

PETITIONER:
STATE OF MANIPUR

Vs.

RESPONDENT:
THINGUJAM BROJEN MEETEIL. ONGBI SAHAYAMIA DEVI

DATE OF JUDGMENT: 10/05/1996

BENCH:
S.C. AGRAWAL, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

W I T H
CIVIL APPEAL NO. 8228 OF 1996
(arising out of S.L.P.(Civil) No. 19612 of 1995)
J U D G M E N T

S.C. AGARWAL, J.
Leave granted

Both these appeals raise common questions relating to appointment on compassionate grounds under the Die-in-Harness Scheme (for short 'the Scheme') framed by the Government of Manipur.

By Office Memorandum dated May 2, 1984 the Government of Manipur issued the Scheme for giving appointment to dependents of government servants who dies in harness. In paragraph (3) of the Scheme, as initially framed it was provided :

"The concession under the above scheme shall also be applicable to those dependents mentioned in (2) above in respect of this work-charged employees who died-in-harness"

By corrigendum dated May 8, 1984 Office Memorandum dated May 2, 1984 was modified and paragraph (3) was substituted by the following provision :

"The Scheme shall be applicable only to regular Government employees in a vacancy available in the department in which deceased employee worked."

Subsequently, by Office Memorandum dated August 31, 1992, the Scheme was revised and in the revised Scheme it was expressly provided :

"Since the appointment under the Scheme is meant only for giving immediate relief to the bereaved family, the application complete in all respect should be submitted to the concerned Department within the one year from the date of expiry of the deceased Government servant.

Provided that the applicant has to crossed the maximum age limit prescribed under the R.R. at the time when proposal in its complete form is submitted to the Government and the Government servant was a regular/substantive appointed under the State Government on the day of demise/retired on medical ground (invalid pension). The Scheme will not be applicable to ad hoc/officialing/work-charged/casual/muster roll appointees."

For work-charged employees the Government Manipur has framed the Terminal Benefits for work Charged Staff of P.W.D./IPC/PHE/M.I./Electricity, Manipur Rules, 1978 (for short 'the Terminal Benefits Rules'). Under the Terminal Benefits Rules permanent work-charged employees are allowed certain benefits in the pattern of C.P.W.D. in the matter of pension, gratuity, retirement, leave, holidays, etc.

Thingujam Brojen Meetai, the respondent in Civil Appeal arising out of S.L.P. (Civil) No. 20370 of 1995 is the son of late Th. Amujao Singh, who was employed as a work-charged Truck Driver with the Government of Manipur. Th. amujao Sing was appointed on February 21, 1978 and he expired on January 31, 1992. After his death, by order dated July 15, 1992, he was confirmed on the post of work-charged Truck Driver with effect from October 1, 1990. After the death of Th. amujao Singh, the respondent sought appointment under the Scheme. Since he was not given an appointment, he filed a writ petition (Civil Rule No. 171 of 1993) in the Gauhati High Court seeking an appropriate direction for his appointment on compassionate grounds. The said writ petition of the respondent has been allowed by the High Court by judgment dated June 29, 1995, whereby the appellants have been directed to consider the case of the respondent for appointment to a suitable post commensurate with his educational qualifications under the Scheme. The submission urged on behalf of the appellants that the Scheme was not applicable since the father of the respondent was a work-charged employee was not accepted by the High Court and, in this regard, the High Court placed reliance on its earlier judgment in N. Arun Kumar Singh v. State of Manipur & Ors., [C.R. No. 2978/91/235/91 decided on March 27, 1982] wherein it was held that a confirmed work-charged employee is entitled to the benefits of the Scheme inasmuch as after confirmation the character of appointment of a work-charged employee is changed. It appears that S.L.P. (Civil) No. 285 of 1993 filed against the said decision of the High Court was dismissed in limine by this court on February 15, 1993. In the impugned judgment the High Court has observed that the matter has been finally concluded by this Court in dismissing the appeal and the said decision of this court is binding under Article 141 of the constitution.

Smt. L. Ongbi Sanyaima Devi, the respondent in Civil Appeal arising out of S.L.P. (Civil) No. 19612 of 1995, is the wife of late L. Kumar Singh who was employed as work-charged Handyman with the Government of Manipur. L. Kumar Singh was appointed as work-charged Handyman with effect from February 21, 1978 and he continued in such employment till he died on August 4, 1991. He was confirmed on the post of work-charged Handyman with effect from March 1, 1987. After the death of her husband, the respondent sought appointment under the Scheme. Since she was not given

appointment, she moved the Gauhati High Court by filing a writ petition (Civil Rule No. 936 of 1993) which has been allowed by the High court by judgment dated June 29, 1995 for the same reasons as in the judgment referred to earlier in Civil Rule No. 171 of 1993.

As noticed earlier, in the Scheme, as initially framed by O.M. dated May 2, 1984, there was a provision in paragraph (3) for appointment of dependents of work-charged employees who died in harness. But by corrigendum dated May 8, 1984, the Office Memorandum dated May 12, 1984 was amended and paragraph (3) was substituted and in the amended provision it was provided that the Scheme shall be applicable to regular government employee in the vacancy available in the department in which the deceased employee worked. The matter was further clarified beyond doubt in the revised scheme issued by O.M. dated August 31, 1992 wherein it is expressly stated that the Scheme will not be applicable to ad hoc/officiating/work-charge/casual/master roll appointees. We are unable to agree with the view of the High Court in *N. Arun Kumar Singh v. The state of Manipur & Ors.* (supra) that a change come about in the character of a work-charged employee after confirmation and the Scheme is applicable to him. In our view, the only change that is brought about as a result of confirmation of a work-charged employee is that, by virtue of the Terminal Benefits Rules, a confirmed work-charged employee is entitled to certain benefits including pension and gratuity under Rule 6 of the Terminal Benefits Rules which benefits he would otherwise have not been entitled to. But a work-charged employee after confirmation does not cease to be a work-charged employee and he continues to be a work-charged employee. The bar regarding applicability of the Scheme to work-charged employee would, therefore, continue to be applicable and the dependents of such a confirmed work-charged employee cannot claim the benefit of an appointment on the basis of the Scheme.

It is no doubt true that Special Leave Petition (Civil) No. 285 of 1993 filed by the State of Manipur against the decision of the High Court in *N. Arun Kumar Singh v. The State of Manipur & Ors.* (supra) was dismissed by this Court by order dated February 15, 1993. The said special leave petition was, however, dismissed in limine without expressing any opinion on the merits of the impugned judgment. The dismissal of a special leave petition by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against. The effect of such a non-speaking order of dismissal without anything more only means that this court has decided only that it is not a fit case where the special leave petition should be granted. Such an order does not constitute law laid down by this court for the purpose of Article 141 of the Constitution. [See: *M/s Rup Diamonds & Ors. v. Union of India & Ors.*, 1989 92) SCC 356; *Late Nawab sir Mir Osman Ali Khan v. commissioner of wealth Tax, Hyderabad*, 1986 Supp. SCC 700, and *Supreme Court Employees' Welfare Association v. Union of India*, 1989 (4) SCC 187]. The High Court was, therefore in error in holding that by dismissing the special leave petition against the judgment in *N. Arun Kumar Singh v. The State of Manipur & Ors.* (supra) this Court has affirmed the said decision of the High Court and the said view of this Court is binding under Articles 141 of the constitution.

For the reasons aforementioned the judgments of The High Court under challenge in both the appeals whereby it has been held that the respondents are entitled to be

considered for appointment on the basis of the Scheme cannot be sustained and have to be set aside. The appeals are, there-fore, allowed, the impugned judgments of the High Court dated June 29 1995 in Civil Rule No. 171 of 1993 and Civil Rule No. 936 of 1993 are set aside and the said writ petition filed by the respondents are dismissed. No costs.

By order dated September 22, 1995, this Court, while directing that notice be issued to the respondent Special Leave petition (Civil) No. 20376 of 1995, also directed the petitioners to deposit for contesting this petition. The said amount had been deposited and has been permitted to be withdrawn by the respondent in the said matter. The said amount shall be retained by him.

JUDIS