

KHOIROM
BIPINCHANDRA SINGH
RA SINGH

Digitally signed by
KHOIROM
BIPINCHANDRA SINGH
Date: 2024.04.05
14:58:56 +05'30'

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

W.A. No. 65 of 2023

State of Manipur & 3 Ors.

... Appellants

- Versus -

Ksh. Romen Singh

... Respondent

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

02.04.2024
(CJ)

[1] Heard Mr. A. Vashum, learned GA appearing on behalf of the appellants and Mr. Th. Khagemba, learned counsel appearing on behalf of the respondent.

[2] Late Shri Ksh. Iboyaima Singh, while serving as Head Lineman at the Senapati Division, died in harness, due to electrocution, on 23.11.2002.

[3] Smt. Ksh. Bormani Devi who is his widow submitted an application dated 11.05.2007 [RR No. 1258 dated 16.05.2007 of CE (P)] initially seeking appointment for her son, namely Ksh. Roshan Singh under the die-in-harness scheme. Thereafter, during the pendency of the said representation seeking appointment under the scheme; the widow sought substitution of Ksh. Roshan Singh with her younger son, Ksh. Romen Singh.

[4] It is an admitted position that the Department of Administrative Reforms (Personnel Division) issued office memorandum dated 06.06.2007 restoring the die-in-harness scheme which had been abolished by the earlier order dated 15.06.2002.

[5] It was under this restored die-in-harness scheme that Ksh. Romen Singh's application for appointment under die-in-harness scheme in the Power Department of Government of Manipur was processed.

[6] It is further observed that in the consolidated list furnished by the official respondent, the name of Ksh. Romen Singh appears at Sl. No. 9 with the remark that his proposal has been submitted to the Government of Manipur for the post of Assistant Lineman (now re-designated as Junior Technical Assistant).

[7] It is also an admitted position that vide office memorandum dated 07.12.2017, issued by the Department of Administrative Reforms (Personnel Division), the revised die-in-harness scheme was brought into force; wherein at clause 21(b), it was clearly and unequivocally enunciated that, all pending applications under the die-in-harness scheme, received before the effective date of revised die-in-harness scheme, shall be governed by the earlier guidelines/office memorandum issued by the Department of Personnel from time to time, subject to certain conditions.

[8] Aggrieved by not being considered for appointment, Ksh. Romen Singh was constrained to institute W.P.(C) No. 375 of 2019 wherein, the Learned Single Judge of this Court vide order dated 26.09.2019 whilst allowing the said writ petition observed and directed as follows:

"The submission of learned Addl. A.G. that the case of the petitioner cannot be considered under O.M. dated 01.04.2011 has also been considered. It is to be noted that the application of the petitioner was made on 17.12.2008 when the O.M. dated 6.6.2007 was in operation. Therefore, the O.M. 1.4.2011 is not applicable to the case of the petitioner particularly when there is no specific provision in the said O.M. that it will have retrospective effect. Further, the Office Memorandum dated 7.12.2017 at clause 21(b) clearly indicates that the applications under the die-in-harness scheme received prior to the effective date of the O.M. dated 7.12.2017 shall be governed by the earlier guidelines/O.M. issued by the Department of Personnel from time to time.

In that view of the matter, the case of the petitioner will be governed by the O.M. dated 6.6.2007. Accordingly, the respondents are directed to consider the case of the petitioner under the O.M. dated 6.6.2007. Let such exercise be taken and completed within a period of 3 (three) months from the date of receipt of a copy of this Court.

Writ petition is accordingly disposed of."

[9] A plain reading of the above extracted findings and directions, leaves no matter of doubt that, Ksh. Romen Singh's application which was admittedly made on 17.12.2008, during the currency of office memorandum dated 06.06.2007, was to be considered in terms of the office memorandum dated 06.06.2007 and not in terms of the office memorandum dated 01.04.2011, as urged on behalf of the official respondent.

[10] It is in that view of the matter that the official respondent was directed to consider Ksh. Romen Singh for appointment under the die-in-harness scheme as elaborated under the office memorandum dated 06.06.2007. The official respondent was directed vide the said order dated 26.09.2019 to take necessary steps for completion of the said exercise within 3 (three) months.

[11] Admittedly, the official respondent thereafter, remained in deep slumber for a period of almost 3 (three) years. It is only on the 26.05.2022 that the official respondents, vide the impugned order dated 26.05.2022, reiterated its earlier stand; which had already been rejected by the Learned Single Judge; to the effect that the office memorandum dated 01.04.2011 did not allow the appointment of a second nominee under the die-in-harness scheme. It is in terms of the said erroneous view that Ksh. Romen Singh's application for appointment under the subject scheme was unjustifiably rejected as being devoid of merit.

[12] We find that, what is of devoid of merit is the ludicrous stand taken by the official respondent evidently contrary to the specific finding arrived at by the Learned Single Judge vide earlier order dated 26.09.2019. Ksh. Romen Singh, being aggrieved, was once again constrained to institute a second writ petition before this Court seeking appointment under the die-in-harness scheme.

[13] As was only to be expected, the Learned Single Judge, in the second round of proceedings on the same issue, allowed the said writ petition observing and directing as follows:

"[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 direction 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 16.01.2006, 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 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 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."

[14] Mr. A. Vashum, learned GA appearing on behalf of the State of Manipur invites our attention to paragraph No. 3 (ii) of the impugned order dated 26.05.2022 issued by the Power Department, Government of Manipur to urge that

in terms of the existing guidelines/office memorandum 01.04.2011, no second nominee could be appointed under the die-in-harness scheme and resultantly, the claim of Ksh. Romen Singh was rejected by them. Paragraph No. 3(ii) of the impugned order aforementioned is extracted as under:

"(ii) There was an existing guidelines/OM bearing No. 20-15/2002-DIH/DP issued by DP on 01-04-2011 which allowed to appoint a 2nd Nominee under the DIH scheme prior to the effective date of O.M. dated 07-12-2017. However, as the petitioner did not fulfill the condition for changing of Nominee as per para 1(iii) of the said DP's OM dated 01-04-2011, he could not be considered for appointment."

[15] As eruditely expressed by the Learned Single Judge in the order dated 18.04.2023 assailed before us, there was never an actual change of nominee on record in favour of the petitioner, inasmuch as, the first application of the petitioner's elder brother was never acted upon or processed by the authorities and the said application is therefore 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.

[16] In addition as elaborated herein above, the Learned Single Judge in the earlier round of litigation had clearly arrived at the finding; which has attained finality on account of the circumstance that it was never carried in an appeal by the official respondent; that the application of Ksh. Romen Singh made on 17.12.2008 during the currency of office memorandum dated 06.06.2007 had to be determined in terms of that office memorandum and not the subsequent office memorandum dated 01.04.2011; which office memorandum has once again been resorted to by the official respondents, to deny appointment to him. In any event, the office memorandum dated 01.04.2011 cannot by any stretch of the law have retrospective operation.

[17] In that view of the matter, the present appeal instituted by the State of Manipur is found to be completely devoid of merit and is resultantly hereby dismissed with the following directions:

- (a) Ksh. Romen Singh be considered for appointment as Assistant Linemen (now re-designated as Junior Assistant) within a period of 6 (six) weeks from today.
- (b) The State of Manipur shall compensate Ksh. Romen Singh to the tune of Rs. 50,000/- (Rupees fifty thousand) for having made him run from pillar to post even after the clear cut directions to consider him for appointment vide the order dated 26.09.2019 passed by the Learned Single Judge of this Court in the first round of litigation on the same subject, within a period of 4 (four) weeks.

[18] The present appeal is dismissed and disposed of accordingly.

JUDGE

CHIEF JUSTICE

Bipin