

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 107 of 2023

Smt. Binobala Nongmeikapam, aged about 49 years old, D/o (L)
N. Ibotombi Singh, a resident of Uripok Tourangbam Leikai, P.O.
& P.S. Imphal, Imphal West District, Manipur-795001.

... Petitioner

-Versus-

1. The State of Manipur represented by the Additional Chief Secretary/ Secretary (Social Welfare), Government of Manipur, Secretariat Block, P.O. & P.S. Imphal, Imphal West, Manipur-795001.
2. The Commissioner/ Secretary (DP), Government of Manipur, Secretariat Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. The Director (Social Welfare), Manipur, Office at Directorate of Social Welfare, Government of Manipur, A.T. Line, North AOC, P.O. Imphal & P.S. Porompat, Imphal East District, Manipur-795001.
4. Manipur Public Service Commission represented by its Secretary, Manipur Public Service Commission, AT Line, North AOC, D.M. Road, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
5. Shri Jiteshwar Keisham, aged about 54 years old, S/o K. Birendra Singh, a resident of Keishampat Keisham Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur-795001 presently promoted to Joint Director, Social Welfare Department, Manipur vide impugned order dated 30-01-2023.

... Respondents

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

For the petitioner	::	Mr. H.S. Paonam, Senior Advocate asstd. by Mr. S. Gunabanta, Advocate
For the respondents	::	Mr. Th. Vashum, Govt. Advocate; Mr. R.S. Reisang, Senior Advocate asstd. by Ms. Sirawon, Advocate & Mr. M. Gunedhor, Advocate
Date of hearing	::	08-05-2024
Date of judgment	::	18-07-2024

J U D G M E N T

[1] Heard Mr. H.S. Paonam, learned senior counsel assisted by Mr. S. Gunabanta, learned counsel appearing for the petitioner; Mr. Th. Vashum, learned GA appearing for the respondents No. 1, 2 and 3, Mr. R.S. Reisang, learned senior counsel assisted by Ms. Sirawon, learned counsel appearing for the respondent No. 4 and Mr. M. Gunedhor, learned counsel appearing for the respondent No. 5.

The present writ petition has been filed challenging the promotion of the respondent No. 5 to the post of Joint Director, Social Welfare, Government of Manipur and the proceeding of the DPC meeting held on 20-01-2023 for giving such promotion coupled with a prayer for issuing a direction to hold a review DPC.

[2] There is only one post of Joint Director in the Social Welfare Department, Government of Manipur and the said post became vacant on 28-02-2018 due to the retirement of the incumbent holding the said post. Under the recruitment rules of the said post of Joint Director, the method of recruitment is by way of promotion and Deputy Director

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(SW/ICDS/Trg.) and Assistant Development Commissioner (WP) of Social Welfare Department, Manipur, with five years of regular service in their respective grade, are eligible for promotion. Even though the said lone post of Joint Director became vacant w.e.f. 28-02-2018, the said vacancy could not be filled up as there was no eligible candidate available at the time of occurrence of the said vacancy.

[3] On the recommendation of a Departmental Promotion Committee meeting held on 14-04-2016 and with the concurrence of the Government, both the petitioner and the respondent No. 5 along with three other officers were given promotion to the posts of Deputy Director in the Social Welfare Department, Government of Manipur, by an order dated 16-05-2016 issued by the Principal Secretary (SW), Government of Manipur. The said promotion was given with effect from the date of issue of the said order and the name of the respondent No. 5 and the petitioner appears at Sl. No. 1 and 3 respectively. Subsequently, the Secretariat, Social Welfare Department, Government of Manipur, issued an order dated 04-10-2019 publishing the Final Seniority List of Deputy Directors of Social Welfare Department, Manipur. In the said Seniority List, the name of the respondent No. 5 appears at Sl. No. 1 and the name of the petitioner appears at Sl. No. 3.

[4] As soon as some Deputy Directors of the Social Welfare Department, Manipur, including the petitioner and the respondent No. 5, became eligible for promotion to the post of Joint Director on their completing five years of regular service as Deputy Directors, the Social

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Welfare Department initiated necessary process for considering their cases for promotion to the aforesaid lone vacant post of Joint Director. In this regard, Vigilance clearance in respect of Integrity Certificate of four Deputy Directors, including the petitioner and the respondent No. 5, was obtained from the Directorate of Vigilance and Anti-Corruption Department, Manipur, vide letter dated 12-07-2022 of the Director of Vigilance and Anti-Corruption Department, Manipur, addressed to the Director of Social Welfare, Manipur. By a letter dated 20-07-2022, the Director, Social Welfare, Manipur, requested four Deputy Directors, including the petitioner and respondent No. 5, to furnish their ACRs for the last five years so as to enable the Department to process for promotion to the lone vacant post of Joint Director. Subsequently, after completion of all the process and formalities including furnishing of necessary documents, certificates, ACRs, etc., in respect of the four eligible candidates, including the petitioner and respondent No. 5, a Class-I Departmental Promotion Committee (DPC) meeting in association with the Manipur Public Service Commission (MPSC) was held on 20-01-2023 in connection with the appointment by promotion to the post of Joint Director, Social Welfare, Manipur.

[5] Out of the four eligible Deputy Directors, the case of only three officers were considered by the DPC as one of the officer, viz., Shri Th. Nilakumar Singh had already retired from service on 31-12-2012 before holding of the said DPC meeting. The DPC treated the vacancy year as 2021-2022 for the purpose of assessing the officers and the DPC examined the ACRs of the three eligible officers, including the petitioner and respondent No. 5, for the five preceding years, i.e., 2016-2017, 2017-2018,

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2018-2019, 2019-2020 and 2020-2021, as provided under para 5.4(b) of the Office Memorandum dated 15-05-2014 (at Annexure-A/18). After assessing the overall merits of the said four officers, the DPC recommended the case of the respondent No. 5 for appointment by promotion to the aforesaid post of Joint Director. Pursuant to the recommendation of the said DPC and with the concurrence of the Government, the Joint Secretary (Social Welfare), Manipur, issued an order dated 30-01-2023 appointing the respondent No. 5 on promotion to the post of Joint Director, Social Welfare with immediate effect. Feeling aggrieved, the petitioner approached this court by filing the present writ petition assailing the said appointment order of the respondent No. 5 and also the proceeding of the said DPC.

[6] Mr. H.S. Paonam, learned senior counsel appearing for the petitioner raised the following grounds in assailing the impugned order and the impugned proceeding of the DPC:-

- (i) Integrity Certificate of only the private respondent was considered by the DPC even though the Integrity Certificate in respect of all the four Deputy Directors have already been furnished by the competent authority and as such, the authorities have violated the fundamental right to equality of the petitioner and other officers for their promotion to the post of Joint Director. Such selected approach of the DPC would vitiate the recommendation of the DPC for affording promotion to the private respondent.

- (ii) Under the Manipur Services (Revised Pay) Rules, 2010, the post of Joint Director, Social Welfare Department, Manipur, carry the pay scale of Rs. 15,600-39,100 with the Grade Pay of Rs. 6,600/- and in para 5.7(c) of the Office Memorandum dated 15-05-2014 issued by the Government, the benchmark in respect of all posts which are in level of Pay Band of Rs. 15,600-39,100 plus Grade Pay of Rs. 7,600/- and above is “Very Good”. Accordingly, the benchmark for the post of Joint Director, which carry the Pay Band of Rs. 15,600-39,100 plus Grade Pay of Rs. 6,600/-, should be “Very Good”. However, the official respondents and the DPC in complete arbitrary exercise of power considered the benchmark for the post of Joint Director in question as “Good” instead of “Very Good” in violation of the above guidelines given at para 5.7(c) of the Office Memorandum dated 15-05-2014 for favouring the private respondent, who had only the grading of “Good” in his ACR and as such, the impugned order as well as the proceeding of the DPC are liable to be quash and set aside.
- (iii) In the ACR of the respondent No. 5 for the year 2021-2022, the Accepting Authority had made an observation that the private respondent is perpetually on leave and graded his ACR grading as “Good”. Such observation made by the Accepting Authority that the private respondent was always perpetually on leave would imply that he is not fit for promotion to the higher post of Joint Director, Social Welfare Department and as such, the impugned promotion order deserves to be quash and set aside.

(iv) In para 7 of the Office Memorandum dated 19-03-2015 (at Annexure-A/19) issued by the Government of Manipur laying down the consolidated instruction for recording the Annual Confidential Report, it is, inter alia, provided that in no circumstances more than one person shall write the ACR for each level in the capacity of Reporting, Reviewing or Accepting Authority for a given period. However, the ACRs of the respondent No. 5 for the year 2017-2018 was written by the then Director (SW) as Reporting and Reviewing Officer and the ACR for the year 2018-2019 was written by the then Director (SW) as the Reporting and Reviewing Officer as well as the Accepting Authority. Therefore, the Annual Confidential Reports in respect of the private respondent No. 5 for the year 2017-2018 and 2018-2019 violates the aforesaid instructions at para. 7 of the Office Memorandum dated 19-03-2015 and as such, the same are null and void ab-initio. Accordingly, the impugned proceeding of the DPC recommending the case of the private respondent for promotion to the post of Joint Director insofar as the assessment of his ACR for the year 2017-2018 and 2018-2019 is concerned, is highly illegal, improper and arbitrary, material irregularities, extraneous consideration and in colourable exercise of power for indulging into favouritism and nepotism thereby rendering the impugned DPC proceeding vitiated.

[7] The learner senior counsel lastly submitted that so far as the petitioner is concerned, in view of her excellent track record in rendering

service to the satisfaction of all concerned, her ACR have remained “Outstanding” for the period 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022 and as such, the petitioner is entitled to reconsideration for promotion to the post of Joint Director by holding a review DPC strictly in terms of the applicable rules governing the field. In support of his contentions and arguments, the learned senior counsel appearing for the petitioner cited the following case laws:-

1. **“Khomdram Mandakini Devi Vs. Manipur Public Service Commission”** reported in **(2016) SCC Online Mani. 159**, wherein it has been held as under:-

“37. If those ACRs were held to be incomplete and thus, invalid, what prevented the DPC to invoke sub-para no.(c) of para 5.2.1 of the OM as also urged by the petitioner which provides that where any one or more CRs have not written for any reason (which in the opinion of the Court would include incomplete or invalid ACRs), the DPC should consider the CRs of the year preceding the period in question and if in any case even those are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered and if this is also not possible all the available CRs should be taken in to account. However, there is nothing on record to show that such procedure was adopted by the DPC. Considering thus, this Court finds merit in the contention of the petitioner relying on the decision in S.B. Bhattacharjee (supra) that if certain procedure had been laid down by the authority to be followed by the DPC, it was obligatory on the part of the DPC to follow such a procedure. Since it was not done, the 2nd DPC proceeding is vitiated with illegality. In S.B. Bhattacharjee (supra) the Hon'ble Supreme Court held that,

“38. In a given case, and in absence of rule, the Court might have been justified to hold that the DPC must take into consideration the merit and merit only. However, in a case of this nature, where the State lays down the procedures as to how and in what manner the merit and suitability is to be judged, it was obligatory on the part of the Commission to follow the same in its letter and spirit.”

2. **“S.B. Bhattacharjee Vs. S.D. Mazumdar & ors.”** reported in (2007) 10 SCC 513 wherein it has been held as under:-

“38. In a given case, and in absence of rule, the Court might have been justified to hold that the DPC must take into consideration the merit and merit only. However, in a case of this nature, where the State lays down the procedures as to how and in what manner the merit and suitability is to be judged, it was obligatory on the part of the Commission to follow the same in its letter and spirit. The case at hand shows that it can in a situation of this nature prove to be disastrous to an employee, if any other construction is given.

3. **“Union of India & anr. Vs. A.K. Narula”** reported in (2007) 11 SCC 10 wherein it has been held as under:-

“15. The guidelines give a certain amount of play in the joints to DPC by providing that it need not be guided by the overall grading recorded in CRs but may make its own assessment on the basis of the entries in CRs. DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness, that the selection calls for interference. Where DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by DPC, the court will not interfere (vide SBI v. Mohd. Mynuddin, UPSC v. Hiranyalal Dev and Badrinath v. Govt. of T.N.). The Review DPC reconsidered the matter and has given detailed reasons as to why the case of the respondent was not similar to that of R.S. Virk. If in those circumstances, the Review DPC decided not to change the grading of the respondent for the period 1-4-1987 to 31-3-1988 from "good" to "very good", the overall grading of the respondent continued to remain as "good". There was no question of moving him from the block of officers with the overall rating of "good" to the block of officers with the overall rating of "very good" and promoting him with reference to DPC dated 13-6-1990. In the absence of any allegation of mala fide or bias against DPC and in the absence of any arbitrariness in the manner in which assessment has been made, the High Court was not justified in directing that the benefit of upgrading be given to the respondent, as was done in the case of R.S. Virk.”

[8] I have heard at length the submissions advanced by the learned senior counsel appearing for the petitioner as well as the submissions advanced by the learned counsel appearing for the respondents. I have also carefully perused all the records including the official files and the proceeding of the DPC submitted by the learned counsel appearing for the respondents. After careful examination of all the materials available on record, the views and the findings of this court in respect of the grounds raised on behalf of the petitioner are given hereunder:-

- (i) Vigilance clearance in respect of the Integrity Certificates of all the four eligible Deputy Directors, including the petitioner and respondent No. 5, was jointly given by the Director of Vigilance and Anti-Corruption Department, Manipur, under his letter dated 12-07-2022 (at Annexure-A/8). The said letter giving the Vigilance clearance of all the four eligible Deputy Directors were placed before the DPC and the DPC considered the same even though it was recorded at para. 8 of the proceeding of the DPC held on 20-01-2023 that “the Administrative Department has furnished the requested Integrity Certificate of 1 (one) eligible officer.” In the counter affidavit filed by the official respondents, it has been clearly stated that recording of the statement at para. 8 of the proceeding of the said DPC quoted above was due to typographical mistake and that such error had been subsequently rectified by the MPSC as can be seen from a letter dated 28-02-2023 of the Under Secretary, MPSC (at Annexure-X/1). In

view of such factual position, this court find no substance and merit in the first ground raised on behalf of the petitioner.

- (ii) In para 5.7 of the Office Memorandum dated 15-05-2014, it is, inter alia, provided as under:-

- “a) Having regard to the levels of the posts to which promotion are to be made, the nature and importance of the duties attached to the posts, a bench-mark grade would be determined for each category of posts for which promotion are to be made by selection method.”***
- (b) For promotion to all posts/ services below the pay band Rs. 15600-39100 plus grade pay of Rs. 7600, the bench-mark would be "Good" All Officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of "Good".***
- (c) In respect of all posts which are in the level of pay band Rs. 15600-39100 plus grade pay of Rs. 7600 and above, the bench-mark grade should be Very Good.”***

- (ii)(a) Para 5.7(b) of the said Office Memorandum clearly provides that for promotion to all posts/services BELOW the pay band of Rs. 5,600-39,100 PLUS Grade Pay of Rs. 7,600/-, the benchmark would be “Good” whereas in clause (c), it is provided that in respect of all posts which are in LEVEL of pay band of Rs. 15,600-39,100 PLUS Grade Pay of Rs. 7,600/- and above, the benchmark grade should be “Very Good”.

The arguments advanced by the learner senior counsel appearing for the petitioner is that as the revised scale of pay of the Joint Director (SW) is Rs. 15,600-39,100, it is not below the pay band of Rs. 15,600-39,100 and the same is in the

level of pay band of Rs. 15,600-39,100 and that while deciding the benchmark grade of the post, only the pay band/ scale and not the grade pay of the post should be taken into account. Accordingly, the benchmark grade of the post of Joint Director (SW) should be “Very Good” as provided under para 5.7(c) of the said Office Memorandum and not “Good” as provided under clause (b).

- (ii)(b) On careful examination of the wordings used in Clause (b) and (c) of para 5.7 of the said Office Memorandum, this court is of the considered view that the intention conveyed under the said clauses is to take into consideration the pay band plus grade pay of the post and not only the pay band of the post and to ignore the grade pay, while deciding the benchmark grade of the particular post. As the revised pay scale for the post of Joint Director (SW) is Rs. 15,600-39,100 plus Grade Pay of Rs. 6,600/-, it is below the pay band of Rs. 15,000-39,100 **plus Grade Pay of Rs. 7,600/-** and as such, this court is of the view that the benchmark grade of the said post should be “Good” and not “Very Good” as provided under the aforesaid Clause (b) of the said Office Memorandum. In any case, since the overall grading of the petitioner’s ACRs for the last five preceding years is graded as “Very Good”, this court find no merit or force in the second ground raised on behalf of the petitioner.

- (iii) On examination of the original proceeding of the DPC meeting held on 20-01-2023 and the assessment chart enclosed therein, which was placed before this court by the learned counsel appearing for the MPSC, it is founded the DPC treated the vacancy year as 2021-2022 and considered and assessed the ACR of all the eligible candidates for the five preceding years, i.e., 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021. The respective gradings in the ACRs of the respondent No. 5 and the petitioner are as under:-

<u>“ACR Gradings</u>						
		2016-17	2017-18	2018-19	2019-20	2020-21
1.	Jiteshwar Keisham (Respondent No. 5)	V.G.	O.S.	O.S.	V.G.	V.G.
2.	Binobala Nongmeikapam (Petitioner)	O.S.	O.S.	O.S.	O.S.	O.S.

Since the DPC did not considered the gradings and entries made in the ACR of the respondent No. 5 for the year 2021-2022, this court is of the considered view that the third ground raised on behalf of the petitioner is misconceived and the same has no merit or force.

[9] In the ACR of the respondent No. 5 for the year 2017-2018, the Director (SW), who is the Reviewing Officer, acted as both the Reporting and Reviewing Officer and the Accepting Authority is the Commissioner (SW), Government of Manipur. In the ACR of the respondent No. 5 for the year 2018-2019, the Secretary (SW), Government of Manipur, who is the Accepting Authority, acted as the Reporting/ Reviewing/ Accepting Officer. The arguments made on behalf of the petitioner is that such entries in the ACR of the respondent No. 5 for the year 2017-2018 and

2018-2019 is contrary to the instructions contained in para. 7 of the Office Memorandum dated 19-03-2015 regarding the consolidated instructions for entry/ preparation of the ACR and as such, such ACR are null and void ab-initio.

In para. 8 of the said Office Memorandum dated 19-03-2015, it is provided that where Accepting Authority writes or reviews the ACR, it shall not be necessary to review or accept such report, and that where the Reviewing Authority writes the ACR, it shall not be necessary to review such report. In the present case, in the ACR of the respondent No. 5 for the year 2017-2018, the Reviewing Authority acted as the Reporting and Reviewing Officer and in the ACR for the year 2018-2019, the Accepting Authority acted as the Reporting/ Reviewing and Accepting Authority. In my considered view, such entries in the said ACRs of the respondent No. 5 is permissible under the aforesaid para. 8 of the Office Memorandum dated 19-03-2015. Moreover, as the petitioner has not challenged and made any prayer in the present with petition for quashing and setting aside or for declaring the said ACRs of the respondent No. 5 as null and void ab-initio, this court is of the considered view that it will not be just and proper to give a finding in the present writ petition that the said ACRs of the respondent No. 5 are null and void ab-initio.

[10] With reference to the last submission advanced by the learned senior counsel appearing on behalf of the petitioner, it is to be pointed out that since the overall grading in the ACRs of the petitioner for the preceding 5 years are found to be "Very Good", this court is of the considered view

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that the DPC did not committed any error or illegality in recommending the petitioner for his appointment by promotion to the post of Joint Director and that such recommendation is in conformity with the guidelines as contained in para 5.7 of the aforesaid Office Memorandum dated 15-05-2014, more particularly clause (b) of the para. 5.7. Accordingly, this court is not inclined to grant the relief sought for by the petitioner for issuing a direction to hold a review DPC meeting and to re-consider her case.

On careful perusal of the case laws cited by the learned senior counsel appearing for the petitioner, this court is of the considered view that the ratio laid down in the said judgments are of no help to the petitioner in view of the facts and circumstances of the present case.

[11] In view of the facts and circumstances of the present case and the reasons and findings given hereinabove, this court do not find any merit in the present writ petition and accordingly, the same is hereby dismissed as being devoid of merit, however, there will be no order as to cost .

JUDGE

FR / NFR

Devananda