

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

WP(C) No. 171 of 2020

Smt. Khangembam Meiteileima Chanu, aged about
49 years W/o Laishram Nilakumar Singh of Sega
Road Khwairakpam Leikai, Imphal West, Manipur.

....Petitioner

-Versus-

1. The State of Manipur represented by the the Addl. Chief Secretary/Principal Secretary /Commissioner/ Secretary (DP), government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West, Manipur- 795001;
2. The Principal Secretary/ Commissioner/ Secretary (Fisheries), Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West, Manipur- 795001 and;
3. The Director of Fisheries, Manipur, Lamphel, P.O. & P.S. Lamphel, Imphal West, Manipur 795001.

... Respondents

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN**

For the Petitioner :: Mr. Ng. Jotindra, Advocate

For the Respondents :: Mrs. L. Monomala, GA

Date of Hearing and
reserving Judgment & Order :: 30.01.2023

Date of Judgment & Order :: **21.02.2023**

JUDGMENT AND ORDER
(CAV)

This writ petition has been filed by the petitioner for issuance of a writ of mandamus directing the respondents to consider the case of the petitioner for absorption/accommodation on regular basis against the newly created supernumerary post of Fisheries Extension Assistant in the Directorate of Fisheries, Manipur as was done in the case of similarly situated persons.

2. Heard Mr. Ng. Jotindra, learned counsel for the petitioner and Mrs. L. Monomala, the learned Government Advocate for the respondents.

3. Mr. Ng. Jotindra, the learned counsel for the petitioner submitted that the petitioner was initially appointed as adhoc Research Assistant in the Department of Fisheries for a period of three years vide order dated 7.1.1999 and thereafter the services of the petitioner was extended from time to time by various orders and she has been still continuing in her service. He would submit that earlier the petitioner initiated several writ proceedings and obtained favourable orders. However, her case has not been considered by the respondent authorities till date.

4. The learned counsel further submitted that despite the petitioner fulfills all the essential as well as desirable

qualification prescribed in the relevant Recruitment Rules for regular appointment as Fishery Extension Assistant in the Department of Fishery, she has been singled out and on the other hand, the similarly situated persons were appointed on regular basis. In fact, the Deputy Secretary (Fishery) submitted a letter dated 6.9.2019 to the Director of Fisheries, based on the Cabinet decision dated 21.8.2019, for creation of 78 nos. of Grade-III and IV supernumerary posts in order to accommodate adhoc/officiating/contract appointees in the Directorate of Fisheries, wherein the name of the petitioner found place at Serial No.65 against the created post of Fishery Extension Assistant. However, by the order dated 13.12.2019, while absorbing/ accommodating 73 employees, excluded the post of the petitioner. The aforesaid act of the respondent authorities clearly prove their unequal treatment amongst the equal. Therefore, a direction may be issued to the respondent authorities to absorb/accommodate the petitioner on regular basis against the newly created supernumerary post of Fisheries Extension Assistant in the Directorate of Fisheries, Manipur.

5. Mrs. L. Monomala, the learned Government Advocate for the respondents submitted that pursuant to the order dated 14.11.2000 passed in W.P.(C) No.1480 of 2000,

recruitment for one post of Fishery Inspector was held in the year 2007 and the Director of Fisheries vide letter dated 21.8.2007 requested the Employment Exchange Officer for sponsoring the name of the petitioner along with four others who were serving in the Department on adhoc basis. At that time since there was no vacancy for the post of Research Assistant, the petitioner was requested to appear for the post of Fishery Inspector, however, she failed to appear in the written test. After completion of the recruitment for the post of Fishery Inspector, the Department issued an order dated 24.12.2007, thereby ordering that since there was no vacant post of Fishery Inspector to be filled up by direct recruitment, the services of all the direct adhoc Fishery Inspectors was discontinued with effect from 15.12.2007. The said order has never been challenged by the petitioner allowing the same to attain finality.

6. The learned Government Advocate further submitted that in compliance of the order of this Court when the respondent authorities afforded an opportunity to the petitioner for recruitment to the post of Fishery Inspector, the petitioner has failed to appear and therefore, the respondents cannot be blamed. Since the adhoc service of the petitioner was discontinued with effect from 15.12.2007, the petitioner is not

similarly situated to that of Babita Devi, Thoudam Suchila Devi, Moirangthem Noren Singh and Khoirom Suresh Singh stated in her affidavit filed in support of the writ petition.

7. The learned Government Advocate further submitted that even in the letter dated 21.10.2019 addressed to the Additional Chief Secretary (Fishery) by the Deputy Secretary (Fishery), it has been stated that the service of the petitioner had been discontinued with effect from 15.12.2007 and that the service of the petitioner has not been utilized in the Fishery Department. The said letter has not been challenged by the petitioner.

8. The learned Government Advocate next submitted that the name of the petitioner was not included in the list of employees who were to be regularized against the newly created supernumerary posts since the service of the petitioner was already discontinued with effect from 15.12.2007. In fact, in the Agenda No.10 of the Cabinet decision taken on 21.8.2019, it has been mentioned that the proposal was for creation of supernumerary posts in order to accommodate the former adhoc appointees in the Directorate of Fisheries whose pay and allowances have already been protected with the concurrence of Finance Department with effect from 1.12.2021 till the date of

their superannuation, retirement etc. The petitioner was not among those adhoc/officiating/contract employees whose pay and allowances have been protected. As such the allegation of the petitioner that the State respondents have singled out her case is without any legal basis.

9. The learned Government Pleader then submitted that the petitioner cannot be equally treated with those employees whose pay and allowances have been protected. As such the question of discrimination and unreasonableness does not arise in the instant case. Thus, a prayer has been made to dismiss the writ petition.

10. This Court considered the rival submissions and also perused the materials available on record.

11. According to the petitioner, she was appointed on 7.1.1999 as Research Assistant on adhoc basis in the Department of Fishery, Government of Manipur and her services was extended thereafter from time to time and she is still continuing in her service. Though some similarly situated persons who were working along with the petitioner on adhoc basis were regularized, the petitioner has been singled out. While accommodating adhoc/officiating/contract appointees in

the Director of Fisheries though the name of the petitioner has been included at Serial No.65 against the created post of Fishery Extension Assistant, finally while issuing the order dated 13.12.2019, her name has been omitted against the 74 nos. supernumerary posts created by the State Government.

12. In reply, the learned Government Advocate contended that since the service of the petitioner was not utilized and discontinued with effect from 15.12.2007, her name has not been considered and, therefore, she is not similarly situated with those employees whose services have been regularized.

13. On a perusal of the letter of the Deputy Director addressed to the Director of Fisheries, it is seen that while furnishing the list of employees, the name of the petitioner finds place at Serial No.65. As submitted by learned Government Advocate, if really, the services of the petitioner discontinued with effect from 15.12.2007, how her name could be furnished in the year 2019. This has not been properly explained by the respondent authorities. That apart, the discontinuation pleaded by the respondent is for the post of adhoc Fishery Inspector and not the Research Assistant.

14. The petitioner has approached this Court four times in connection with her service absorption and this writ petition is fifth one. When the last writ petition in W.P.(C) No.620 of 2016 filed by the petitioner for similar relief came up for consideration, this Court, by the order dated 26.8.2016 while disposing of the writ petition, held as under:

“It is submitted by the learned counsel for the petitioner that persons who were appointed on ad-hoc basis and who were similarly situated with her in the same Department have been regularized in their respective posts/services. But the petitioner’s prayer for regularization of her service has been constantly ignored. Therefore, a representation dated 08.08.2016 was submitted to the Principal Secretary/ Commissioner/ Secretary (Fishery), Government of Manipur by the petitioner to appoint her on regular basis to the post of Research Assistant as was done in the case of similarly situated persons.

The facts and circumstances stated above shows that for the petitioner, it has been a long journey of a career in Government service fighting constantly and consistently for a right which she felt has accrued to her. Therefore, it would be just and humane on the part of the respondents to dispose the

representation dated 08.08.2016 (Annexure, A/20 to the writ petition) of the petitioner in a just and reasonable manner. As such, the respondents are directed to dispose the same in a just and reasonable manner within a period of 3 (three) months from the date of receipt of a copy of this order. Needless to say but the order disposing the representation should be speaking order.

With this, the writ petition is disposed.”

15. Pursuant to the aforesaid order, when the petitioner submitted representation for absorption of adhoc service as was done in other cases, the Director of Fisheries addressed a letter dated 16.8.2018 to the Secretary (Fishery), Government of Manipur, wherein the Director requested the Secretary (Fishery) to consider the case of the petitioner as done in other similar cases of the Department and convey approval of the Government for final decision. Thereafter, the Cabinet took a decision on 21.8.2019 for creation of 78 nos. of Grade III and IV supernumerary posts in order to accommodate adhoc/officiating/contract appointees in the Directorate of Fisheries. Accordingly, the Deputy Secretary forwarded the names of 77 persons to the Director of Fisheries on 6.9.2019, wherein the name of the petitioner found place at Serial No.65.

By the decision dated 21.8.2019, the Cabinet also approved the proposal for creation of 78 nos. of Grade III and IV supernumerary posts in order to accommodate all the former adhoc/officiating/contract appointees in the Directorate of Fisheries. However, while passing order dated 13.12.2019 thereby creating 74 nos. of supernumerary posts for absorbing 73 employees with immediate effect in terms of the State Cabinet's decision dated 21.8.2019, the post of the petitioner has been omitted. The reason for omitting the post of the petitioner in the said list has not been properly explained by the respondents. Thereafter, by addendum dated 18.12.2019, para 3 has been added in the order dated 13.12.2019 by stating "Consequently, services of the above employees (both Grade III and IV contract appointees/former officiating appointees) have been regularized w.e.f. 13.12.2019 itself against the aforesaid 74 nos. of supernumerary posts created by the State Government".

16. No convincing reasons forthcoming from the side of the respondent why the post of Fisheries Extension Assistant alone singled out from creation of supernumerary posts pursuant to the Cabinet decision dated 21.8.2019. When similarly situated persons have been considered and regularized with effect from 13.12.2019, the same principle should apply to the case of the

post of Fisheries Extension Assistant. Since the petitioner all along serving in the Fisheries Department, it is the duty of the respondent authorities to absorb/accommodate her on regular basis by creating supernumerary post of Fisheries Extension Assistant in the Directorate of Fisheries, in case if it has not been earlier created.

17. It is a clear case of unequal treatment of the petitioner who is equal person. The law is also well settled that unequal treatment amongst the equal person would amounts to discrimination and unreasonableness.

18. In the welfare state committed to a socialist pattern of society, the petitioner has acquired the right to food, clothing, housing and healthcare. Such rights are guaranteed to her under Articles 14, 16 and 21 of the Constitution of India read with Article 39 and the respondent authorities cannot and should not deny such rights to her.

19. This Court is of the view that the petitioner has made out a case and also her claim for absorption is bona fide one. Moreover, for regularization, the petitioner is fighting consistently for long years since 2000. That apart, direction of

this Court dated 26.8.2016 passed in W.P.(C) No.620 of 2016 has not been complied with by the respondent authorities till date.

20. In the result,

- (i) *The writ petition is allowed.*
- (ii) *The respondent authorities are directed to consider the case of the petitioner for absorption/ accommodation on regular basis against the newly created supernumerary post of Fisheries Extension Assistant in the Directorate of Fisheries, Manipur as stated in the letter correspondence dated 6.9.2019 of the Deputy Secretary to the Government as well as the decision of the State Cabinet dated 21.8.2019, within a period of two months from the date of receipt of a copy of this order.*
- (iii) *No costs.*

ACTING CHIEF JUSTICE

FR/NFR

Sushil