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IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C)No.875 of 2022

Shri Moirangthem Raichand, aged about 44 years, S/o M. Bolkishor Singh, resident of Khongman Moirang Pandit Leikai, PO & PS Irilbung, and Imphal East District, Manipur-795001.

...Petitioner

– Versus –

1. The State of Manipur represented by the Commissioner(Law), Government of Manipur, New Secretariat Building, PO & PS Imphal, Imphal West District, Manipur-795001.
2. The Deputy Secretary(Law), Government of Manipur, New Secretariat Building, PO & PS Imphal, Imphal West District, Manipur-795001.

.... Respondents.

BEFORE

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

For the Petitioner : Mr. Kh. Tarunkumar Sr. Adv.

For the Respondents : Mr. S. Niranjana, GA

Date of reserved. : 10.08.2023

Date of Judgment & Order : 24.08.2023.

JUDGMENT & ORDER
(CAV)

Heard Mr. Kh. Tarunkunmar learned senior counsel for the petitioner and Mr. S. Niranjana, the learned Government Advocate for the respondents.

2. This writ petition has been filed by the petitioner to quash the impugned order dated 1.8.2022 and to direct the respondents to allow the petitioner to function as regular Special Public Prosecutor as usual with all consequential benefits, including his due salaries.

3. The case of the petitioner is that he was engaged as Special Public Prosecutor in the Special Court (ND&PS) (FTC), Manipur on contract basis with the concurrence of the Finance Department. His contractual engagement was extended from time to time. In pursuance to the State Cabinet decision dated 18.5.2022, one post of Special Public Prosecutor was created. Against the newly created post, the service of the petitioner was regularised on 18.7.2022. However, without giving any opportunity of being heard to him, his regularisation order was kept in abeyance by the impugned order dated 1.8.2022. Challenging the same, the present writ petition is filed.

4. The respondents filed affidavit-in-opposition stating that in order to avoid any disturbance in the judicial proceedings, namely the order passed in Contempt Case (C) No.119 of 2021, the impugned order came

to be issued. The State Government has neither intention to infringe the rights of the writ petitioner nor there is intention to deprive the rights of the Assistant Government Advocates-cum-Assistant Public Prosecutors (District).

5. Assailing the impugned order, the learned counsel for the petitioner submitted that without giving any opportunity of being heard, the regularization of the petitioner has been kept in abeyance and, as such, his regular pay scale has also been suspended. The petitioner is facing serious consequences in view of the impugned order.

6. Elaborating further, the learned counsel for the petitioner submitted that being aggrieved by the regularisation of one Mr.Neelakumar Singh, W.P.(C) No.540 of 2022 has been filed by Mr. Akoijam Bobby Singh, wherein this Court granted interim order on 18.7.2022 staying the regularisation order of Mr.Neelakumar Singh. As the order of stay is in respect of Mr.Neelakumar Singh, keeping abeyance the regularisation of the petitioner is unacceptable. Such action of the respondent authorities is a clear case of arbitrary exercise of power and, therefore, the same is liable to be set aside. The learned counsel also prayed for direction to the respondents to allow the petitioner to serve as a regular Special Public Prosecutor.

7. Per contra, the learned Government Advocate submitted that in order to improve the service conditions of the contract Additional

Government Advocate-cum-Additional Public Prosecutor (District) and the Special Public Prosecutors, the incumbents on contract services were regularised through Government policies from time to time. Pursuant to the policy decision, the State Government had regularised the contract service of the petitioner and one Mr.Neelakumar Singh as regular Spl. PP and Addl. PP (District) vide order dated 8.7.2022 after creation of one post each.

8. The learned Government Advocate further submitted that challenging the order dated 8.7.2022 appointing/regularising Mr.Neelakumar Singh, W.P.(C) No.540 of 2022 has been filed on the ground that the same was done against the order dated 1.6.2022 passed in W.P.(C) No.896 of 2018 and the other connected cases. He would submit that an interim order in respect of Mr.Neelakumar Singh was passed on 18.7.2022. Further, this Court, by the order dated 28.7.2022 in Contempt Case (C) No.119 of 2021 observed that creating two new posts only for the purpose of regularising contract personnel though the recruitment rules specifically state that direct recruitment can only be resorted to if there is no possibility of promotion being made. Because of such observation made in the Contempt Case, the State Government has kept in abeyance the order dated 8.7.2022 until further orders vide the impugned order. The action of the respondent authorities is to avoid any

disturbance in the judicial proceedings and, therefore, the same cannot be faulted.

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

10. It is an admitted fact that pursuant to the policy decision taken by the State Government, the contract services of the petitioner and one Mr.Neelakumar Singh as regular Spl. PP and Addl. PP (District) were regularised and, accordingly issued the order dated 8.7.2022. On a perusal of the said order dated 8.7.2022, it is seen that the above Spl. PP and Addl. PP (District), Manipur will be on probation for two years from the date of their joining to their respective post.

11. Aggrieved by the regularisation of Mr.Neelakumar Singh, Mr.Akoijam Bobby Singh and others have filed W.P.(C) No.540 of 2022 on the ground that the regularisation is against the order passed in W.P.(C) No.896 of 2018 dated 1.6.2022. By the interim order dated 18.7.2022, this Court granted interim stay in respect of Mr.Neelakumar Singh and the said interim order is still operating.

12. It appears that W.P.(C) Nos.896 of 2018 and other connected writ petitions have been filed challenging the order dated 28.11.2018 extending the probation period of service for another one year and the notifications dated 28.12.2019 and 23.11.2021 for appointment of Spl. PP in the office of the Public Prosecutor (District), Manipur and notifying the

final seniority list of Asst. PP (District)-cum-Asst. Government Advocate (District).

13. By the common order dated 1.6.2022, this Court allowed the said writ petitions. While allowing the writ petitions, this Court observed as under:

“In terms of the proposal made by the learned A.G., Manipur, the respondents are directed to finalize the Final Seniority List of Assistant Public Prosecutor (District)-cum-Assistant Government Advocate (District) Manipur in the Office of the Public Prosecutor (District), Manipur within a period of two months from the date of receipt of a copy of the order of this Court. Thereafter, promotion to the post of Addl. Public Prosecutor (District)-cum-Additional Government Advocate (District) in the Office of Public Prosecutor (District), Manipur shall be made within a period of 3 (three) months in accordance with the prevailing Recruitment Rules when the vacancies arose.

It is made clear that the promotional post to the post of Addl. Public Prosecutor (District)-cum-Additional Government Advocate (District) in the Office of the Public Prosecutor (District) shall not be filled up by way of any other method except in terms of the directions passed by this Court.”

14. Pursuant to the decision taken by the State Cabinet dated 8.7.2022, two posts of Spl. PP and Addl. PP were created for regularisation of one contract Spl. PP and one contract Addl. PP (District). Accordingly, the petitioner and one Mr. Neelakumar Singh were appointed as Spl. PP and Addl. PP respectively on regular basis by regularisation of their contract appointment to the respective posts in the time scale of pay

of Rs.15600-39100 + GP 6600 and the same was published in Manipur Government Gazette on 11.07.2022.

15. Since the challenge made in W.P.(C) No.540 of 2022 pertains to the regularization of Mr.Neelakumar Singh and the interim order granted by this Court in the said writ petition clearly states that *“till such time, there shall be an order interim stay as prayed in the writ petition in respect of respondent No.3”*, keeping abeyance of the regularization/appointment order of the petitioner is unsustainable. The fact remains that the regularisation of the petitioner has not been stayed by the Court.

16. The respondents contended that in order to avoid the disturbance in the judicial proceedings, more particularly, the observation made in the Contempt Case No.119 of 2021, the impugned order dated 1.8.2022 has been passed. On a reading of the impugned order, the same does not reflect the said reasoning. The impugned order simply states *“in respect of regularization of (1) Shri Moirangthem Raichand and (2) Shri A.Neelakumar Singh to the posts of (1) Special Public Prosecutor and (2) Addl. Public Prosecutor (District) respectively in the Office of the Public Prosecutor (District), Manipur is hereby kept in abeyance until further orders”*. As rightly argued by the learned counsel for the petitioner, before issuing such order, no notice was given to the petitioner and also not heard him.

17. It is settled principle of law that principle of natural justice must be followed before issuing any order which will have a civil consequence upon the person concerned.

18. As stated supra, in the instant case, no such show cause notice was issued to the petitioner prior to the issuance of the impugned order. That apart, the stay order is in operation in respect of the regularisation of Mr.Neelakumar Singh alone.

19. Since the interim order dated 18.7.2022 is in respect of the appointment Mr.Neelakumar Singh as Additional Public Prosecutor (District) and not in respect of the petitioner, who was appointed/regularised to the post of Special Public Prosecutor (District) and since the appointment/regularisation as Special Public Prosecutor (District) has not been challenged by anyone in the Court of law or in any other Forum till date, the question of keeping abeyance of the appointment/regularization of the petitioner to the post of Special Public Prosecutor (District) is not warranted. Without keeping in mind the factual position and the post creation made pursuant to the decision of the State Cabinet, the order impugned in respect of the petitioner came to be passed and the same is liable to be set aside.

20. In the result,

- (i) The writ petition is allowed.

- (ii) The impugned order dated 1.8.2022 issued by the second respondent in respect of the petitioner is set aside.
- (iii) The respondent authorities are directed to allow the petitioner to serve as regular Special Public Prosecutor in terms of the order dated 8.7.2022 issued by the Commissioner (Law), Government of Manipur.
- (iv) No costs.

ACTING CHIEF JUSTICE

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