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State of Manipur Vs. All Manipur Appointment Under the Die-in-harness Scheme Association and ors.

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Court : Guwahati

Decided On : Dec-16-2003

Judge : P.P. Naolekar, C.J. and S.K. Kar, J.

Acts : [Constitution of India](#) - Articles 14 and 16; Manipur Service (Special Pension) Rules, 1982

Appeal No. : W.A. Nos. 26, 49, 51, 53, 54, 72, 73, 81 to 91, 93, 101, 103, 104, 106 to 111, 113, 115, 116, 118, 1

Appellant : State of Manipur

Respondent : All Manipur Appointment Under the Die-in-harness Scheme Association and ors.

Advocate for Def. : A. Mohendro, B.P. Sahu, C.K. Kamal, Ch. Ngongo, Ch. Nickel, G. Gourachandra, G. Khupchingpao, H.S. Paonam, K. Rabei, Kh. Binoy Kumar, L. Sharat Sharma, M. Jagajit, M. Rajen, N. Jotendro, N. Kotiswar, N

Advocate for Pet/Ap. : A. Jagjit, Ashok Potsangbam, Bidyamani Devi, H.N.K. Singh, Jallaluddin, N. Kerani, N. Umakanta, R.K. Yaibi, R.S. Reisang, S. Nepolean, Sobhana and Th. Ibohal, Advs. and G.A.

Disposition : Appeal allowed

Judgement :

P.P. Naolekar, C.J.

1. A large number of persons in the State of Manipur approached the High Court by filing writ petitions seeking directions for enforcement of the 'Die-in-Harness Scheme' framed by the State of Manipur for giving appointment to the dependent of a Government servant dying in harness and for quashing the policy decision taken by the State Government on 16.3.2001, whereby the Die-in-Harness Scheme was kept in abeyance with immediate effect until further orders. The writ petitions numbering 155 were clubbed together and decided by a common judgment and order dated 21.12.2001 by the learned Single Judge. The learned Single Judge in his judgment has categorised the petitions and petitioners in three different categories; (I) Petitioners in Writ petitions from serial No. 1 to 87, where the State Government did not sanction nor give its approval for appointment of legal heirs of the Government employees, who died-in-harness, (II) Petitioners in Writ Petitions from serial No. 88 to 143, where the petitioners cases have been examined and considered by the authorities concerned and approval has been given for their appointment under 'Die-in-Harness Scheme' on compassionate ground and (III) writ petitioners in Writ Petitions from Serial No. 144 to 154 where the authorities concerned have offered appointment by issuing letters but did not actually give appointment and kept the matter pending without taking final decision. The learned Single Judge while considering the 'Die-in-Harness Scheme' frame by the State of Manipur and the subsequent ban imposed on appointment in paragraph 4 of the judgment held, thus:

4. A question mark arises at this stage. Why this Government (State of Manipur) instead of issuing a ban for a limited/short period in the matter; they almost recall their own scheme and keeps it is abeyance as if forever. Why they don't implement such policy decision instead of taking the course of 'Ban'. In my considered view, it is an illegal step on the part of the State respondents, thus, infringing the Constitutional mandates. In view of the above position, this Court has no alternative but, to quash the subsequent impugned Govt. order dated 16.3.2001 pertaining to the ban, in other words, keeping in abeyance the

appointment under Die-in-harness Scheme or on compassionate ground and, accordingly, it is quashed, however, it is made clear that the Government may issue necessary order banning such appointment under die-in-harness Scheme or on compassionate ground under their wisdom but, the State Government cannot do it as it will be against the mandate of our Constitution.

2. The learned Single Judge has further held that - the Courts generally and ordinarily do not interfere with, the decision making process of the authorities concerned unless such decision making process suffers from infirmity, illegality or arbitrariness. The State respondents/authorities are at liberty to exercise their lawful duties under their wisdom in the matter, but such decision of the State Respondents should be fair and just and imposition of ban on the appointments, according to the learned Single Judge does not fall within such category. On this view of the matter, the learned Single Judge has issued directions to the State Government, which runs, thus:

7. in case of those writ petitioners/candidates, in whose favour the Government had already conveyer the approval for their appointment under Die-in-Harness Scheme against the existing vacant posts and in whose favour the Offer Forms had been given for the purpose, they shall be afforded/given appointment in the said post/posts within a period of 3(three) weeks from the date of receipt of this judgment and order. It is made clear that the Govt. order dated 16.3.2001 pertaining to the ban in the matter of appointment under Die-in-Harness Scheme as mentioned above shall not be applicable in their cases. With regard to the other cases of the writ petitioners in whose favour there are no Government approval orders for such appointment, the State respondents are directed to expedite the matter and finalise the same at the earliest preferably, within a period of one (1) month from the date of receipt of this judgment and order and afford appointment to them against the available vacancies in order of preference, in other words, as per their turn and even, if there is/are no suitable post(s), the State respondents are at liberty to create supernumery post(s) for accommodating them and, in these cases also, the State Government's ban orders particularly, the Govt. order dated 16.3.2001 mentioned above shall not be applicable.

3. Thus, the learned Single Judge has issued directions to the State of Manipur for giving appointment to some petitioners under 'Die-in-Harness Scheme' and in regard to some petitioners the State Government was directed to expedite the process of giving its approval for appointment within a period of one month. The learned Single Judge has also issued directions to create supernumerary posts, if posts are not available, so that the petitioners can be accommodated, on their appointment, on these posts under the 'Die-in-harness Scheme'. The learned Single Judge has quashed the ban order dated 16.3.2001 issued by the State Government. The Court has also issued directions for relaxation of the age limit in the Writ Petition No. 1340/2001.

4. Aggrieved by the decision rendered by the learned Single Judge the State of Manipur has filed 92 writ appeals, which are placed before the Court for hearing. The question involved in these appeals being analogous, we propose to decide these appeals by a common judgment. Before we proceed to deal with the legal question involved in these appeals, we may lay the facts and circumstance in which the dispute arose.

5. State of Manipur, in supersession of all previous orders, instructions/guidelines/office memorandum laying down guidelines/instructions, has issued an office memorandum on 1st December, 1995 for living appointment under the 'Die-in-Harness Scheme'. The salient features of the scheme are - to help the victim of circumstance in dire financial conditions on the sudden death of the bread earner of the family; the benefit of appointment under the Scheme shall be extended only to the dependent of those Government employees, who died in service and shall not apply to those employees, who retired on medical ground (invalid pension); the appointment under the Scheme will be applicable only to the wife/husband/real son/real daughter of the Government servant who died-in-harness leaving his/her family in immediate need of assistance and when there is no other earning member in the family; the appointment under the Scheme shall be applicable only to Class III and IV posts, which are not within the purview of the Manipur Public Service Commission (MPSC) for technical posts which required technical qualification prescribed under the Recruitment Rules of the post; the appointment/nominee will be considered against Class III and IV posts as per the

relevant recruitment rules in force at the time of issue of appointment order; the scheme shall be applicable only to the Government employees against substantive vacancies falling under direct recruitment quota available in the Department in which deceased employees worked; the appointment under the Scheme will be restricted to only one dependent of the deceased employee, i.e., wife/husband/real daughter/adopted daughter as the case may be; since the scheme has been formulated for giving immediate relief to the bereaved family, the application for appointment was to be moved within one year from the date of expiry of the Government servant and the job seekers should be within the age limit prescribed under the relevant service rules. The scheme specifically mentioned that the Scheme does not create a right to a post under the Government.

6. By office memorandum issued on 13th January, 1999 certain amendments have been incorporated in the Scheme and the benefit of compassionate appointment under the Scheme was extended to a widow/son/daughter/adopted son/adopted daughter of a Government servant, who retired on medical grounds, viz., loss of sight, disability due to paralysis illness due to cancer and mental disorder, before attaining the age of 55 years, on recommendation of Medical Board constituted for the purpose, in case, the Government servant has no son or daughter the adopted son/adopted daughter shall be eligible for appointment if such adoption is lawful and valid under the personal law of such Government servant and the particulars of the adopted son/adopted daughter are duly recorded in the service book/card of the Government servant concerned. If the Government servants, at the time of their death in harness or retirement on invalidation on the grounds specified therein was unmarried but have other dependents on them, one of the dependent brothers/sisters of the Government servant concerned was made eligible for consideration for appointment on compassionate grounds on the conditions laid therein. The amendment further stated that if the family of the deceased Government servant gives option for or receives pension under the Manipur Service (Special Pension) Rules, 1982 no dependent/member in the said family will be entitled to compassionate appointment under the Scheme.

7. When the Scheme was in force in the State of Manipur the State Government has issued a ban order on 19th October, 1999 on the background of financial difficulties faced by the State Government, banning creation or up-gradation of posts. Apart from this, the Order was made applicable to all Public Section Undertakings, Autonomous Bodies and Banks that are financially assisted by the Government in the form of Grant-in-aid, share capital contribution, etc.

8. The State of Manipur on 6th November, 1999 had issued another order banning the direct recruitment and declaration on result of DPC for promotions. The order stated that all appointments against existing vacancies shall stand frozen until further orders in public interest and there will be a complete ban on direct recruitment and that the result of DPC, if not declared as on date should be frozen as per the order of Finance Department. The State of Manipur on 24th July, 2000 has issued clarification regarding applicability of ban on direct recruitment in regard to appointment under die-in-harness scheme the order stated that doubts have been expressed by some Departments whether appointment under die-in-harness scheme are covered under the ban order issued by the State Government. Appointment in die-in-harness scheme has been made against vacancies of direct recruitment quota and, therefore, the ban order was applicable to appointment under die-in-harness scheme also. It has been further clarified that there is no bar to process the claims for appointment under die-in-harness scheme, but the actual appointment orders may be issued only after lifting the ban on appointment by direct recruitment. On 16th March, 2001 the State of Manipur has issued a specific order in regard to appointment under the Die-in-Harness Scheme. The order stated that in view of the critical financial position of the State Government, The Governor of Manipur hereby keeps in abeyance appointment under Die-in-Harness Scheme with immediate effect until further orders. The State of Manipur has issued an order on 19.3.2001 in pursuance of the Cabinet decision taken on 7.3.2001 for downsizing the posts of Government. This order reiterated the ban on direct recruitment, part-time, contract, ad hoc, substitute, casual basis, etc. On 11th July, 2001 orders have been issued in pursuance of the recommendation by the Committee constituted by the State for down sizing/right sizing of the Departments under the State Government in the form of the reduction of number of posts and abolition of posts, as the case may be.

9. Law on the subject of appointment on Die-in-Harness Scheme has been laid down by the Apex Court in series of decisions. In *State of Haryana v. Rani Devi* (1996) 5 SCC 308, the Supreme Court observed that appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the [Constitution of India](#). However, such claim is considered as reasonable and permissible on the basis of a sudden crisis occurring in the family of such employee who has served the State and dies while in service. The Court further emphasized that is why, it is necessary for the authorities to frame rules, regulations or issue such administrative orders, which can stand the test of Article 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *LIC of India v. Asha Ramchandra Ambedkar* : (1994) 1173 SCC 1, the Court said the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. In *Umesh Kumar Nagpal v. State of Haryana* : [1994] 3 SCR 893, it has reiterated that as a rule public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of an employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. In *Sushma Gosain v. Union of India* (1989) 4 SCC 468, the Apex Court has observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his

father is no ground, unless the Scheme itself envisages specifically otherwise. In *Director of Education Secondary v. Pushpendra Kumar* : [1998]3SCR432 , it was held that in the matter of compassionate appointment there couldn't be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has; however, to be taken that provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. In *State of UP v. Paras Nath* : (1999)IILLJ454SC , it was held that the purpose of providing employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time.

10. The aforesaid principles laid down by the Apex Court has been emphatically confirmed by the Court in other two recent decisions in *State of Manipur v. MD Rajodin* : AIR 2003 SC3794 and in the matter of *State of Haryana and Anr. v. Ankur Gupta* (2003) 7 SCC 704.

11. From the aforesaid decision, the law on the subject is crystal clear, that appointment on compassionate ground cannot be claimed as a matter of right. The appointment under Die-in-Harness Scheme has to be made in accordance with the statutes, rules, regulation or scheme framed by the Government and no direction can be issued by the Court beyond the perimeter of the statutory

provision or the policy decision taken by the Government. Compassionate appointment is an avenue of appointment made available by the Government purely on humanitarian considerations and having regard to the fact that unless some source of livelihood is provided to the family of the deceased employee they would not be able to meet both ends. The employment can be given under Die-in-Harness Scheme to Grade-III and IV posts and such appointment should have immediate implementation to redeem the family in distress, unless the Scheme itself suggests specifically otherwise. One has to keep in mind that compassionate appointment is in the nature of exception to the general provisions and it should not unduly interfere with the right of other persons, who are otherwise eligible for appointment on the post.

12. The learned Single Judge has proceeded in the premises that appointment under the Die-in-Harness Scheme is a legal or constitutional obligation of the State and as such the persons who are eligible to be appointed under the Scheme have a legal and constitutional right for appointment under the Scheme. The observations made by the learned Single Judge in the impugned judgment that the States inaction in not giving appointment under the Scheme amounts to infringement of the Constitutional mandate and violative of legal rights of the petitioners/respondents, in our opinion, does not enunciate the legal position correctly. The learned Single Judge while issuing the direction to the State Government in the impugned order has quashed the order dated 16.3.2001 issued by the State Government, where under the appointment under Die-in-Harness Scheme has been kept in abeyance, presumably because the learned Judge has thought that giving appointment to eligible persons under the Scheme is legal and Constitutional obligation of the State and that policy decision once taken has to be implemented. The learned Judge has further found that policy decision taken by the State can be termed as 'arbitrary decision'.

13. It is submitted by Mr. Ashok Potsangbam, learned Counsel appearing for the State of Manipur that order dated 19.10.1999 imposing ban on creating or up-gradation of post was issued on account of the financial difficulties faced by the Government. The ban was applicable to cadre reviews of State organised services having implication of additional posts creation and also in respect of all Public

Sector Undertakings, Autonomous Bodies and Banks financed by the Government in the form of Grant-in-aid and share capital contribution, etc. Thereafter on 6th November, 1999 the State Government has issued order imposing complete ban on all appointments, direct recruitments and also declaration of the result of DPC, if not declared as on date. On 24th July 2000 the Government issued a clarification stating that the existing ban on filling up vacancies within direct recruitment is applicable to appointment under Die-in-Harness Scheme also, however, there is no bar to process the claims for appointment under Die-in-Harness scheme. He has argued that suspending all appointments under Die-in-Harness Scheme dated 16.3.2001 was issued by the State Government taking a policy decision, which was necessitated on account of serious financial crunch. The policy decision of the Government to impose ban on appointment under the Die-in-Harness Scheme was resorted to for strengthening the deteriorating financial condition of the State and it was a part and parcel of the said policy to curtail the expenditure of the State Government. According to the learned Counsel appearing for the appellants-State, the orders were passed in pursuance of the Cabinet decision imposing ban on direct recruitment and down sizing/right sizing of the Departments under the State Government. The persistent action taken by the Government clearly indicates that the policy decision taken by the government in imposing ban was on account of financial difficulties faced by the State government and cannot be termed as arbitrary action on the part of the State.

14. In *Peerless General Finance and investment Co. Ltd. v. Reserve Bank of India* : 1991 CriLJ1391 , the Supreme Court has held that the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy, which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies in such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts. In *Premium Granites v. State of T.N.* : [1994]1SCR579 , the Supreme Court while considering the Court's

powers in interfering with the policy decision has observed that 'it is not the domain of the Court to embark upon un-chartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be'. In *Delhi Science Forum v. Union of India* : [1996]2SCR767 , the Apex Court held that 'the national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by Parliament and the representatives of the people on the floor of Parliament can challenge and question any such policy adopted by the ruling Government'. While considering the validity of the industrial of the State of Madhya Pradesh relating to the agreements entered into for supply of sale seeds for extracting oil in M.P. *Oil extraction v. State of M.P.* : (1997)7SCC592 . the Supreme court held that unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other Constitutional provisions or comes into conflict With any statutory provision, the Court cannot and should not out-step its limit and tinker with the policy decision of the executive functionary of the State. In *Narmada Bachao Andolan v. Union of India* : AIR 2000 SC3751 , there was a challenge to the validity of the establishment of a large dam. It majority view of the Apex Court was - 'it is now well settled that the courts, in exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution'.

15. In *Balco Employees' Union (Regd.) v. Union of India and Ors.* (2000) 2 SCC 333, in paragraph 47, the Supreme Court held, thus:

47. Process of disinvestments is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic

decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to 'trial and error' as long as both trial and error are bona fide and within limits of authority.

16. It is obvious from the above decisions of the Apex Court that in matters relating to economic issues, the Courts have refrained from interfering with as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be violative of constitutional or legal limits on power or so abhorrent to reason, the court would decline to interfere, in the matter relating to economic issues, the Government has, while taking a decision, right to 'trial and error' as long as both trial and error are bona fide and within the limits of authority, it is also evident from the decisions that the courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. However, the Court has a duty to see that in taking such decision, no law is violated and fundamental rights guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution. To strike down policy decision, Court must come to definite conclusion that policy decision of the State or Authority is devoid of reason and is the result of whims and unreasonable wishes of the Executive Authority.

17. The consistent efforts made by the State Government to curtail its expenditure to meet the financial demands of the State is demonstrated from various policy decisions taken by the Government from time to time by taking measures of imposing ban on appointment, restricting promotions and down sizing cadre strength and direction to local bodies and Autonomous bodies to act as per the directions of the State Government, etc. The decision so taken by the Government, in our considered view, cannot be termed as violative of the Constitutional mandate or any legal rights or is absolutely capricious, arbitrary and/or not being informed by any reason, whatsoever. We are of the view that the

policy decision taken by the Government on 16.3.2001 was within the domain and limits of powers of the Executive and does not call for interference from the Court, in the facts and circumstances of the case. The directions of the learned Single Judge to the State Government to give appointments to the petitioners under Die-in-Harness Scheme, if necessary by creating supernumerary posts were contrary to the policy decision taken by the Government and, therefore, we set aside the impugned judgment and order dated 21.12.2001.

18. Before parting with the case, it is pertinent to mention the submissions made by the counsel appearing for respondents/petitioners that after the decision rendered by the learned Single Judge the State Cabinet has taken policy decision on 29th October, 2002 for giving appointment and the same appointment are made by the State on the basis of that policy decision, which may not be disturbed. The policy decision of the State relied upon by the counsel reads:

(i) Those petitioners/applicants in respect of whom the Government had already conveyed its approval under the Die-in-Harness Scheme, but the appointment orders could not be issued before imposition of the ban on direct recruitment, may, now be appointed subject to availability of vacancies, provided that the vacant post has not been identified for downsizing as a part of the State Governments policy;

(ii) The case of those applicants which were processed during the currency of the Die-in-Harness Scheme but in respect of which Government approval was not accorded before imposition of the ban on direct recruitment may be reexamined on individual merits in consultation with the Department of Personnel & Administrative reforms and decided. The case in respect of which a decision to appoint the applicant was taken, the Government approval may be conveyed to the concerned department provided that no appointment shall be made against any post, which has been identified for downsizing as a part of State Government's policy;

(iii) Those who have obtained orders from the High Court in their favour for appointment under the Die-in-Harness Scheme which have not been vacated on appeal/review may be appointed in a vacancy against the post not identified for abolition or downsizing in the Department concerned; and

(iv) The cases of those applicants who are either not eligible for appointment under the, Scheme of Die-in-Harness Scheme or under the Recruitment Rules may be examined and rejected. The Administrative Departments may take appropriate and timely action to file appeal/review petition in the Court, in case any such applicants have obtained orders in their favour for appointment under the Die-in-Harness Scheme.

19. Suffice to say, the State Government is at liberty to act on the policy decision taken by the Government on 29th October, 2002 and it is not for this Court to adjudicate on this policy decision in the present appeals. Our decision is restricted to in relation to the policy decision of the Government imposing the ban on Die-in-Harness Scheme and the subsequent ban imposed by the order dated 16.3.2001 issued by the Government only.

20. In the result, the appeals are allowed as indicated above. However, in the facts and circumstances of the case there shall be no order as to costs.

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