsel appearing for the petitioner and Mr. A. Vashum, learned Government Advocate appearing for the respondents.

The present writ petition had been filed praying for quashing and setting aside the impugned order dated 26.05.2022 issued by the Deputy Secretary (Power), Government of Manipur, rejecting the claim of the petitioner for his appointment under the Die-in-harness scheme in the Electricity Department, coupled with a prayer for directing the respondents to appoint the petitioner to the post of Assistant Lineman/Junior Technical Assistant within a stipulated period.

[2] The facts of the present case in a nutshell is that the father of the petitioner, who was serving as Head Lineman at Senapati Division in the Electricity Department during his life time, died on 23.11.2002 while on duty due to electrocution.

After the expiry of the petitioner's father, no application for appointing any of his dependence under the Die-in-harness scheme could be submitted immediately to the Government as the scheme for appointment under the Die-in-harness was already abolished by the Government by issuing an order dated 15.06.2002.

[3] After four and half years from the date of abolishing the scheme for appointment under the Die-in-harness, the State Government issued an order dated 16.12.2006 restoring the said Die-in-harness scheme with certain conditions. One of the conditions as contain in the said restoration order is that the families of the Government servant who died-in-harness during the period from 15.06.2002 up to the date of

restoration of the die-in-harness scheme will also be covered under the scheme with immediate effect.

[4] After the restoration of the Die-in-harness scheme on 16.12.2006, the mother of the petitioner submitted an application dated 11.05.2007 to the Chief Engineer (Power), Electricity Department, Manipur, requesting for appointment of the petitioner's elder brother, viz., Ksh. Roshan Singh under the Die-in-harness scheme. However, no process was taken up by the authorities for consideration of the said application. Subsequently, the State Government issued an Office Memorandum dated 06.06.2007 issuing certain clarification to address the issues relevant to early disposal of the claim for appointment under the Die-in-harness scheme. Some of the clarification which are relevant with the present case are reproduced herein under:-

- "i. The Die-in-Harness Scheme was abolished vide orders dated 15-6-2002. The OM of even No. dated 29-10-2002 clearly states that no application for appointment under the Die-in-Harness Scheme should be received. Therefore, all applications submitted in between 15-6-2002 and 16-12-2006 shall be treated as invalid applications."*
- "ii. Applicants whose applications have been treated invalid as above should submit fresh application to the concerned Department within 2(two) months from the date of issue of this OM."*
- "iii. The seniority of the applicants shall be prepared based on the date of expiry of the deceased Government servant in respect of the above group of applicants. In respect of deaths, which occurred after 16.12.2006, the seniority shall be based on the date of receipt of applications."*
- "iv. The Head of Department concerned after considering the applications received should either submit the completed proposal to the Government for appointment"*

under the Die-in-harness Scheme or reject the application within one year from the date of receipt of the application.”

[5] After issuance of the aforesaid Office Memorandum dated 06.06.2007, the petitioner’s mother submitted another application dated 17.12.2008 to the Chief Engineer (Power), requesting to appoint the petitioner in place of the petitioner’s elder brother under the Die-in-harness scheme as the petitioner elder brother become over-aged.

The second application was duly processed by the authorities and the Administrative Officer (Power) wrote a letter dated 28.04.2009 to the Deputy Commissioner, Imphal East District, Manipur, requesting to furnish the required information in connection with the appointment of the petitioner under the Die-in-harness scheme. After receiving the required information and all the necessary documents in connection with the appointment of the petitioner under the Die-in-harness scheme, the Chief Engineer (Power) Electricity Department, Government of Manipur, submitted to the Commissioner (Power), Government of Manipur, the proposal for appointment of 24 applicants, including the petitioner for appointing them to the post of Assistant Lineman under the Die-in-harness scheme and also requesting to convey the approval of the Government for appointment of the said applicants, under a letter dated 05.11.2012. Subsequently, the Deputy Secretary (Power), Government of Manipur, issued a consolidated seniority list dated 01.02.2017 of applicants pending for appointment under the Die-in-harness scheme in the Power

Department. In the said seniority list, the name of the petitioner is at Sl. No. 9.

[6] The Department of Personnel and Administrative Reforms (Personnel Division), Government of Manipur, issued another Office Memorandum dated 01.04.2011 giving certain relaxation as a special case and as a one time measure so as to enable to dispose of the pending cases for appointment under the Die-in-harness scheme. One of the relaxation given under Para 1 (iii) of the said Office Memorandum is to consider the 2nd nominee by counting his/her seniority from the date of receipt of the 1st application where applicant had to be changed because of compelling circumstances which are beyond his/her control such as Death/Marriage in case of woman candidate/mental disorder, disability due to accident of the first applicant.

When the process for appointment of the petitioner and other applicants under the Die-in-harness scheme reach the Department of Personnel and Administrative Reforms, the said Department seek certain clarification in respect of 19 applicants including the petitioner. In respect of the petitioner, the Department of Personnel asked for furnishing copy of the initial application and the condition for change of nominee as per Para 1 (iii) of the aforesaid Office Memorandum dated 01.04.2011. The required information as sought for was promptly furnished by the Administrative Department, however, no further action with regard to the appointment of the petitioner under the Die-in-harness scheme was taken up.

[7] When the petitioner came to know that some of the juniors who are at Sl. No. 16 & 19 of the consolidated seniority list of applicants have been given appointment by superseding the petitioner, the petitioner approached this Court by filing a writ petition being WP(C) No. 375 of 2018 for redressing his grievances. During the pendency of the said writ petition, the Under Secretary (Power), Government of Manipur wrote a letter dated 16.03.2019 addressed to the Additional Advocate General, Manipur, wherein it is stated that there are 86 numbers of posts of Junior Technical Assistant reserved @ of 20% in Manipur State Power Distribution Company Limited for appointment under the Die-in-harness scheme and that the case of the petitioner was referred to the Department of Personnel and Administrative Reforms for their concurrence to which the Department of Personnel had observed that the petitioner did not fulfil the condition laid down in Para 1 (iii) of the DP's Office Memorandum dated 01.04.2011 and as such, the Department of Personnel and Administrative Reforms did not give its concurrence for appointment of the petitioner under the Die-in-harness scheme.

[8] The aforesaid writ petition filed by the petitioner was disposed of by this Court by an order dated 26.09.2019 by directing the respondents to consider the case of the petitioner under the Office Memorandum dated 06.06.2007 and to complete the exercise within a period of three months from the date of receipt of a copy of the said order. When the authorities failed to implement the direction given by this Court and when the

petitioner came to know that in the latest seniority list of applicants pending for appointment under the Die-in-harness scheme, his name was not included and one of his junior is at Sl. No. 1 of the list, the petitioner approached this Court by filing the contempt case against the concerned authorities and only after filing of the said contempt case, the Deputy Secretary (Power), Government of Manipur, issued an order dated 26.05.2022 rejecting the claim of the petitioner for his appointment under the Die-in-harness scheme. The reasons given by the authorities in the said order for rejecting the claim of the petitioner is that at the time of considering the case of the petitioner, the Department of Personnel and Administrative Reforms made observation that in the Office Memorandum dated 06.06.2007 under which the case of the petitioner is to be considered as per directions given by this Court, there is no provisions for appointment of 2nd nominee under the Die-in-harness scheme and therefore, the petitioner cannot be considered for appointment under the said scheme and that even though appointment of a 2nd nominee is allowed under DP's Office Memorandum dated 01.04.2011, the case of the petitioner cannot be considered for appointment as he did not fulfil the condition for changing of nominee as per Para 1 (iii) of the said Office Memorandum. On the basis of the aforesaid observation made by the DP, the claim of the petitioner for his appointment under the Die-in-harness scheme has been rejected as being devoid of merit. Having been

aggrieved, the petitioner assailed the said order by filing the present writ petition.

[9] In the present case, only the respondent No. 1 filed its counter affidavit and none of the other respondents filed any counter affidavit. In the said counter affidavit, the stand taken by the respondent No. 1 in rejecting the claim of the petitioner for his appointment under the Die-in-harness scheme is the same as are given in the impugned order dated 26.05.2022.

[10] I have heard the submissions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record. In my considered view, the object and purpose of compassionate appointment is to provide succor to the deceased employee's family, which lost its bread-winner suddenly, and to come to its rescue in such financial dire straits. Therefore, such an appointment needs to be made shortly after the death of the employee concerned. It is well settled that compassionate appointment are not to be treated as a separate mode or method of recruitment and they are only a welfare measure put in place to come to the aid of bereaved families that are torn apart by the abrupt loss of the sole earning member. However, in practice, it is seen that due to lack of vacancies or for any other reasons, such appointments are kept pending through no fault of the family member of the deceased employees who had applied for such benefit. The case in hand is one of such. The petitioner's father died on 23.11.2002, a long

time back and though the initial application was made on 11.05.2007 (16.05.2007), just after restoration of the Die-in-harness scheme after its abolition on 15.06.2002, nothing came out of it even after two decades thereafter, till the petitioner's claim was rejected on 26.05.2022, that too only on the pains of contempt proceedings.

[11] The ground for rejection of the claim of the petitioner for his appointment in Die-in-harness scheme as given by the authorities in the impugned order as well as in the counter affidavit is that under the DP's Office Memorandum dated 06.06.2007 under which the case of the petitioner is to be considered as per directions given by this Court, there is no provisions for appointment of 2nd nominee, therefore, the petitioner's case cannot be considered for appointment under the said Office Memorandum and that even though appointment of a 2nd nominee under the Die-in-harness scheme is allowed under the DP's Office Memorandum dated 01.04.2011, the petitioner did not fulfil the condition for changing of nominee as provided under Para 1 (iii) of the said Office Memorandum dated 01.04.2011 and as such, his case could not be considered for appointment and accordingly, the claim of the petitioner for his appointment under the Die-in-harness scheme had been rejected as devoid of merit.

[12] In the present case, just after restoration of the Die-in-harness scheme on 16.12.2006, the petitioner's mother submitted an application dated 11.05.2007 to the Chief Engineer (Power), Government

of Manipur requesting for appointment of the petitioner's elder brother Ksh. Roshan Singh under the Die-in-harness scheme, however, the authorities never process or acted upon the said application. Subsequently, the petitioner's mother submitted another application dated 17.12.2008 to the Chief Engineer (Power), Electricity Department, Manipur requesting for appointing the petitioner in place of the petitioner's elder brother under the Die-in-harness scheme on the ground that the petitioner's elder brother has become age barred. On submission of the 2nd application, the authorities acted upon the said application and process for considering the case of the petitioner for his appointment under the Die-in-harness scheme and in fact, the Administrative Department submitted proposal for appointment of the petitioner under the Die-in-harness scheme. In view of the above, this Court is of the considered view that there was never an actual change of nominee on record in favour of the petitioner, inasmuch as, the first application for appointment of the petitioner's elder brother was never acted upon or process by the authorities and the said application is deemed to have been superseded by the 2nd application and accordingly, this Court is of the considered view that the petitioner cannot be treated or termed as a 2nd nominee as is now being claimed by the authorities. In fact, as there was never a change of nominee and the petitioner is the only claimant being considered by the authorities for appointment under the Die-in-harness scheme, his claim cannot be rejected on the ground that such claim is barred by the DP's Office Memorandum dated 01.04.2011.

There is, thus, no impediment to the petitioner being given appointment on compassionate ground under the Die-in-harness scheme.

[13] In view of the facts and circumstances of the present case and for the reasons and finding given hereinabove, this writ petition is allowed by quashing and setting aside the impugned order dated 26.05.2022 and the respondents are directed to appoint the petitioner either as an Assistant Lineman as proposed by the Administrative Department or as a Junior Technical Assistant against one of the 86 vacant posts as mentioned in the letter dated 16.03.2019 of the Under Secretary (Power), Government of Manipur within a period of one month from the date of receipt of a copy of this order.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

FR/NFR

Lhaineichong