

IN THE HIGH COURT OF MANIPUR
AT IMPHAL
WP(C) No. 10 of 2020

Smt. Monika Koijam, aged about 40 years, W/o Kshetrimayum Tomba Singh, resident of Khongman Zone-V East, P.O. Singjamei, P.S. Iribung, District, Imphal East, Manipur – 795008.

... Petitioner

-Versus-

1. The Union of India through the Secretary, Ministry of Health & Family Welfare, Govt. of India, Nirman Bhavan, New Delhi-110011.
2. The Regional Institute of Medical Sciences (RIMS), Imphal, represented by its Director, P.O. & P.S. Lamphel, District, Imphal West, Manipur – 795004.

... Respondents

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

For the Petitioner	::	Mr. Kh. Tarunkumar, Sr. Advocate & Ms. Kh. Nirmala, Advocate
For the respondents	::	Mr. Boboy Potshangbam, Advocate
Date of Hearing	::	11-01-2024
Date of Judgment	::	16-01-2024

J U D G M E N T

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Ms. Kh. Nirmala, learned counsel appearing for the petitioner and Mr. Boboy Potsangbam, learned CGSC appearing for the respondents.

The only issue to be decided in the present writ petition is whether the petitioner is entitled to get promotion and seniority retrospectively with effect from the date of vacancy of the post or with effect from the date

of her actual promotion given on the basis of the recommendation made by the DPC.

[2] The case of the petitioner is that she was initially appointed as Laboratory Assistant in RIMS along with another person, viz., Shri Gambhirsana Yanglem by an order dated 19-12-2006 issued by the Director, Regional Institute of Medical Sciences (RIMS). The said appointment was in order of merit and in the said order, the name of the petitioner is at Sl. No. 2. Subsequently, the Administrative Officer, RIMS notified the Tentative Seniority List of Laboratory Assistants, RIMS, and in the said seniority list, the name of the petitioner is at Sl. No. 6 while the name of Shri Gambhirsana Yanglem is at Sl. No. 5. It has been stated by the petitioner in her petition that as no objection was filed by anybody, the said tentative seniority list became final.

[3] On 24-06-2017, the Director, RIMS issued an order promoting three Laboratory Assistants, whose names appeared at Sl. No. 3, 4 and 5 of the aforesaid tentative seniority list, to the higher posts of Laboratory Technician w.e.f. 23-06-2017. After issuance of the said order, the petitioner become the senior most Laboratory Assistant in RIMS.

[4] Two posts of Laboratory Technician become vacant w.e.f. 31-07-2018 and 31-08-2018 due to the retirement of the two incumbents holding the said posts on attaining the age of superannuation. As two vacant posts of Laboratory Technician were available in RIMS and being the senior most incumbents holding the feeder post, i.e., Laboratory Assistant, the petitioner submitted a representation dated 14-03-2019 to the Director, RIMS requesting to take up necessary steps to promote her to the

post of Laboratory Technician. Subsequently, on the recommendation of the DPC meeting held on 09-09-2019, the petitioner was appointed on promotion as Laboratory Technician in RIMS w.e.f. 14-08-2019, vide order dated 11-09-2019 issued by the Deputy Director (Admn.), RIMS.

[5] Having been not satisfied with the effective date of her promotion, the petitioner submitted two representations to the Director and Deputy Director (Admn.) of RIMS requesting for giving her promotion to the post of Laboratory Technician w.e.f. the date of occurrence of the vacancy, i.e., 01-08-2018 in place of 14-08-2019, i.e., the effective date of her promotion. When the authorities failed to consider the said representations, the petitioner approached this court by filing the present writ petition for redressing her grievances.

[6] Mr. Kh. Tarunkumar, learned senior counsel for the petitioner submitted that as per the consolidated instructions contained in Office Memorandum dated 10-04-1989 issued by the Central Government, it is, inter alia, provided that the DPC should be convened at regular annual interval to draw panels which could be utilised on making promotion against a vacancy occurring during the course of a year and that the DPC could be convened every year if necessary on a fixed date either in the month of April or May. The learned senior counsel submitted that even though two vacant posts of Laboratory Technician were available in RIMS in the month of July and August, 2018, the authorities of RIMS did not hold the DPC for filling up the said two posts in time despite the clear instructions as contained in the aforesaid O.M. of the Central Government and such lapses on the part of the RIMS authorities has deprived the petitioner of getting her

promotion at an earlier point of time. The learned senior counsel also submitted that in the case of Shri Gambhirsana Yanglem, prompt steps was taken up to consider his case for promotion to the post of Laboratory Technician and he was given promotion within a period of six months from the date the vacancy arose, whereas in the case of the petitioner, the authorities took about one year in giving her due promotion. According to the learned senior counsel, such action of the authorities of RIMS are discriminatory and the petitioner cannot be made to suffer due to the lapses on the part of the authorities of RIMS and she is entitled to get her promotion with effect from the date the vacancy arose. In support of his contention, the learned senior counsel cited the following case laws:-

(i) (2004) 1 SCC 245 “P.N. Premachandran Vs. State of Kerala & ors.”

“7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.”

(ii) Order dated 28-02-2019 passed by a Division Bench of this court in WA No. 67 of 2018 “State of Manipur & anr. Vs. Mrs. Ngachong Kipgen & anr.”

“6. It is not in dispute that the petitioner was eligible for promotion to the higher post of Joint Director/ ZEO in the Education Department. The DPC was to be held prior to her retirement but was not held for the reason best known to the State respondents. It may be noted that even after her retirement, she was considered by the DPC for promotion and was, in fact, recommended for promotion. There is no reason as to why she was considered for promotion, if the benefit of promotion was not to be given to her. The learned Single Judge is right when it held that the delay on the part of the authorities in convening the DPC could not be at the cost of the petitioner and that it is well settled that the right to be considered for promotion is a fundamental right, which cannot be deprived of, though the right to be promoted is not a fundamental right. Therefore, in terms of the law laid down by the Hon'ble Supreme Court in the aforesaid cases, the contention of the learned Advocate General that a floodgate will be opened, if the order passed by the learned Single Judge is complied with, has no merit at all and is not acceptable to this court. Having heard the learned counsels appearing for the parties, this Court finds no infirmity in the order of the learned Single Judge and the appeal being devoid of any merit, is liable to be dismissed by this Court.”

[7] The stand of the respondents is that before holding the DPC for consideration of promotion to the post of Laboratory Technician, the administration took steps to collect all relevant documents like Seniority List, ACR for the last five years, Integrity Certificate, Vigilance Clearance Certificate, etc. and after collection of all the relevant documents which are required to be placed before the DPC, the DPC for consideration of promotion of Laboratory Assistant to the post of Laboratory Technician was held on 14-08-2019. Thereafter, on the recommendation of the DPC, the petitioner was appointed on promotion to the post of Laboratory Technician by the order dated 11-09-2019 issued by the Institute.

[8] Mr. Boboy Potsangbam, learned CGSC submitted that the Institute has no mala fide intention to delay the holding of DPC meeting

for consideration of promotion of the petitioner to the post of Laboratory Technician and that the Institute holds DPC/ Screening Committee meetings from time to time to fill up the vacant post either by direct recruitment or by promotion as per the relevant recruitment rules. The learned counsel also submitted that in the case of post which is to be filled up by promotion, the administration needs to collect all relevant documents like Seniority List, ACR for the last five years, Integrity Certificate, Vigilance Clearance Certificate, IPR, etc. and preparation/ collection of such documents take some time which eventually resulted in delaying the holding of DPC meeting for consideration of promotion to the post of Laboratory Technician.

[9] It has been submitted on behalf of the respondents that in para. No. 6.4.4. and para 17.11 of the Consolidated Instructions/ Guidelines contained in the aforesaid O.M. dated 10-04-1989 issued by the Central Government, it is, inter alia, provided that while promotion will be made in the order of the consolidated select list, such promotion will have only prospective effect even in cases where the vacancies relate to earlier year(s) and that the date on which promotion will be effective will be the date on which the officer was actually promoted or the date of the meeting of the DPC whichever is later. It has also been submitted that retrospective promotion cannot be recognized in service jurisprudence unless there exist a rule or residuary power by which the same can be granted and as such, the claim of the petitioner of her right for retrospective promotion with effect from the date of vacancy of the post is not maintainable in the eyes of law.

[10] I have heard the contentions advanced by the learned counsel appearing for the parties at length and also perused all the relevant records including the judgments cited by the learned counsel appearing for the petitioner. In my considered view, in the aforesaid judgments cited by the learned counsel appearing for the petitioner, the Hon'ble Apex Court as well as this court did not lay down any principle of law having universal application that an incumbent is entitled to have retrospective promotion with effect from the date of occurrence of the vacancy and not from the date of the actual promotion. Accordingly, this court is of the view that the judgments cited by the counsel for the petitioner is not applicable in the facts and circumstances of the present case.

[11] On examination of the materials available on record and after hearing the rival submissions advanced by the learned counsel appearing for the parties, this court is of the considered view that the issue raised in the present case is no longer res-integra. In the case of **“Union of India & ors. Vs. K.K. Vadera & ors.”** reported in **1989 Supp. (2) SCC 625**, the Hon'ble Apex Court held that promotion takes effect from the date of being granted and not from the date of occurrence of vacancy. The relevant portion of the judgment are as under:-

“5. There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the

date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

[12] In the case of **“Nirmal Chandra Sinha Vs. Union of India & ors.”** reported in **(2008) 14 SCC 29**, the Hon’ble Apex Court held as under:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India v. K.K. Vadera, State of Uttaranchal v. Dinesh Kumar Sharma, K.V. Subba Rao v. Govt. of A.P.3, Sanjay K. Sinha-II v. State of Bihar, etc.”

“10. In the present case, appellant Nirmal Chandra Sinha was promoted as General Manager on 29-11-1996, but he claims that he should be deemed to have been promoted w.e.f. 13-3-1996 with consequential benefits. We are afraid this relief cannot be granted to him. It is settled law that the date of occurrence of vacancy is not relevant for this purpose.”

[13] Relying on the judgments of the Hon’ble Apex Court in the case of *Nirmal Chandra Sinha’s case (supra)*, a Division Bench of this Hon’ble Court in its judgment and order dated 26-11-2018 passed in WA No. 25 of 2013 held as under:-

“4. Against this order, appeal has been filed by the RIMS authority stating that the direction of the learned Single Judge is contrary to the law laid down by the Supreme Court that the benefit of promotion will be from the date of DPC and not from the date when he becomes eligible as held by the Hon’ble Supreme Court in the case of Nirmal Chandra Sinha Vs. Union of India (UOI) and Ors., (2008) 14 SCC 29. The relevant para reads as follows:

“10. In the present case, appellant Nirmal Chandra Sinha was promoted as General Manager on 29.11.1996, but he claims

that he should be deemed to have been promoted w.e.f. 13.3.1996 with consequential benefits. We are afraid this relief cannot be granted to him. It is settled law that the date of occurrence of vacancy is not relevant for this purpose."

"6. Be that as it may, the substantial legal issue raised by the appellant has to be accepted and appeal allowed because the Supreme Court has clearly held in the case of Union of India Vs. K.K. Vijh, MANU/SC/7645/2008 that the date of the eligibility would not be relevant and the date of the DPC alone becomes relevant in the case of this nature. Relevant judgment reads as follows:-

"The sole question to be determined in this appeal is as to whether the seniority of the respondent in the cadre of Executive engineer is to be reckoned with effect from the date of the DPC or from the date of occurrence of vacancies in the said post. This question has been answered by this Court in a recent decision of this Court in the case of Nirmal Chandra Sinha Vs. Union of India (UOI) and Ors., (2008) 14 SCC 29. The said decision squarely covers the facts of the case in hand."

"7. In view of the above, the appellant was justified with the benefit of DPC from the date of order dated 28.10.2010 and the respondent writ petitioner is not entitled to be benefit of promotion w.e.f. 01.06.2009 as ordered by the learned Single Judge. Accordingly, the writ appeal stands allowed to be extent indicated above."

[14] In my considered view, the issue raised in the present writ petition is squarely covered by the above quoted judgments and orders of the Hon'ble Apex Court and this High Court and as such, the petitioner is not entitled to get retrospective promotion with effect from the date of occurrence of the vacancy as claimed by her in the present writ petition. Accordingly, the present writ petition is hereby dismissed as being devoid of merit, however, without any order as to cost.

JUDGE

FR / NFR

Devananda