

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

WP(C) No. 167 of 2018

Ch. Sagir Ahmmed & 2 Ors.

.....*Petitioner/s*

- Versus -

State of Manipur

.... *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Order (Oral)

14.12.2023

[1] Heard Mr. M. Rendy, learned counsel for the petitioners and Mr. Phungyo Zingkhei, learned Dy. G.A. for the State respondents.

[2] The case of the 3 (three) petitioners is that vide notification dated 27.09.2016, the Director (CAF & PD), Manipur issued a notification for certain posts in the Directorate including one UR post of LDC/Office Assistant (OA). In para No. 2 of the notification dated 27.09.2016, it is mentioned that vacancies may be increased or decreased according to the vacant post available in the department. In pursuance to the notification dated 27.09.2016 against one UR post of LDC/Office Assistant, 4 (four) persons were appointed out of which the 3 (three) petitioners, who were appointed vide order dated 16.12.2016, are alleged to be in excess by SIT Report. In pursuance to the SIT Report, the Under Secretary (CAF & PD), Government of Manipur issued a common Show Cause Notice dated 06.02.2018 to the 3 (three)

petitioners herein for giving reasonable opportunities of being heard in compliance with the Principles of Natural Justice. It is also stated the Show Cause Notice contemplating cancellation of their appointment to be submitted within 15 days from the date of receipt of the Show Cause Notice failing which, it will be presumed that the petitioners have nothing to say in the matter. Being aggrieved by the same, the petitioners approach this Court for quashing the Show Cause Notice.

[3] The prayers are reproduced as:

- “(i) To admit the present writ petition.*
- (ii) To issue rule nisi calling upon the respondent to show cause as to why prayer made by the petitioners shall not granted in the facts and circumstances of the present petition.*
- (iii) To issue a writ in the nature of certiorari or any other appropriate writ/order/direction for setting set aside and quashing the impugned Show Cause Notice dated 06.02.2018 (At Annexure-A/10) issued by the under Secretary, Department of Consumer Affairs, Food & Public Distribution, Government of Manipur.*
- (iv) If no cause is shown or insufficient cause is shown, make the rule absolute.*
- (v) To call for the entire relevant records.*
- (vi) To pass any other/writ/directions/order which the Hon’ble Court deem fit and proper in the facts and circumstances of the present case.*

-AND-

In the interim, pending disposal of the present writ petition, Your Lordship may be gracious enough to pass appropriate interim order granting ex-parte stay/suspended the impugned Show Cause Notice dated 06.02.2018 (at Annexure-

A/10) issued by the Under Secretary, Department of Consumer Affairs, Food & Public Distribution, Government of Manipur in view of the facts and circumstances of the present writ petition at the earliest.”

[4] The main grounds raised in the writ petition are that (i) There was no opportunity given to the petitioners of being heard in the SIT Proceedings and hence, the SIT Report against the petitioners is not binding on them. (ii) The notification dated 27.09.2016 clearly mentioned that the vacancy may be increased or decreased and as on the date of appointment, there are 16 (sixteen) vacancies in the cadre of LDC/Office Assistant in the same department as seen from the subsequent notification dated 16.12.2016 advertising 16 posts of LDC/OA and hence, the appointment of the petitioners cannot be termed as in excess. This fact has been stated in para No. 11 of the rejoinder affidavit.

[5] Mr. M. Rendy, learned counsel for the petitioners, has drawn the attention of this Court to the common judgment and order dated 10.10.2022 passed by a learned Single Judge of this Court in WP(C) Nos. 727 of 2019, 208 of 2022 and 209 of 2022 wherein similar Show Cause Notices issued on the basis of SIT Report were quashed on the ground that no opportunity was given to the petitioners. During the proceedings, the SIT and the Authorities have pre-dictated the mind of cancelling their appointments. It is prayed that similar relief may be given in the present petition.

[6] Per contra, Mr. Phungyo Zingkhei, learned Dy. G.A. for the State respondent, distinguishes the judgment and order dated

10.10.2022 referred by the learned counsel for the petitioners on the ground that the judgment is with respect to appointment Store Keeper in CAF & PD Department, Manipur and as recorded in para No. 41 of the judgment and order of the learned Single Judge that there was no excess appointment in the case of the Store Keeper as out of 3 (three) posts advertized, only 2 (two) were appointed. Learned Dy. G.A. submits that the fact of the cited case is not applicable in the present case. As against one post advertized, 4 (four) persons were appointed and the 3 (three) petitioners were allegedly appointed in excess. Learned Dy. G.A. also points out that vacancies shown in the subsequent notification dated 16.12.2016 cannot be a vacancy arising out of the earlier notification dated 27.09.2016. In the notification dated 27.09.2016, the mentioned post is LDC/OA whereas in the notification dated 16.12.2016, it is LDC/OA Inspector. Till date, the petitioners have not submitted any reply. It is also alleged that the petitioners have not taken the plea that the Show Cause Notice has been issued by an incompetent person. Hence, the same cannot be challenged in the writ petition without giving any reasons.

[7] This Court has considered the submissions made at bar and perused the materials on record including the judgment and order dated 10.10.2022 passed by the learned Single Judge of this Court in similar matters arising out of the same department i.e. CAF & PD.

[8] Even though, similar Show Cause Notice were issued in the cited case, there was no excess vacancies and in the present case, the appointment of the 3 (three) petitioners are made in excess as only

one post was advertized and the State Government has not increased the number of vacancies. Hence, the ratio of the referred judgment will not be applicable in the facts of the present case. The existence of 16 (sixteen) vacancies as submitted by the learned counsel for the petitioners in the notification dated 16.12.2016 cannot be considered as the petitioners were appointed on the same date i.e. 16.12.2016 and they have been appointed in pursuance to the earlier notification dated 27.09.2016 where only one post was advertized. Admittedly, the petitioners have not submitted any reply to the Show Cause Notice taking the ground raise in the writ petition.

[9] During the course of hearing, Mr. M. Rendy, learned counsel for the petitioners, prays for some time to file reply to the Show Cause Notice since 15 (fifteen) days time was granted in the impugned Show Cause Notice for reply. The petitioners are given 15 days time to submit a detailed reply to the Show Cause Notice from the date of receipt of this order.

[10] With this observation, writ petition is disposed of.

[11] This Court does not express any opinion on the merit of the case to the Show Cause Notice except for the purpose of disposal of this writ petition.

[12] Furnish a copy of this order to the learned counsel appearing for all the parties.

JUDGE

KH.
JOSHUA
MARING

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by KH. JOSHUA
MARING
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