

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM**

REF NO. 02 OF 2008
[WITH MISC APPLN, NO. 2 OF 2008]

Appellant/ Petitioner:

Smt. Vanlalnguri
W/o Padama (L)
Bualpui Village, Kolasib District

By Advocates : 1. Mr. H. Laltanpuia
2. Mr. Ricky Gurung
3. Mr. Saihmingliana Sailo
4. Mr. K. Zomuanpuia
5. Mr. J. Lalremruata Hmar

Versus

Respondent's:

Smt. Zosangliani
C/o H. Rothanga
Kawnpui, Kolasib District

By Advocates :

Date of hearing : 24-02-2012
Date of Judgment & Order : 24-02-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge
Aizawl District: Aizawl

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the

nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a *sine quo non* to vanish.

BRIEF FACTS

This appeal is directed against the judgment & order in connection Heirship Certificate Case No. 21 of 2006 Dt. 29.8.2007 passed by the learned Magistrate, Additional Subordinate District Council Court, Kolasib. Wherein, the learned Magistrate declared and appointed the followings in the benefits mentioned below for the legal heirs of the deceased Mr. Padama 1st Bn. IR, Mualvum, Kolasib District viz.-

1. Smt. Zosangkimi W/o Padama (L)
 - (a) Family pension
 - (b) GPF/DLI
 - (c) GPF (NRW)
2. Mr. David Lalrinnunga
 - (a) Relief fund 1st IR Bn, Mualvum
 - (b) Ex-Gratia payment from PHQ
3. Mr. Lalremruata S/o Padama (L)
 - (a) GIS
 - (b) Compensatory pay of 2006
 - (c) TA/DA
 - (d) Leave salary
4. Mr. Lalnunpuia S/o Padama (L)
 - (a) Group saving linked Insurance
 - (b) DCRG

The debt/dues of the said deceased Mr. Padama in respect of LIC (HBA) shall be under the liabilities of Mr. Lalnunpuia S/o Padama (L).

Condonation of delay for filing the instant appeal for about 44 days applied in Misc Case No. 2 of 2008 is granted due to receiving late of the copy of the impugned judgment & order on 29.8.2007 and wrong advice given by lawyer for filing appeal at the belated stage as well as accident of the appellant sustaining simple injury.

The memorandum of appeal streak out that- (i) without going through the nomination duly made by the deceased, the impugned judgment & order was made in contravention of the nomination made by the deceased (ii) the lower court also fails to frame correct issues as did beyond pleadings (iii) without probate case, the learned lower court acted on the basis of the alleged will.

As the respondent nether appear nor fails to file written objections till date, it is decided to adjudicate the case ex parte by virtue of O. XLI, R. 17 (2) of the CPC.

FINDINGS AND REASONS

The law is very clear that as the crux is a matter of service laws/rules where judicial interference is not called for. Pertinently, previously, in practice may be because of some lethargy in the executive arena, easily litigations is filed for obtaining Heirship Certificate in respect of service benefits even when proper nomination is made. The law is well settled in **Manish Goel Vs. Rohini Goel**, reported in AIR 2010 SC 1099, the Supreme Court after placing reliance on large number of its earlier judgments held as under :-

"No Court has competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injuncted by law."

In the case of **State Of West Bengal vs Subhas Kumar Chatterjee & Ors.** decided on 17 August, 2010 in connection with Civil Appeal No. 5538 of 2008, the Supreme Court has observed that-

"No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law."

In the case of **Central Board of Secondary Education Vs. Nikhil Gulati & Anr.** decided on 13/02/1998 and reported in 1998 AIR 1205, 1998 (1) SCR 897, 1998 (3) SCC 5, 1998 (1) SCALE 634, 1998 (1) JT 718, it was observed thus-

"Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on *principle and precept*, it should better desist from passing such orders, for it puts the 'Rule of Law' to a mockery, and promotes rather the 'Rule of Man'."

In the instant case as admitted, nomination is properly made by the deceased Mr. Padama where interference of court is not called for unless and until arbitrary and capricious act of the service authorities. The authorities in the government are supposed and binding to settle the matter in accordance with service rules/laws. If parties rather aggrieved in their decisions, they may have locus standi to approach the law court with impleadment of all necessary parties. In a nutshell, interference of the learned ASDCC, Kolasib for passing the impugned judgment & order is futile and is premature in nature. More so, acted on the basis of the alleged will by the learned trial court while the suit is not registered as Probate case is not also arbitrary as probate case will be proceed and decided in accordance with the rigour provisions of the Mizo District (Inheritance of Property) Act, 1956 by producing suffice evidence for that purpose. Even in the grounds of framing of issues, the grounds is fit as a simple petition in a plain paper was submitted and no vital and systematic pleadings was eke out in the plaint.

ORDER

As per the reasons discussed above and towards rule of law, the impugned judgment & order in connection Heirship Certificate Case No. 21 of 2006 Dt. 29.8.2007 passed by the learned Magistrate, Additional Subordinate District Council Court, Kolasib is hereby set aside and quashed. If so advised, parties are at liberty to approach the concerned department in the government for its process in accordance with law, the concerned executive authorities are also likewise at liberty to process the crux in accordance with relevant service rules. If so aggrieved in their decisions, parties may have locus standi to approach the court with impleadment of all necessary parties

Give this copy to all concerned. By virtue of the proviso to rule 34 of the Mizoram Family Court Rules, 2008, the lower court case record be sent to the learned Civil Judge, Kolasib.

With this order, the case with Misc J. No. 2 of 2008 shall stand disposed of.

Given under my hand and seal of this court on this 24th Feb., 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. RFA/2/2008, Sr. CJ (A)/

Dated Aizawl, the 24th Feb., 2012

Copy to:

1. Smt. Vanlalnguri W/o Padama (L), Bualpui Village, Kolasib District through Mr. H. Laltanpuia, Adv.
2. Smt. Zosangliani C/o H. Rothanga, Kawnpui, Kolasib District
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Mr. H. Laldusanga, learned Civil Judge, Kolasib with case record of Heirship Certificate Appln. No. 21 of 2006
5. Case record

PESKAR