

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

**W.A. No. 32 of 2024
With
MC (W.A.) No. 65 of 2024**

State of Manipur; & Anr.

Appellants/Applicants

Vs.

Luwangthem Jilla Singh; & Anr.

Respondents

**With
W.A. No. 33 of 2024
With
MC (W.A.) No. 66 of 2024**

State of Manipur; & Ors.

Appellants/Applicants

Vs.

Luwangthem Jilla Singh; & Ors.

Respondents

**With
W.A. No. 34 of 2024
With
MC (W.A.) No. 67 of 2024**

State of Manipur; & Anr.

Appellants/applicants

Vs.

Luwangthem Jilla Singh; & Anr.

Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI**

For the appellants :: Mr. Th. Vashum, Government Advocate

For the respondents :: Mr. N. Ibotombi, Sr. Advocate

Date of Order :: 03.09.2024

JUDGMENT & ORDER (ORAL)

Siddharth Mridul, C.J.:

[1] Mr. Th. Vashum, learned Government Advocate, appears on behalf of the appellants/applicants; and Mr. N. Ibotombi, learned senior counsel, appears on behalf of the respondents.

[2] The connected writ appeals assail the common impugned judgment and order dated 04.10.2023 passed by the learned Single Judge of this Court in the connected writ petitions, viz., W.P. (C) No. 919 of 2021, W.P. (C) No. 45 of 2022 and W.P. (C) No. 130 of 2022; thereby directing the State of Manipur through the Commissioner of Education School, as follows:

"(a) The offending rider made by the DPC in paragraph 13 of the proceeding of its meeting held on 25-02-2021 as well as the impugned cancellation order dated 14-12-2021, insofar as the petitioners are concerned, are hereby quashed and set aside;

(b) The respondents No. 1 and 2 are directed to appoint the petitioners on promotion to the post of Principal notionally w.e.f. any date between 25-02-2021 and 28-02-2021 and actual financial benefits in terms of pension and other retirement benefits should be given to them w.e.f. the date of their promotion; and

(c) The whole process for giving such benefits should be completed within a period of two months from the date of receipt of a certified copy of this order."

[3] The facts briefly encapsulated as are necessary for the adjudication of these connected appeals are that:-

- (i) The original petitioners were initially appointed as Lecturers on regular basis in the Government Higher Secondary Schools, Education Department, Government of Manipur.
- (ii) After having served about thirty years as Lecturers in the said post, they were promoted to the post of Vice-Principal of Higher Secondary School on regular basis by way of an order dated 30.10.2018.
- (iii) Since the post of Vice-Principal is the feeder post under the Recruitment Rule for appointment to the post of Principal, the State Government, in terms of the DPC held on 25.02.2021, recommended the original petitioners for promotion to the post of Principal.
- (iv) It is an admitted case that in view of their stand that the original petitioners' appointment to the post of Principal required sanction and consultation from the Manipur Public Service Commission (MPSC), the files were first sent to the MPSC for purported consultation on 26.02.2021.

- (v) However, the MPSC returned the same on the ground that the Commission was non-functional due to a vacancy in the post of Chairperson since 20.11.2020.
- (vi) Subsequently, upon MPSC becoming functional, the appellants resubmitted the proposal seeking the formers' concurrence to the said recommendation made by the DPC held on 25.02.2021 *vide* letter dated 26.06.2021.
- (vii) However, on this occasion, the MPSC returned the same with the observation that the proposal was beyond the scope of the MPSC.
- (viii) In the meantime, the original petitioners retired from service with effect from 28.02.2021 on attaining the age of superannuation.
- (ix) Being aggrieved by the act of omission on the part of the official respondents in issuing the appointment orders, in pursuance to the recommendation of the DPC, the original petitioners were constrained to file the writ petitions out of which the common impugned judgment and order assailed in the present appeals arise.

[4] As aforesaid, vide the said common order dated 04.10.2023, the learned Single Judge allowed the writ petitions.

[5] In other words, in sum and substance, the appellants were directed to appoint the original petitioners on promotion to the post of Principal notionally with effect from any date between 25.02.2021 and 28.02.2021 and grant them actual financial benefits, in terms of pension and other retirement benefits with effect from the date of their notional promotion.

[6] The solitary submission made by Mr. Th. Vashum, learned Government Advocate, appearing on behalf of the appellants, is that the learned Single Judge fell into error in so directing since promotion to a post can only take effect prospectively and not retrospectively.

[7] Per contra, Mr. N. Ibotombi, learned senior counsel appearing on behalf of the original petitioners, would urge that they were denied promotion along with its consequential benefits for no fault of theirs. The appellants fell into error in transmitting the said recommendation dated 25.02.2021 of the DPC to the MPSC, inasmuch as, *vide* notification dated 01.02.2021, the appellants were at liberty to exempt consultation with the MPSC with regard to appointment by promotion in the Offices/Departments under the Government of Manipur during the period when the MPSC was not in existence or duly constituted.

[8] We find ourselves in complete agreement with the submission canvassed on behalf of the original petitioners.

[9] In this behalf, it would be profitable to extract the relevant paragraphs of the judgment and order dated 04.10.2023 impugned before us in the present appeals.

"[16] *I have heard the submissions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record. In the present case, the writ petitioners have been denied promotion to the post of Principal of Government Higher Secondary Schools even though they have been recommended for such promotion only on account of the offending rider made by the DPC in paragraph 13 of the proceeding of its meeting held on 25-02-2021. It is undisputedly on record that at the time of holding the said DPC meeting on 25-02-2021, the MPSC remained non-functional. It is also undisputed that in order to facilitate the Government with regard to appointment by promotion to Class-I and Class-II post, the State Government issued a Notification dated 01-02-2021 according sanction to the exemption from consultation with the MPSC in the matter of appointment by promotion in the Offices/ Departments under the Government of Manipur during the period till the MPSC become functional. In the said notification, the composition of the Class-I and Class-II DPC was also notified. In view of the said notification, this court is of the considered view that there was no requirement for consulting the MPSC or obtaining its concurrence in connection with the promotion of the Vice-Principal to the post of Principal of Government Higher Secondary Schools since consultation with and obtaining concurrence of the MPSC had already been exempted by the State Government. The offending rider made by the DPC was un-warranted and absolutely un-necessary, in fact, there was no reason or justification for making such an offending rider in the proceeding of the said DPC. In the face of such factual position, this court is of the considered view that the DPC made the said*

offending rider whimsically, capriciously, arbitrarily and without any application of mind thereby depriving the valuable rights of the petitioners for their promotion to the post of Principal before their retirement from service. Accordingly, such offending rider cannot withstand the test of law and the same deserves to be quash and set aside.

[17] *With regard to the challenge being made to the proceeding of the DPC meeting held on 18-12-2021 and the appointment order dated 28-12-2021 appointing twenty nine Vice Principal to the posts of Principal, this court is of the considered view that there is no point in interfering with the recommendation made by the said DPC and the appointment order issued on the basis of such recommendation for the simple reason that the petitioners have already retired from service on attaining the age of superannuation w.e.f. 28-02-2021 and they will gain nothing from quashing the said DPC proceeding and the impugned appointment order. Since the said DPC meeting was held after retirement of the petitioners to fill up the resultant vacancies and even if the petitioners are appointed on promotion to the posts of Principal before the date of their retirement from service, no purpose will be served by interfering with the said recommendation made by the DPC and the said appointment order and no prejudice will be caused to the petitioners by refusing to interfere with the same.*

[18] *The main controversy in the present case is whether the petitioners can be given promotion retrospectively before the date of their retirement from service. The stand of the State Government is that in the consolidated guidelines for promotion issued by the Department of Personnel & Administrative Reforms, Government of Manipur under the Office Memorandum dated 15-05-2014, it is laid down at para 5.11 that promotion will have only prospective effect even in case where the vacancies relate to earlier years. Accordingly, the petitioners cannot be given promotion retrospectively before the date of their retirement from service.*

It will be relevant to mention here that in paragraph 3 of the said Office Memorandum dated 15-05-2014, it is also laid down that DPC should be convened on regular annual intervals to draw panels which could be utilized for making promotion against the vacancies occurring during the course of a year and that the DPC may be convened every year if necessary on a fixed date in the month of January or April and that holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being revised/ amended.

[19] *In the present case, there was gross delay on the part of the State authorities in holding DPC meetings for considering the case of the petitioners and other eligible candidates for their promotion to the posts of Principal despite availability of a large number of vacancies and eligible candidates. Moreover, because of the offending and malicious rider made by the DPC at paragraph 13 of its proceeding, directing the Administrative Department to issue appointment orders after obtaining the concurrence of the MPSC, the petitioners have been deprived of their valuable right for their promotion to the posts of Principal before their retirement from service, even though they have been recommended for such promotion. In such a situation, this court is of the considered view that the petitioners cannot be made to suffer owing to such arbitrary, unreasonable and malicious act committed by the DPC and for no fault on their part. It is also undisputed that if the DPC did not put the offending rider while recommending the case of the petitioners and other candidates for their promotion to the posts of Principal, the petitioners could have been given promotion before the date of their retirement from service.*

[20] *This court must keep in mind the constitutional obligation of the State Government and State Government is to act as a model employer, which is consistent with its role in a Welfare State. It is an accepted legal position that the right of the eligible employees to be considered for promotion is virtually a part of their Fundamental Right*

guaranteed under Article 16 of the Constitution and the guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution. It has not been disputed by the respondents that in respect of promotion to the post of Under Secretary, Manipur Secretariat Service during the same period when the MPSC remained non-functional, no consultation was made with the MPSC or obtain its concurrence before issuing the appointment order because of the exemption sanctioned by the Government from such consultation as notified under the Notification dated 01-02-2021.

In view of the above, this court find force in the submission made on behalf of the petitioners that the petitioners have not been treated equally by the authorities in the matter of their promotion. It is, therefore, clear that the valuable right of the petitioners for their promotion to the posts of Principal had been denied or defeated by the unreasonable, arbitrary and malicious act of the DPC.

*This court have also carefully perused the case law cited by the learned GA and this court is of the considered view that the principle laid down by the Hon'ble Apex Court in the said case is not applicable in the present case as the facts are totally different. In the case of **"Government of West Bengal & ors. Vs. Dr. Amal Satpathi"** reported in **2023 SCC online Cal. 489**, which is somewhat similar to the present case, a Division Bench of the Hon'ble High Court of Calcutta concurred with the view taken by the Tribunal that even if a Government servant could not be granted benefit of retrospective promotion, he should be given financial benefits of the promotional post notionally on the date of his retirement and the actual financial benefits in terms of pension and other retirement benefits.*

[21] *Taking into consideration the peculiar facts and circumstances of the present case and keeping in view that the petitioners have been denied their valuable right to get promotion to the posts of Principal*

before the date of their retirement from service by the arbitrary, unreasonable and malicious act of the DPC, this court is of the considered view that it will be in the interest of justice to dispose of the present writ petitions."

[10] In our considered view, the conclusion arrived at by the learned Single Judge is impeccable and unimpeachable and does not warrant any interference in the present appeals, since the same cannot be characterized to be perverse or contrary to the law or material on the record.

[11] We accordingly dismiss the present appeals as being devoid of merit.

[12] The appellants shall comply with the directions issued by the learned Single Judge forthwith and preferably within a period of eight weeks from today.

JUDGE

CHIEF JUSTICE

Sandeep