

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

W.P. (C) No. 855 of 2021

Miss Saikhom Bidyarani Chanu, aged about 25 years, D/o (Late) S. Dhaka Meetei, a resident of Moreh Ward No. 9, P.O. & P.S. Moreh, Tengnoupal District, Manipur-795131.

... Petitioner

-Versus-

1. The State of Manipur represented by the Principal Secretary (Health), Government of Manipur, Old Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Additional Chief Secretary/ Commissioner/Secretary (DP), Government of Manipur, Secretariat Building, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. The Director of Health Services, Manipur, Lamphelpat – 795001.

... Respondents

**B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the Petitioner	::	Mr. Y. Nirmolchand, Senior Advocate asstd. by Mr. U. Augusta, Advocate
For the respondents	::	Mr. A. Vashum, GA
Date of Hearing	::	16-08-2023
Date of Judgment & Order	::	05-09-2023

JUDGMENT & ORDER

[1] Heard Mr. Y. Nirmolchand, learned senior counsel assisted by Mr. U. Augusta, learned counsel appearing for the petitioner and Mr A. Vashum, learned GA appearing for the respondents.

The core issue to be decided in the present writ petition is the validity period of a Waiting List prepared by a DPC/ Selection Committee in connection with giving appointments in Government services.

[2] The facts of the present case, in a nutshell, is that the Medical Directorate, Government of Manipur, issued a Notification dated 20-12-2016 notifying the list of selected candidates recommended by a Selection Committee in its meeting held on 19th and 20th September, 2016 for appointment to the vacant posts of Pharmacist under the Health Department, Manipur. In the said Notification, altogether 82 (eighty two) candidates were shown as select candidates and 9 (nine) candidates, including the present petitioner, were shown as wait list candidates. In the wait list candidates, the name of the petitioner is shown at Sl. No. 1. The said Notification also indicated that Offer Forms will be issued at the Directorate w.e.f. 24th to 30th December, 2016 during office hours.

Even though the said select list was notified on 20-12-2016, no appointment order was issued by the Government on account of the enforcement of the Model Code of Conduct for the General Election in the State of Manipur in the year 2017, pendency of Departmental investigation initiated to verify the selection process and pendency of series of litigations. Ultimately, this court passed two orders dated 24-01-2019 in WP(C) No. 992 of 2018 and 29-04-2019 in WP(C) No. 253 of 2019 directing the respondents to expedite the process of consideration for appointment of those petitioners and other eligible candidates to the posts of Pharmacist at the earliest and within the stipulated time given in the said two orders. In compliance with the directions given by this court in the aforesaid two

orders, the Director of Health Services, Manipur, issued two orders dated 08-03-2019 and 11-06-2019 appointing all the eighty-two recommended candidates to the posts of Pharmacist (Allopathy) with the condition, inter alia, that the appointees should join their respective place of posting within ten days, failing which their appointment will be cancelled.

[3] Out of the total 82 appointed Pharmacists, two appointees, namely M. Surchandra Singh (UR category) and Umeshwori Devi Nongthombam (OBC category) did not joined their service. On having knowledge about the non-joining of the said two appointees, specially the candidate belonging to the UR category, the petitioner, who belongs to UR category and whose name is at Sl. No. 1 of the Waiting List, submitted an application to the Director, Health Services, Manipur on 14-06-2019 requesting for appointing her against the vacant post.

The Chief Medical Officer, Tamenglong informed the Director, Health Services, Manipur under a letter dated 20-08-2019 about the non-submission of the joining report by the aforesaid two appointees by giving their particulars and for taking necessary action. Taking into consideration the application submitted by the petitioner on 14-06-2019 and the non-joining report given by the CMO, Tamenglong under its letter dated 20-08-2019, the Director of Health Services, Manipur wrote a letter to the Principal Secretary (Health & F.W.), Government of Manipur informing the latter about the non-joining of the two appointees and requesting to convey the administrative approval for appointment of two applicants, including the present petitioner, as Pharmacist against the resultant vacancies occurred due to non-joining of the two candidates.

[4] When the State Government failed to take up any action with regard to the aforesaid proposal made by the Director of Health Services, Manipur, the petitioner again approached the authorities by submitting a representation dated 21-01-2020 requesting for appointing her as Pharmacist against the vacancies caused by non-joining of the said two appointees. However, the State Government again failed to take up any action in connection with the said representation submitted by the petitioner. Feeling aggrieved, the petitioner approached this court by filing a writ petition being WP(C) No. 140 of 2020 with a prayer for directing the respondents to consider for her appointment as Pharmacist against the vacancies arose due to non-joining of service by two of the appointed candidates. The said writ petition was disposed of by this court by passing an order dated 24-03-2021 directing the authorities to consider and dispose of the representation submitted by the petitioner within a period of three months by issuing a speaking order. In purported compliance with the directions given by this court, the Deputy Secretary (Health & Family Welfare), Government of Manipur issued an order dated 05-10-2021 declining to appoint the petitioner as Pharmacist and rejecting the representation submitted by her.

The only reason given by the authorities for rejecting the claim of the petitioner for her appointment as Pharmacist against one of the resultant vacancies is that all the Waiting List for direct recruitment for which DPCs has been held more than one year back shall be deemed to have been cancelled in view of para 4 of the Office Memorandum dated 20-12-1995 issued the Department of Personnel & Administrative Reforms

(PD), Government of Manipur. Having been aggrieved, the petitioner approached this court again by filing the present writ petition for redressing her grievances.

[5] I have heard the submission advanced by the learned senior counsel appearing for the petitioner as well as the submission advanced by the learned GA appearing for the respondents at length and also, carefully examined the materials available on record.

In the present case, it is an undisputed fact that on the recommendation of a Selection Committee in its meeting held on 19th and 20th September, 2016, the Medical Directorate, Government of Manipur notified a list of 82 selected candidates and 9 candidates in the Waiting List for appointment to the vacant posts of Pharmacist in the Health Department, Manipur, under the notification dated 20-12-2016. In the said Waiting List, the name of the petitioner is at Sl. No. 1. Even though the said select list as well as the Waiting List were notified on 20-12-2016, no appointment order can be issued by the Government on account of the enforcement of the Model Code of Conduct for the General Election in the State of Manipur in the year 2017, pendency of Departmental Enquiry to verify the selection process and pendency of various litigations. Ultimately, this court passed two orders dated 24-01-2019 in WP(C) No. 992 of 2018 and 29-04-2019 in WP(C) No 253 of 2019 directing the State respondents to expedite the process of consideration for appointment of the selected candidates to the advertised posts of Pharmacist (Allopathy) at the earliest and in compliance with the said directions given by this court, the State Government issued two appointment orders only on 08-03-2019 and

11-06-2019, about two and half years after the date of notification of the selection list, appointing all the 82 selected candidates to the advertised posts of Pharmacist (Allopathy) with the condition that they should join their respective place of posting within ten days, failing which their appointment will be cancelled. Out of the 82 selected candidates, two candidates namely, M. Surchandra Singh (UR category) and Umeshwori Devi Nongthombam (OBC category) did not joined their service and accordingly, two vacancies remained unfilled.

On having knowledge about the said two unfilled vacancies, the petitioner, who is at Sl. No. 1 of the Waiting List promptly approached the authorities to consider for her appointment against one of the UR vacancies and the Director of Health Services, Manipur, also made a proposal to the Government under a letter dated 09-09-2019 for conveying administrative approval for appointment of the petitioner against the unfilled vacancy. The only reason given by the respondents for rejecting the claim of the petitioner is that the Waiting List shall be deemed to have been cancelled as the DPC was held more than one year back as provided under para 4 of the Memorandum dated 20-12-1995 issued by the Department of Personnel & Administrative Reforms (PD), Government of Manipur. For ready reference, para 4 of the said Memorandum are reproduced hereunder:-

“4. The Government have decided that all the waiting lists for the Direct Recruitment for which DPCs has been held more than one year back shall be deemed to have been cancelled. In respect of the DPCs which are less then one year old, only the names of the persons upto 10% of the vacancies for which the selection process was held would be considered to be in the waiting list and remaining portion of the list would be deemed

to have been cancelled. The appointments from these truncated list would be made in accordance with para 2 above.”

[6] The aforesaid Memorandum dated 20-12-1995 had been issued by the Government with regard to clarification regarding waiting list for appointment for direct recruitment through Departmental Promotion Committee. In para 2 of the said Memorandum, it is, inter alia, provided that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date of notification of the vacancies but even those which are likely to arise in the future, within one year or so, due to retirement, promotion, etc. and that such lists are prepared either under the rules or even otherwise mainly to ensure that the working in office does not suffer if the selected candidates does not join for one or other reason or the next selection or examination is not held soon. It is further provided that a candidate in the waiting list in the order of merit may, therefore, be appointed if one or other selected candidate does not join or in the event of the resignation, discharge or death, etc. of a candidate within the period of validity of the waiting list. In my considered view, the provision under para 2 of the aforesaid Memorandum dated 20-12-1995 is exactly applicable in the case of the petitioner and the petitioner has legitimate right to claim for her appointment against one of the unfilled vacant post of Pharmacist.

[7] In the present case, the meeting of the Selection Committee was held on 19th and 20th September, 2016 and the select list was notified on 20-12-2016. Only on 08-03-2019 and 11-06-2019, the State Government issued the appointment orders after more than two years from the date of notification of the said select list, meaning thereby, that the State

Government considered the select list notified on 20-12-2016 as still valid even after about two and half years from its publication. In respect of the list of 82 selected candidates, the stand of the State Government is that the said select list is still valid even after more than two years from the date of publication of the said select list whereas in respect of the waiting list, the stand of the State Government is that it is invalid as it has lapsed the period of one year and deemed to have been cancelled in view of para 4 of the aforesaid Memorandum dated 20-12-1995. In my considered view, such stand of the State Government in respect of the same select list as notified under the notification dated 20-12-2016 is inconsistent, contradictory, illogical, unreasonable, arbitrary and unsustainable in the eyes of law. It is quite illogical and unfair to treat the same select list differently by applying two different yardsticks and this court cannot give its countenance to such arbitrary stand of the State Government.

[8] In the case of “**State of Jammu and Kashmir Vs. Sat Pal**” reported in **(2013) 11 SCC 737**, the Hon'ble Apex Court held as under:-

“11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil), Grade-II for which the recruitment

process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil), Grade-II on 22-4-2008. The aforesaid offer was made consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22-4-2008, because the vacancy was offered to Trilok Nath on 22-4-2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23-8-2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned."

[9] Taking into consideration the facts and circumstances of the present case and findings and reasons given hereinabove and keeping in view the law laid down by the Hon'ble Apex Court in the case of "**Sat Pal**" (**supra**) quoted hereinabove, it is hereby held that the rejection of the petitioner's claim for her appointment against the unfilled vacancy of Pharmacist (Allopathy) earmarked for unreserved category due to non-joining of the service by one of the selected candidates namely, M. Surchandra Singh is illegal. Accordingly, the respondents are directed to appoint the petitioner against the said post retrospectively w.e.f 11-06-2019 on which date the appointment order of M. Surchandra Singh was issued or with effect from any date within the month of June, 2019 as deem fit and proper by the authorities. It is made clear that such

[10]

retrospective appointment should be given notional effect without any monetary benefit for the period from the date of her appointment till the date of issuance of the said appointment order. However, the petitioner shall be entitled to all the consequential service benefits including seniority and pensionary benefits as permissible under law. The whole process of the petitioner's appointment should be completed within a period of two months from the date of receipt of a certified copy of this order.

With the aforesaid directions, the present writ petition is allowed.
Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda