

IN THE HIGH COURT OF MANIPUR AT IMPHAL

W.P. (C) No. 597 of 2023

1. Arunkumar Singh Ashem, aged about 33 years, S/O A. Jiten Singh, Chingamakha Ningthoujam Leikai, P.O. -Imphal, P.S.- Singjamei, District – Imphal West, Manipur- 795001.
2. Dayanand Khuraijam, aged about 32 years, S/O (L) Kh. Guneswar Singh, Khagempalli Huidrom Leikai, P.O. – Imphal, P.S. – Singjamei, District – Imphal West, Manipur – 795001.
3. Bedajit Huirem, aged about 44 years, S/O H. Gehari Singh, Sagolband Meino Leirak, P.O. – Imphal, P.S. – Imphal, District – Imphal West, Manipur.
4. Sarangthem Meghraj, aged about 40 years, S/O S. Devendra Singh, Thambalkhong Sabal Leikai, P.O. & P.S. – Porompat, District- Imphal East, Manipur.
5. Tayenjam Ricky Singh, aged about 35 years, S/O T. Tejmani Singh of Singjamei Chingamathak, P.O. – Imphal, P.S. – Singjamei, District- Imphal West, Manipur-795001.
6. Pebam Satish Singh, aged about 30 years, S/o P. Mangi Singh of Kwakeithel Heinoukhongnembi Leikai, P.O. Imphal, P.S. Singjamei, District- Imphal West, Manipur.
7. Athokpam Manmohan Singh, aged about 31 years, S/o. A. Subol Singh of Thoubal Athokpam Makha Leikai, Thoubal District, P.O. & P.S. – Thoubal, Manipur- 795138.

... Petitioners

- Versus -

1. The State of Manipur represented by the Secretary/Commissioner, Department of Personnel & Administrative Reforms (DP), Government

of Manipur, Secretariat, P.O. & P.S. – Imphal, District – Imphal West, Manipur – 795001.

2. The Secretary, Public Health Engineering Department, Government of Manipur, Secretariat, P.O. & P.S. –Imphal, Imphal West District, Manipur- 795001.
3. The Chief Engineer, Public Health Engineering Department, Government of Manipur, PWD Complex, Khoyathong, P.O. & P.S. – Imphal, Imphal West District, Manipur- 795001.
4. The Manipur Public Service Commission (MPSC in short) represented by its Secretary, North AOC, D.M. Road, Imphal, Manipur – 795001.
5. Gongguilung Kamei, aged about 36 years, presently working as Section Officer Grade- I, C/o. Chief Engineer, Public Health Engineering Department, Government of Manipur, PWD Complex, Khoyathong, P.O. & P.S. – Imphal, Imphal West District, Manipur – 795001.
6. Lalringdik, aged about 32 years, presently working as Section Officer Grade- I, C/o. Chief Engineer, Public Health Engineering Department, Government of Manipur, PWD Complex, Khoyathong, P.O. & P.S- Imphal, Imphal West District, Manipur – 795001.

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... Respondents

B E F O R E

**HON'BLE THE ACTING CHIEF JUSTICE MR. MV MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the petitioners	:	Mr. E. Premjit, Advocate.
For the respondents	:	Mr. S. Nepolean, Sr. G.A for respondent Nos. 1,2 & 3; and Ms. O. Momota Devi, for respondent No. 4.
Date of Hearing	:	30.08.2023
Date of Judgment & Order	:	12.09.2023.

JUDGMENT AND ORDER (CAV)

A. Guneshwar Sharma, J.

[1] Heard Mr. E. Premjit, learned counsel for the petitioners; Mr. S. Nepolean, learned Sr. G.A. for respondent Nos. 1, 2 & 3; and Ms. O. Momota Devi, learned counsel for respondent No. 4.

[2] Mr. E. Premjit, learned counsel for the petitioners, submits that the petitioners are Degree Holder Section Officers in Public Health Engineering Department during the year 2014 and 2016 and their names are reflected at Serial Nos. 33, 34, 35, 36, 62, 85 and 97 respectively in the Tentative Seniority List of Section Officer Grade- I as on March, 2023. As per the relevant recruitment rules, the next higher post from the post of Section Officer Grade- I (SO-I) is the post of Assistant Engineer (AE). The post of AE is to be filled up as per the provisions contained in the PWD, IFCD and PHED, Manipur [Assistant Engineers (Civil/Mechanical)/Assistant Surveyor of Works] Recruitment Rules, 2013. As per the provisions contained in Column 11 of the MPSC Form- 8 in the PWD, IFCD and PHED, Manipur [Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works] Recruitment Rules, 2013, a Degree Holder SO-I is eligible for promotion to the post of AE after rendering 3(three) years regular service and a Diploma Holder SO-I is eligible for promotion to the post of AE after rendering 8(eight) years in Public Health Engineering Department. It is stated that the petitioners became eligible for promotion to the post of AE during the period from 2017 to 2019. Column

10 of the MPSC Form – 8 of the PWD, IFCD and PHED, Manipur [Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works] Recruitment Rules, 2013, provides provision for filling up 60% of the vacancies in the post of AE by promotion and 40% of the vacancies by direct recruitment. Out of the 60% promotion quota, 50% of the vacancies are to be filled up by SO-I Degree Holder and the remaining 50% by SO-I Diploma Holders/others.

[3] Relevant Column Nos. 10 & 11 of MPSC FORM – 8 of Recruitment Rules for the post of Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works in PWD, IFCD & PHED, Manipur are reproduced below:-

10.	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods	60% by promotion and 40% by direct recruitment. 60% promotion quota shall be filled up in sub-quotas as follows: (1) 50% by selection from officers holding Degree/AMIE in Civil/Mech. Engineering or its equivalent from a recognized University/Institution with regular service as specified in Column 11. Provided that if sufficient number of officers holding Degree/AMIE or its equivalent are not available for promotion, the remaining vacancies in this sub-quota may be filled by persons possessing Diploma in Civil/Mechanical Engineering with service as specified in Column 11. (2) 50% by selection from Diploma holders in Civil/Mechanical Engineering who obtained Diploma after doing a minimum 3(three) years course from a recognized Institution with service as specified in Column 11 and from officers who are not in possession of a Degree or a Diploma in Civil/Mechanical Engineering with service and record as specified in Column 11. N.B.: 1. Reservation of SC/ST in promotion quota shall be in the overall vacancies and not with reference to sub-quota. 2. In direct recruitment, the number of the posts requiring Civil Engineer - qualification and number of posts requiring Mechanical Engineering qualification may be advertised separately and recruitment made according to requirement on the basis of separate merit lists for Civil Engineering post and Mechanical Engineering post. At the same time, a combined merit list of Mechanical and Civil Engineering candidates will be prepared for the purpose of seniority.
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11.	In case of recruitment by promotion/deputation/transfe, grades from which promotion/deputation/transfer to be made	Promotion: S.O. Grade-I or post equivalent declared by Govt. of Manipur in consultation with the Commission as equivalent thereto with the following period of regular service in the grade. (a) In case of Degree holders, 3 (three) years. (b) In case of Diploma holders, 8(eight) years. (c) In case of Diploma holders who pass both Section A & B of AMIE Examination of Institution of Engineers (India), 3(three) years regular service from the date of such passing. (d) In case of Diploma holders who possess B.E./B. Tech while in service from a recognized University, 3(three) years regular service from the date of such passing. (e) In case of officers who are not in possession of a Degree/AMIE or its equivalent or Diploma, 15 (fifteen) years with outstanding records of service.
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[4] It is stated that Department of Personnel & Administrative Reforms (Personnel Division), Govt. of Manipur issued Office Memorandum dated 09.10.2020 replacing 'vacancies' by 'total sanctioned post' at Column 10 of MPSC Form-8 in the said Rules. It is stated that the Department of Personnel & Administrative Reforms (Personnel Division), Govt. of Manipur issued letter dated 27.07.2022 under the subject 'step for rectification of systemic deficiencies in Engineering Deptts. - Regarding' and suggested revised provision proposed for appointment of AE as 80% by promotion and 20% by direct recruitment. 80% of the promotion quota shall be filled up as per seniority list. Reservation of SC/ST in promotion quota shall be in the overall vacancies and not with reference to sub-quota. The present writ petition is filed challenging Column 10 of the MPSC Form-8 for providing 50:50 sub quota for the Degree Holders and Diploma Holders SO-I in the 60% promotion quota from the post of SO-I to AE as the same is violative

against the degree holder SO-I. In view of the fact that at present there are 152 Section Officers, 120 Section Officers are Degree Holders and only 32 are Diploma Holders and the distribution of sub-quota as 50:50 is violative and not proportionate with the number of incumbent officers eligible for promotion. It is also pointed out that there is no quota for direct recruit and promotee in the cadre of Executive Engineer in the same department and in the proposal put up by the Department of Personnel & Administrative Reforms (Personnel Division), Government of Manipur. It is proposed that promotion to AE be 80% by promotion and 20% by direct recruitment and 80% by promotion quota shall be filled up as per seniority list and there is no 50:50 sub-quota.

[5] Mr. E. Premjit, learned counsel for the petitioners, relies on the judgment of the Hon'ble Supreme Court in ***Raghunath Prasad Singh Vs. Secretary, Home (Police) Department of Bihar (1988) Supp. SCC 59*** to the point that an officer should get atleast two promotions in his career and the impugned rule amounts to forfeiting the right of the Degree Holder SO-I for further promotion in their career.

[6] The prayer is reproduced below:-

- a) to admit and allow the present Writ Petition;
- b) issue an appropriate writ, order or direction quashing impugned provisions contained in Column 10 of MPSC Form-8 of the PWD, IFCD and PHED, Manipur [Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works] Recruitment

Rules, 2013 providing division 60% promotion quota into sub-quota of 50:50 between Degree Holder Section Officer Grade-I and Diploma Holder Section Officer Grade-I so far it relates to PHE Department, Government of Manipur;

- c) direct the Respondents to fill the 60% promotion quota of Assistant Engineer in PHE Department as per combined seniority list of Section Officer Grade-I;
- d) pass any further order/orders, direction/directions as deem fit and proper under the facts and circumstances of the case.

AND

-In the interim-

- e) restrain the Respondents from taking any steps for holding DPC for appointment by way of promotion to the post of Assistant Engineer in Public Health Engineering Department pending disposal of the instant petition;
- f) pass such other orders and further orders, direction/directions as may be deemed necessary and proper on the facts and in the circumstances of the case.

[7] It is prayed that during the pendency of the present writ petition, the State respondents be restrained from taking any steps for holding DPC for appointment by way of promotion to the post of AE in Public Health Engineering Department under the impugned rule.

[8] Mr. S. Nepolean, learned Government Advocate, assisted by Ms. R.K. Emily, learned Deputy G.A., submits that the Recruitment Rules of 2013 providing 60% promotion quota into two sub-quotas of 50:50 between Degree Holder SO-I and Diploma Holder SO-I has been formed under the provisions of Article 309 of the Constitution and the same has been in existence even before the petitioners joined the service of the PHE Department. The only ground in the writ petition that out of the 152 Section Officers, 120 belong to Degree Holders and only 32 are Diploma Holders is not a criteria to challenge the service rule. Learned G.A. highlights that the petitioners have measurably failed to show that the division of 50:50 sub-quota out of 60% promotion quota to the post of AE has infringed the right of the Degree Holders. The same rule is applicable in all engineering departments such as PWD, IFCD and PHED. It is submitted that in the exigency of service, the numbers of Degree Holders and Diploma Holders may vary from time to time. Learned G.A. has pointed out that if the numbers of diploma holder increases in future then the rule is liable to be challenged. It is submitted that reliance on the proposal sent by Department of Personnel cannot be a ground for challenge of the existing rule. It is prayed that the writ petition be dismissed at this stage as the same is without any merit.

[9] Ms. O. Momota Devi, learned counsel for the MPSC also adopts the submissions of learned G.A. and states that there is no basis for challenging the sub-quota of 50:50 out of 60% promotion quota and prays that the writ petition be dismissed.

[10] We have heard the learned counsel appearing for the parties, perused the materials on record and considered the relevant law.

[11] The main ground for challenge in the writ petition is for quashing Column 10 of MPSC Form-8 of providing sub-quota of 50:50 between the Degree Holder SO-I and Diploma Holder SO-I in the 60% promotion quota from the SO-I for promotion to AE. The only ground pleaded in the writ petition is that at present out of the 152 SO, 120 are Degree Holders and 32 are Diploma Holders. Hence, 50:50 sub-quota is irrational and it is loaded against the Degree Holder Section Officers. Another ground is that Department of Personnel Affairs have proposed 80% promotion quota from SO to AE and 20% for direct recruit. 80% promotion quota will be considered on the basis of the common seniority list and no sub-quota (as 50:50 in the present case) is not proposed.

[12] This Court is of the opinion that this 50:50 sub-quota out of 60% promotional quota to A.E. has been adopted and has been prevailing in all Engineering Departments such as PWD, IFCD and PHED in the state of Manipur and the Rule is framed under Article 309 of the constitution of India. In the exigency of service, the percentage of the degree holders and diploma holders S.O. Grade-I may vary from time to time. Larger proportion of degree holders at a particular time cannot be a ground for challenge of the recruitment rules providing the sub-quota of 50:50 unless the petitioners have shown that the sub-quota of 50:50 violates the principles of equality as enshrined in Article 14 of the Constitution. It is settled proposition of law that

there can be classification and such classification should be reasonable and the object behind the classification shall have an intelligible criteria [kindly see D.S. Nakara Vs. UOI: (1983) 1 SCC 305]. The existing rule cannot be challenged on the basis of proposed rule in absence of any discriminatory provisions in the distribution of sub-quota of 50:50 in the existing rule in Column 10 of the MPSC Form – 8 for promotion to the AE. If the plea of the petitioners are accepted, the diploma holders can also challenge the sub quota 50:50 rules if the numbers of diploma holder increases subsistently in a particular period. The number of existing incumbents of degree holders *vis a vis* diploma holders cannot be a ground for setting aside the Recruitment Rules of providing equitable distribution of 50:50 sub quota in the 60% promotional quota from the post of SO to the post of AE.

[13] We don't find any merit in the plea of the petitioners. Accordingly, the writ petition is dismissed at the admission stage.

[14] No costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Indrajeet