

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

MC(WP(C)) No. 163 of 2023

Ref:- WP(C) No. 436 of 2023

Ng. Subhachandra Singh, S/o Late Ng. Rashi,
aged about 60 years, Permanent Residence of
Khabam Chumbreithong, PO & PS- Heingang,
Imphal East District.

.....Applicant

-Versus-

1. N. Jasobanta Singh, aged about 58 years, S/o
(L) N. Joy Singh of Keishampat Mutum Leikai,
P.O. & P.S. Imphal, Imphal West District –
795001,
2. S. Priyananda Singh, aged about 58 years, S/o
(L) S. Ibotombi Singh of Nagamapal
Chungkham Leirak, P.O. Imphal, P.S.- Imphal,
Imphal West District, Manipur – 795001,
3. Th. Bimol Singh, aged about 55 years, S/o (L)
Th. Dwijamani Singh of ward No. 3
Ningthoukhong, P.O. & P.S. Bishnupur,
Bishnupur district, Manipur.

.....Respondents

4. The State of Manipur through the Chief
Secretary, Government of Manipur, Manipur
Secretariat South Block, Babupara, P.O. &
P.S. Imphal – 795001.

5. The Principal Secretary/ Commissioner/ Secretary (DP), Government of Manipur, Manipur Secretariat, Babupara, Imphal West – 795001.
6. The Principal Secretary/ Commissioner/ Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West – 795001.

.....Proforma Respondents

MC(WP(C)) No. 164 of 2023

Ref:- WP(C) No. 436 of 2023

Shri Hijam Shantikumar Singh, aged about 60 years, S/o (L) Hijam Yaima Singh, resident of Sagolband Yengkhom Leirak, P.O. & P.S. Lamphel, District, Imphal West, Manipur – 795004.

....Applicant

-Versus-

1. N. Jasobanta Singh, aged about 58 years, S/o (L) N. Joy Singh of Keishampat Mutum Leikai, P.O. & P.S. Imphal, Imphal West District – 795001,
2. S. Priyananda Singh, aged about 58 years, S/o (L) S. Ibotombi Singh of Nagamapal Chungkham Leirak, P.O. Imphal, P.S.- Imphal, Imphal West District, Manipur – 795001,
3. Th. Bimol Singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of ward No. 3

Ningthoukhong, P.O. & P.S. Bishnupur,
Bishnupur district, Manipur.

.....Respondents

4. The State of Manipur through the Chief Secretary, Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal – 795001.
5. The Principal Secretary/ Commissioner/ Secretary (DP), Government of Manipur, Manipur Secretariat, Babupara, Imphal West – 795001.
6. The Principal Secretary/ Commissioner/ Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West – 795001.

.....Proforma Respondents

B E F O R E
HON'BLE THE ACTING CHIEF JUSTICE MR. MV MURALIDARAN

For the Applicant in MC(WP(C)) No. 163 of 2023	::	Mr. S. Biswajit, Sr. Adv. Ms. N. Prista Devi, Adv.
For the Applicant in MC(WP(C)) No. 164 of 2023	::	Mr. N. Kumarjit, Sr. Adv. Mr. N. Zequeson, Adv.
Dates of Hearing	::	02.06.2023 and 12.06.2023
Date of Judgment & Order	::	15.06.2023

JUDGMENT & ORDER
(ORAL)

MC (WP(C)) No.163 of 2023 has been filed by the applicant Ng. Subhachandra Singh to implead him as respondent in the writ petition and allow him to contest the writ petition by filing counter-affidavit.

2. MC (WP(C)) No.164 of 2023 has been filed by the applicant Hijam Shantikumar Singh to implead him as respondent in the writ petition.

3. When the applications were taken on 02.06.2023 Mr.Biswajit, the learned senior counsel for the applicant in MC (WP(C)) No.163 of 2023 submitted that the applicant who was serving as Managing Director, MSPDCL in the Electricity Department, was re-engaged as Managing Director, MSPCL, on contract basis after his retirement from service on superannuation for a period from 1.5.2022 to 28.2.2023 based on the decision of the State Cabinet. He would submit that pursuant thereto, vide letter dated 5.1.2023, the Deputy Secretary (DP), conveyed the approval of the State Cabinet for re-engagement of the applicant on contract basis as MD, MSPDCL with effect from 1.3.2023 to 31.3.2023 and as MD, MSPCL for one year with effect from 1.4.2023. However, by the interim order of this Court passed in W.P.(C) No.49 of 2023, the letter dated 5.1.2023 was stayed. In fact,

during the course of proceedings of W.P.(C) No.49 of 2023, the petitioners have filed MC (WP(C)) No.124 of 2023 restraining the State authorities from making appointment to the post of MD, MSPDCL and MD, MSPCL by way of any other mode after modification and amendment of the existing rules during the pendency of the writ petition.

4. The learned senior counsel further submitted that the State Cabinet, as a policy decision to meet the exigency of completing important projects and to run the said two companies, took a decision on 13.4.2023 for filling up the posts by way of lateral entry. Pursuant thereto, the petitioners have withdrawn MC (WP(C)) No.124 of 2023 and filed another MC (WP(C)) No.154 of 2023 and the same has been ordered for hearing along with the writ petition on 29.5.2023. He would submit that challenging the decision of the State Cabinet dated 13.4.2023, the petitioners have also filed W.P.(C) No.423 of 2023 without impleading the applicant as party respondent.

5. The learned senior counsel submitted that as a subsequent action, the State Government issued an open advertisement dated 22.5.2023 inviting applications from qualified and experienced Electrical Engineers for appointment on contract basis for the post of Managing Directors in the State Government Power Companies. According to the learned senior counsel, the applicant is also an eligible candidate for the said posts as he is qualified as per the

eligibility criteria and is also ready to apply for the said post within the legitimate expectation. Thus, a prayer has been made to implead the applicant as respondent in the writ petition.

6. Mr.Kumarjit, learned senior counsel appearing for the applicant in MC (WP) No.164 of 2023, *inter alia*, submitted that the applicant is eligible for appointment to the posts of Managing Director, MSPCL as well as the Managing Director, MSPDCL in terms of the impugned advertisement and he is desirous of submitting necessary application for appointment to the said posts called for by the respondent authorities. He would submit that apprehending that the petitioners may challenge the impugned advertisement, the applicant has filed Caveat Petition No.107 of 2023. However, the petitioners without impleading the applicant had filed the present writ petition levelling several allegations against the applicant. The learned senior counsel further submitted that the applicant is necessary party in the writ petition and, as such, even the writ petition itself is not maintainable for want of necessary party.

7. Mr. N. Kumarjit, learned senior counsel for the applicant in MC(WP(C)) No. 164 of 2023 has also argued on 12.06.2023 that when the petitioner themselves have made mentioning about the filing of the writ petition in W.P.(C) No. 49 of 2023 and the interim stay of the appointment against these applicants in MC(WP(C)) No. 164 of 2023

and MC(WP(C)) No. 163 of 2023 the applicants have filed appeal in W.A. No. 38 of 2023 against the orders. Pursuant to the direction of the Hon'ble Supreme on 12.06.2023 the same is yet to transfer to the Gauhati High Court for hearing of the case in the writ appeal. Once an appeal has been filed, the continuation of the present writ petition is subjudice and the very filing of the writ petition is not maintainable.

8. Apart from this, Mr. N. Kumarjit, learned senior counsel for the applicant also argued the case that these petitioners in this writ petition WP(C) No. 436 of 2023 are only Superintending Engineers and they have no right at all to challenge the Notification dated 22.05.2023 since they are not eligible for the post of Managing Directors of these two companies.

9. Mr. N. Kumarjit, learned senior counsel for the applicant in MC(WP(C)) No. 164 of 2023 also made various grounds for seeking prayer for impleading the applicant as party respondents to the writ proceedings and he also produced the judgments rendered by the Hon'ble Supreme Court in ***Modern Food Industries (India) Ltd. & Anr. –Versus- Sachidanand Dass & Anr. reported in 1995 Supp (4) SCC 465*** and ***Dharam Dutt & Ors. –Versus- Union of India & Ors. reported in (2004) 1 SCC 712*** for supporting his case. Thus, the prayer has been made to implead the applicant as respondent in the writ petition.

10. This Court considered the submissions made by both the learned senior counsels and also perused the materials available on record.

11. According to the applicants, they have not been impleaded as respondents for reasons best known to the writ petitioners and, in fact, the petitioners have filed series of litigations, being W.P.(C) No.1096 of 2022 and W.P.(C) No.49 of 2023, against the applicants and the petitioners also have made allegations against the applicants in the writ petition. Since the petitioners deliberately and intentionally omitted to implead the applicants, the applicants have come forward to file MC (WP) Nos.163 and 164 of 2023. Therefore, the same is liable to be allowed.

12. According to the applicants, they are desirous of submitting necessary applications for appointment to the posts of Managing Directors of MSPCL and MSPDCL and, therefore, they should be impleaded as respondents in the writ petition.

13. The prayer in the writ petition is to quash the impugned advertisement dated 22.5.2023 issued for filling up the post of MD, MSPDCL and MSPCL by way of lateral entry and to direct the respondents to consider the case of the petitioners to hold the charge

of MD, MSPDCL and MD, MSPCL before retirement from service on attaining the age of superannuation in 8 months or so.

14. When a challenge is made to the impugned advertisement calling for applications from the eligible candidates for appointment to the post of Managing Directors, MSPCL and MSPDCL, the desirous candidates in submitting applications are not necessary parties to the writ petition. That apart, whether the applicants have applied for the post or not is not known. Apart from this, the applications for applying to the present post challenged in the Notification is yet to consider their candidatures by the official respondents. Since the petitioners have challenged the notification by impleading the official respondents, they are alone necessary parties to the writ petition. Merely because the applicants have been made as party respondent in W.P.(C) No.49 of 2023, they are not entitled to be impleaded as respondents in the present writ petition.

15. The law as to who are necessary or proper parties to a proceeding is well settled. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

16. On hearing of both learned senior counsels and the judgments reported in (1) ***Modern Food Industries (India) Ltd. & Anr. –Versus- Sachidanand Dass & Anr. reported in 1995 Supp (4) SCC 465*** and (2) ***Dharam Dutt & Ors. –Versus- Union of India & Ors. reported in (2004) 1 SCC 712*** this Court is of the view that the said judgments are not applicable to this case since the ground raised in the order passed by the Hon'ble Supreme Court is entirely different. Since the writ petitioners have challenged only the Notification and these applicants allegedly to be the candidate for applying to the Notification cannot be sought for impleading themselves in the writ petition which was challenged on various grounds for which the applicants are not necessary parties in this writ petition for adjudication.

19. In the present case, the applicants have no right or ground to implead as party respondents in the writ petition. Since the challenge in the writ petition is to the impugned advertisement issued by the official respondent, the same can be adjudicated in the absence of the applicants. Moreover, the argument of the learned senior counsel for the applicants that the applicants are eligible for appointment to the posts of Managing Director, MSPDCL and MSPCL cannot be countenanced. Finding no locus standi to seek for impleadment, this Court is of the view that the applicants are unnecessary parties to the

instant writ petition and, therefore, without issuing any notice to Respondents the miscellaneous cases are liable to be dismissed.

20. In the result, MC (WP(C)) Nos.163 and 164 of 2023 in W.P.(C) No.436 of 2023 are dismissed.

ACTING CHIEF JUSTICE

FR/NFR

Sushil