

JOHN
TELEN
KOM

Digitally signed
by JOHN TELEN
KOM
Date:
2021.10.29
16:15:22 +05'30'

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

WP(C) No.393 of 2021

N.Thangkhankhual, aged about 34 years s/o (L) John Chinthang Naulak, Ex-Inspector Sericulture Dept. Government of Manipur, and a resident of Thangsho Street, New Lamka (G), PO & PS Churachandpur in Churachanpur District, Manipur..

...Petitioner

– Versus –

1. The State of Manipur represented by the Commissioner, Sericulture to the Govt. of Manipur-795001.
2. The Director, Sericulture Govt. of Manipur at Imphal-795005.

...Respondents

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner : Mr N. Umakanta, Advocate,

For the Respondents : Mr. Sukumar, GA.

Date of hearing : 29.09.2021

Date of Judgment & Order : 28.10.2021.

JUDGMENT & ORDER
(CAV)

[1] This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to give compassionate appointment to the petitioner to a class-III post in the Sericulture Department, preferably as a Lower Division Clerk or Inspector, which is commensurate with his educational qualification.

[2] The case of the petitioner is that his father John Chithang Naulak, while working as an Inspector in the Sericulture Department, died on 4.10.2002 and the petitioner being the eldest son submitted an application for compassionate appointment under the die-in-harness scheme. However, at the relevant point of time, the Government had withdrawn the dis-in-harness scheme for some time only to restore it after a few years. After the restoration of the scheme, it was notified that the family members of the deceased employees who had died during the period of withdrawal and restoration will be eligible for compassionate appointment as per the death of the deceased employee, subject to the family member applying for compassionate appointment.

[3] Further case of the petitioner is that the petitioner, who has earlier applied at the time of the death of his father, again applied to the authorities for giving him compassionate appointment to a suitable post, preferably Class-III

post like Lower Division Clerk as he was a graduate having passed his B.A (Hons) in political Science. In the meantime, it came to the notice of the petitioner that, some tampering had been made in the list of the claimants for compassionate appointment, whereby a person lower to him was placed above him. Not only that, the date of the petitioner's father's expiry was tampered with by pushing it back by a year later. Aggrieved by such tampering, the petitioner has filed W.P.(C) No. 473 of 2014 to quash such tampering and sought for compassionate appointment. By an order dated 11.2.2015, this Court allowed the writ petition after recording the submission of the learned Government Advocate that, it has already corrected the tampering giving the petitioner his rightful position. However, the petitioner's claim was rejected on the ground that there were two more claimants to the post of LDC, Grade-III above the petitioner and the available post of LDC was only one and the petitioner was advised that his claim will be considered when there are vacancies available in the Department.

[4] It is the further case of the petitioner that having waited for more than five years since his earlier claim was rejected, the petitioner again approached the Department and submitted an application requesting him for giving compassionate appointment on 19.11.2020. Along with the application, the petitioner filed application under RTI Act seeking complete details of the claimant list, number of Grade-III post available as well as available vacancies and also appointment made to Grade-III post at the last instant. Thereafter, in

view of the Vagueness of the information furnished, the petitioner once again filed another application under RTI Act seeking further clarification as well as information and the same has not been responded till date by the authorities.

[5] According to the petitioner, in the meantime, it has come to be knowledge of the petitioner that there are available vacancies of Lower Division Clerks as well as Inspectors which are Grade-III post in the Department. Since the authorities have failed to response to the latest claim of the petitioner till today, he has filed the present petition seeking direction on the respondent authorities to give compassionate appointment to him to a Grade-III post, preferably LDC or Inspector.

[6] Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Advocate, appearing for the State.

[7] The learned counsel for the petitioner vehemently argued that though the respondent authorities maintained the seniority list for compassionate appointment under die-in-harness scheme, but contrary to the seniority, they have appointed Grade-IV employees and not under Grade-III, which is illegal. The learned counsel further submitted that several persons who are below the name of the petitioner in the seniority list were appointed under Grade-III, but the petitioner is left out. Since the petitioner's family is suffering lot, learned counsel for the petitioner prayed that suitable direction may be issued to the respondent authorities to give compassionate appointment to the petitioner.

[8] On the other hand, the learned Additional Government Advocate submitted that Group-IV posts alone were available and hence, the persons who were seeking appointment as Group-IV employees, were given appointment under the scheme. In the case of the petitioner, learned Additional Government Advocate submits that the petitioner seeks only Group-III post and since no Group-III post is available, the petitioner was not given appointment. He would submit that whenever vacancies arose in Group-III post, the petitioner will be given appointment.

[9] This Court considered the submissions raised by the learned counsel appearing on either side and also perused the materials available on record.

[10] The grievance of the petitioner is that though his father died on 4.10.2002 and immediately after the death of his father, he made an application on 12.11.2002 for compassionate appointment, till date the respondent authorities have not given him appointment under die-in-harness scheme. On the other hand, persons lower to him in the seniority were given appointment.

[11] It is the say of the respondents that the petitioner is seeking Group-III post and since no Group-III post is available at present, the petitioner was not given compassionate appointment.

[12] It appears that since there was tampering in the seniority list qua date of death of his father maintained by the respondents, earlier, the petitioner filed W.P.(C) NO.473 of 2014 seeking to quash the seniority list of claimants and for issuing appropriate direction on the respondents to appointment the petitioner as LD. During the course of arguments in the said writ petition, the learned Government Advocate has produced a revised seniority list in respect of the compassionate appointment under die-in-harness scheme and recording the submission of the learned Government Advocate, this Court observed that there is no need of passing an order quashing the seniority list of claimants and thus, disposed of the writ petition. The operative portion of the order reads thus:

“In view of the aforesaid facts and circumstances, this writ petition can be disposed of with the direction that respondent Nos. 1 – 3 shall consider the case of the petitioner. Accordingly, I direct that respondent Nos.1 – 3 shall consider the case of the petitioner as per the existing norms of Die-in-harness scheme and issue appropriate order thereafter within a period of 3 (three) months from the date of receipt of a copy of this order.”

[13] The aforesaid order came to be passed by this Court on 11.02.2015. Pursuant to the order dated 11.2.2015, the respondent issued a Memorandum dated 2.9.2015 stating that there are two applicants who are senior to the petitioner and are to be appointed as LDC under die-in-harness scheme and hence, there is no post of LDC available for appointment of the petitioner at present.

[14] It appears that after passing the order dated 11.2.2015, the petitioner submitted RTI applications and sought information qua the appointment given under die-in-harness scheme to a Class-III post either LDC or Inspector. The petitioner annexed along with the writ petition the RTI applications and the information furnished to him by the authorities.

[15] The updated seniority list of all the applicants who have applied for appointment under die-in-harness scheme in respect of Sericulture Department under die-in-harness scheme in respect of Sericulture Department was also furnished by the respondent authorities to the petitioner and the same was also annexed with the writ petition. On a perusal of the same, it is seen that the last appointment as LDC under die-in-harness scheme was given to one Kh. Anand Singh. In the said updated seniority list, it has been noted that the father of the petitioner died on 02.10.2002 and the petitioner has submitted an application on 2.8.2007. Admittedly, the petitioner's initial application for appointment was dated 12.11.2002. Nothing on record to show that the application for appointment under die-in-harness in respect of S. Anand Singh was prior to the application of the petitioner.

[16] It is apposite to note that from the updated seniority list prepared on 04.07.2017, which was furnished to the petitioner as part of the reply dated 2.12.2020, it is evident that the petitioner who appears at Serial No.9 of the combined seniority list under the die-in-harness scheme of the Sericulture

Department is the only person who has got a B.A. degree while the rest above him do not possess any academic qualification except Serial No.8 whose qualification is H.S.L.C. From the seniority list, it can be seen that the petitioner is the only person who can be considered for appointment to any Class-III post either LDC or Inspector as the only academically qualified one as to do so. Moreover, It is also surprise to note that the last compassionate appointment to a Class-III post in the Sericulture Department was made as far back on 02.7.2012 and for the last nearly nine and half years no compassionate appointment to any Class-III post has been made in the Sericulture Department though by the seniority list fixed on 4.7.2017, the petitioner is the only qualified person for appointment to a Class-III post in the Sericulture Department. It has been almost 20 years since the petitioner's father died after which the petitioner had claimed for compassionate appointment with no positive result till date.

[17] Generally, in case of a Government servant dies in harness and the spouse of the deceased Government servant was not in employment under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family, who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, shall, on making an application for the purposes, be given which is within the purview of the public Service Commission, in relaxation of the normal recruitment rules, if such person (i) fulfils the educational qualifications

prescribed for the post: (ii) is otherwise qualified for Government service, and (iii) makes an application for employment within five years from the date of the death of the Government servant.

[18] In the case on hand, it is not the case of the respondent authorities that the petitioner is not eligible and has not qualified for seeking compassionate appointment. It is also not the case of the respondent authorities that the petitioner has not fulfilled the eligibility criteria. On the other hand, during the course of arguments, the learned Additional Government Advocate submitted that since no post of LDC is available, the petitioner was not given appointment. The said argument of the learned Additional Government Advocate cannot be countenanced. The die-in-harness scheme was framed by the State Government to bring solace and benefit to the family of the deceased Government employee who suddenly became without a source of income on the death of the Government employee. The spirit and intention of the scheme provides doe immediate employment and settlement. However, in the present case, as stated supra, the petitioner has been making for almost 20 years waited and in fact, the petitioner and his family members, including his widowed mother continued to live in a penuries condition without any employment.

[19] Considering the facts and circumstances of the case, particularly the penury condition of the family of the petitioner, this Court is of the view that

there is merit in the grievance of the petitioner and accordingly, the writ petition filed by the petitioner is liable to be allowed.

[20]

In the result,

(a) The writ petition is allowed.

(b) The respondent authorities are directed to follow the seniority list maintained by them under the die-in-harness scheme and appoint the petitioner immediately in Class-III post in the Sericulture Department, preferably as a lower Division Clerk or Inspector which is commensurate with the educational qualification of the petitioner.

(c) The said exercise is directed to be done by the respondent authorities within a period of three months from the date of receipt of a copy of this order.

(d) No costs.

JUDGE

FR/NFR

John Kom