

IN THE HIGH COURT OF MANIPUR

LHAINEL
CHONG
HAOKIP

Digitally signed
by
LHAINELCHONG
HAOKIP
Date: 2023.01.10
12:55:58 +05'30'

AT IMPHAL

W.P.(C) No. 86 of 2019

Shri Yumnam Sharat Singh, aged about 44 years, S/o Shri Y. Amuchou Singh, resident of Mayang Imphal Bazar, P.O. & P.S. Mayang Imphal and District, Imphal West, Manipur.

... Petitioner

-Versus -

1. The State of Manipur through the Principal Secretary/Commissioner/Secretary (MAHUD), Govt. of Manipur, Imphal, Manipur-795001.
2. The Director (MAHUD), Govt. of Manipur, Imphal, North AOC, near 2nd M.R. Pin-795001.
3. The Mayang Imphal Municipal Council through the Executive Officer (MIMC), Imphal West District, Manipur.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the Petitioner	:	Mr. Sh. Athoi Singh, Adv.
For the respondents	:	Mr. H. Debendra, Govt. Adv. & Mr. N. Zequeson, Adv.
Date of Hearing	:	19.10.2022
Date of Judgment & Order	:	10.01.2023

Judgment & Order

[1] Heard Mr. Sh. Athoi Singh, learned counsel appearing for the petitioner, Mr. H. Debendra, learned Government Advocate appearing for

the respondents No. 1 & 2 and Mr. N. Zequeson, learned counsel appearing for the respondent No. 3.

The present writ petition had been filed with a prayer for quashing and setting aside the impugned advertisement dated 17.01.2019 issued by the Director (MAHUD), Manipur only in respect of the post of Revenue Officer of MayangImphal Municipal Council and for directing the respondents to consider the case of the petitioner for promotion to the post of Revenue Officer, Mayang Imphal Municipal Council.

[2] The brief facts of the present case is that the petitioner was initially appointed to the post of Revenue Inspector in the Mayang Imphal Municipal Council on contract basis with effect from the date of his joining duty and until further order by an order dated 24.11.2003 issued by the Chairperson, Mayang Imphal Municipal Council. Pursuant to the said appointment order, the petitioner joined and discharged his duties to the full satisfaction of his senior officers and he continued to render his service on contract basis till his service was regularised with effect from 19.12.2016.

[3] In pursuance of the proposal for rationalisation of the staffing pattern in Urban Local Bodies of the State, a memorandum for Cabinet was prepared and placed before the State Cabinet as Agenda No. 24 in its meeting held on 04.08.2016. Under the said Cabinet memorandum, the approval of the Cabinet was solicited towards the creation of 226 posts and for rationalisation of the staffing pattern in the Urban Local Bodies of

Manipur as contain in Para 11 of the said memorandum for Cabinet, the said Para 11 is reproduced hereunder for ready reference:-

“11. Approval of the Cabinet is solicited towards the proposed retionalisation of the staffing pattern in the ULBs of Manipur as given in Annexure in D & E and the following:

- “a) ULBs should regularise all those employees who had been granted approval by the Government with conditions and the effective date of appointment should be from the date of issue of the order.*
- “b) ULBs should regularise all those employees who had been appointed by the respective Councils. In case the number exceeds the prescribed staffing pattern, appointment order should be issued based on the seniority of the existing staff in each category of post and issue fresh order from the date of issue of the Government convey letter reckoning initial date of appointment without any financial appointment.*
- “c) Fresh appointments shall be made only with the approval of the Government and following due process of law.*
- “d) Every ULB to issue fresh appointment orders mentioning the earlier appointment orders issued by the concerned ULB.*
- “e) To down size all the post of Community Organisers, Revenue Supervisors, FA and Road Mohorrirs prospectively.”*

[4] The State Cabinet approved the proposal at Para No. 11 of the said memorandum for Cabinet and as per the provisions given by the Cabinet, the Secretariat (MAHUD) Department issued an order dated 25.11.2016 creating 226 different categories of posts for the Urban Local Bodies including two posts of Revenue Inspector in the MayangImphal Municipal Council.

[5] After creation of the said 226 different categories of posts, the Secretariat (MAHUD) Department wrote a letter dated 19.12.2016 to the Executive Officer of all Urban Local Bodies conveying the approval of the Government to the regularisation of 128 employees of the Urban Local Bodies in various categories of posts as recommended by the Screening Committee and as per the Cabinet decision taken on 04.08.2016 subject to the following conditions:-

“(i) All the Urban Local Bodies shall issue fresh appointment orders mentioning the earlier appointment orders issued by the concerned Urban Local Bodies.

“(ii) The regularisation shall be with effect from the date of issue of this letter.

“(iii) However, past service reckoned for purpose of seniority and pensionary benefits.

“(iv) No arrear shall be paid for the period between initial appointment and regularisation.”

Pursuant to the aforesaid letter dated 19.12.2016 of the Secretariat (MAHUD) Department, the Executive Officer, MayangImphal Municipal Council, issued the order dated 26.12.2016 regularising the contract service of the petitioner as Revenue Inspector. In the said order, it is also provided that the regularisation of the petitioner was subject to the following conditions:-

“(i) The regularisation shall be effective from 19.12.2016.

“(ii) The past service shall be reckoned for the purpose of seniority and pensionary benefits.

“(iii) No arrear shall be paid for the period between initial appointment and regularisation.”

[6] The next promotional posts from the post of Revenue Inspector is the post of Revenue Officer. Under the Manipur Municipality (Revenue Officer) Recruitment Rules, 1990 (hereinafter referred to as ‘Recruitment Rules of R.O’ for short), the method of recruitment is by promotion failing which by direct recruitment. In case of promotion, Revenue Inspector under the Municipal Board having at least 10 years regular service in the grade are eligible.

[7] One post of Revenue Officer became vacant in the MayangImphal Municipal Council with effect from 12.03.2015 due to the promotion of the Officer who was earlier holding the said post. Subsequently, the Director (MAHUD), Manipur, issued an advertisement dated 17.01.2019 inviting applications for selection of candidates for direct recruitments to various posts of the Urban Local Bodies of Manipur including one post of Revenue Officer in the Mayang Imphal Municipal Council. Having been aggrieved by issuance of the said advertisement dated 17.01.2019, the petitioner challenge the same by filing the present writ petition.

[8] Mr. Sh. Athoi Singh, learned counsel for the petitioner submitted that the petitioner has been rendering service as Revenue Inspector in the Mayang Imphal Municipal Council with effect from 24.11.2003 till date, for

the last more than 19 years. Even though the petitioner's service as Revenue Inspector was regularised only with effect from 19.12.2006, he is entitled to count his past service as qualifying service for the purpose of promotion to the higher post of Revenue Officer, inasmuch as, his service was regularised subject to the condition that the past service shall be reckoned for the purpose of seniority and pensionary benefits. According to the learned counsel, the petitioner is quit eligible for appointment on promotion to the higher post of Revenue Officer in the Mayang Imphal Municipal Council and preference had to be given to the petitioner, who is holding the feeder post, prior to consideration for appointment by direct recruitment. The learned counsel vehemently submitted that the acts of the respondents in issuing the impugned advertisement before considering the case of the petitioner for his promotion as provided under the Recruitment Rules of R.O. is very much arbitrary and illegal and the impugned advertisement is liable to be quashed and set aside.

[9] The learned counsel also submitted that as per section 43 of the Manipur Municipality Act, 1994, the appointing authority of the Revenue Officer is the Council and not the Director (MAHUD) and that the Director (MAHUD) has no power or authority to issue the impugned advertisement. The learned counsel accordingly submitted that as the Director of (MAHUD) has no power or authority to issue the impugned advertisement, the same is liable to be quashed and set aside.

[10] Mr. H. Debendra, learned Government Advocate and Mr. N. Zequeson, learned Advocate appearing for the respondents submitted that though the petitioner claimed to have been holding the post of Revenue Inspector continuously with effect from 24.11.2003, the past service rendered by the petitioner prior to regularisation of his service with effect from 19.12.2016 was only on contract basis as clearly provided in his initial appointment order and such prior service on contract basis cannot be counted as regular service by any stress of imagination. It has also been submitted that as the service of the petitioner as Revenue Inspector in the Mayang Imphal Municipal Council was regularised only with effect from 19.12.2016, the petitioner has not rendered 10 years regular service and accordingly, he is not eligible for promotion to the higher post of Revenue Officer as he does not possess the requisite eligibility criteria of having minimum 10 years of regular service in the cadre of Revenue Inspector.

[11] It has also been submitted by the learned counsel appearing for the respondents that the conditions that the past service of the petitioner shall be reckoned for the purpose of seniority and pensionary benefits does not rendered the past services of the petitioner to be on regular basis when it has been specifically mentioned in the regularisation order that the regularisation of the petitioner is only with effect from 19.12.2016. It has further been submitted that as there is no eligible person available for promotion to the post of Revenue Officer, the vacant post of Revenue Officer in the Mayang Imphal Municipal Council had been advertised for

filling up by direct recruitment under the impugned advertisement dated 17.01.2009 as provided under the Recruitment Rules of R.O. and that the authorities have not committed any illegality or irregularity in issuing the impugned advertisement and accordingly, the present writ petition is liable to be dismissed as being devoid of merit.

[12] I have heard the submissions advanced by the learned counsel appearing for the parties and also carefully examined the material available on record. As per the relevant provisions of the Recruitment Rules of R.O., the method of recruitment to the post of Returning Officer is by promotion, failing which by direct recruitment. In case of promotion, only Revenue Inspector having 10 years regular service in the grade are eligible to be considered for such promotion. As per the order dated 26.12.2016 issued by the Executive Officer, Mayang Imphal Municipal Council, the service of the petitioner was regularised as Revenue Inspector only with effect from 19.12.2016. It has also been specifically stated by the respondent No. 3 in its additional affidavit-in-opposition dated 17.10.2022 that there are only two sanction posts of Revenue Inspector existing in the Mayang Imphal Municipal Council which were newly created by the Secretariat (MAHUD) Department, Government of Manipur, under its order dated 25.11.2016 pursuant to the State Cabinet decision in its meeting held on 04.08.2016 and that the petitioner was given regular appointment against one of the newly created post of Revenue Inspector.

[13] On careful examination of the memorandum for Cabinet for rationalisation of the staffing pattern in the Urban Local Bodies of Manipur which had been approved by the State Cabinet, the Government order dated 25.11.2016 creating 226 different categories of posts for the Urban Local Bodies under (MAHUD) Department including two posts of Revenue Inspector in the Mayang Imphal Municipal Council, the order dated 26.12.2016 issued by the Executive Officer, Mayang Imphal Municipal Council regularising the service of the petitioner as Revenue Inspector in the Mayang Imphal Municipal Council with effect from 19.12.2016 and the categorical statement made by the respondent No. 3 in the aforesaid additional affidavit-in-opposition dated 17.10.2022 that there are only two sanction posts of Revenue Inspector in the Mayang Imphal Municipal Council which are created under the Government's order dated 25.11.2016 and the petitioner had been regularised against one of the said newly created post, it is clearly revealed that the service of the petitioner can be regularised only with effect from 2016. The past service rendered by the petitioner as Revenue Inspector on contract basis cannot be counted as regular service as there was no sanction post of Revenue Inspector in the Mayang Imphal Municipal Council to accommodate the petitioner prior to issuance of the Government order dated 25.11.2016 which created two posts of Revenue Inspector in the Mayang Imphal Municipal Council. Being faced with such undisputed facts, this Court is not inclined to accept the submissions advanced on behalf of the petitioner

that the past service rendered by the petitioner prior to his regularisation can be counted as qualifying service for availing promotion to the next higher post. In my considered view, such a stand will defeat the provisions of the Recruitment Rules of R.O.

[14] With regard to the argument advanced by the learned counsel for the petitioner that the Director (MAHUD) has no power or authority to issue the impugned advertisement, it is to be pointed out that there is no provision under Section 43 of the Manipur Municipality Act, 1994 specifying the authority who can issue the advertisement or prohibiting the Director (MAHUD) from issuing the impugned advertisement. Accordingly this Court is not inclined to interfere with the impugned advertisement only on this ground.

In view of the above facts and circumstances, this Court do not find any irregularity or illegality having been committed by the respondents in issuing the impugned advertisement. In the result, the present writ petition is hereby dismissed as being devoid of merit.

Earlier interim order stands vacated.

Parties are to bear their own costs.

JUDGE

FR/NFR

Lhaineichong