

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C) No.695 of 2016

L. Jayananda Singh, aged about 37 years,
s/o L.Ibobi Singh, resident of Singjamei
Mayengbam Leikai, Imphal West,
Imphal, Manipur

... Petitioner

-Versus-

1. The Secretary, Manipur Legislative
Assembly, Government of Manipur, Imphal.
2. The Manipur Legislative Assembly,
Represented by its Secretary, Government of
Manipur.
3. Smt. Thokchom Nivedita Devi, Under Secretary,
Manipur Legislative Assembly Secretariat,
Imphal, Manipur.

... Respondents

**BEFORE
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**

For the Petitioner :: Ms. B.Bidyalakshmi, Advocate

For the Respondents:: Mr.N.Ibotombi, Sr.Advocate,
Mr.Kh.Tarunkumar, Sr.Advocate &
H.Samarjit, Government Advocate

Date of Hearing :: 06.11.2023.

Date of Order :: 20.03.2024

ORDER (CAV)

[1] Heard Ms. B. Bidyalakshmi, learned counsel for the petitioner; Mr.Kh.Tarunkumar, Sr. Advocate assisted by Ms. Rebati, learned counsel for respondent Nos.1&2; Mr. N. Ibotombi, Sr. Advocate assisted by Mr. A. Rommel, learned counsel for respondent No.3; and Mr. H. Samarjit, learned GA for respondent No.4.

[2] The instant writ petition has been filed by the petitioner herein challenging the appointment order dated 22.11.2011, appointing the respondent No.3 as Under Secretary in the Manipur Legislative Assembly. The said appointment was made on the basis of Advertisement dated 14.10.2011. Before advertisement of the said post of Under Secretary in the Manipur Legislative Assembly, some employees who were working as Under Secretary submitted resignation letters and in that view of such submission of resignation letters, the authority anticipated that some vacancies were likely to occur to the post of Under Secretary and as such while issuing the above Advertisement dated 14.10.2011, the authority added a rider "the number of vacancy for the above two posts may be increased subject to the availability of vacancy".

[3] The petitioner neither applied for the post of Under Secretary nor challenge the Advertisement dated 14.10.2021 but the ground for challenging the appointment of the respondent No.3 is that the official respondent had appointed the respondent No.3 in excess of the advertised post.

[4] The writ petition challenging the appointment order dated 22.12.2011 was filed only on 14.09.2016, after a delay of about five years, which is also not explained.

[5] The respondent No.3 who entered service as Under Secretary on 22.12.2011 was given promotion to the post of Deputy Secretary vide order dated 22.09.2014 and thereafter again promoted to the post of Joint Secretary vide order dated 06.07.2021. The writ petitioner has not filed any rejoinder affidavit denying the plea/explanation given/taken by the respondents in their counter affidavit.

[6] It is the case of the petitioner that although the petitioner possessed all the essential and desirable qualifications for the said post as per notification, he did not apply for the said post as the number of vacancy was only one. However, if the number of vacancy was more than one he would have definitely applied for the said post and as the petitioner did not have sufficient resource for engagement of lawyers for filing case in the Court for challenging the said appointment order dated 22.12.2011, approached the High Court Legal Services Committee, Imphal, and Mr.Ng.Kumar, Advocate was appointed as Legal Aid Counsel for the petitioner.

[7] Further, it is the case of the petitioner that the number of vacancies/posts advertised is only one, however the official respondents appointed respondent No.3 in excess of the advertised posts and as such, the action of the State respondents in appointing the respondent No.3 is wholly arbitrary and is in violation of Articles 14 and 16 of the Constitution and prays for a direction to the respondents to hold fresh DPC for filling up the said resultant vacancy/post of Under Secretary held by the respondent No.3 afresh enabling the petitioner to apply and compete for the same.

[8] The respondent Nos. 1 & 2 have filed affidavit in opposition raising the preliminary point on maintainability of the present writ petition being filed after a delay of about five years,

which deserves to be dismissed and even if the prayer of the petitioner is allowed and a fresh DPC/recruitment test for filling the post of Under Secretary, present held by the answering respondent, is to be held, the petitioner will not be eligible for the said post since the petitioner is age barred.

[9] In the additional affidavit it is further stated that on the recommendation of the DPC, the Speaker, Manipur Legislative Assembly, appointed the respondent No.3 as Deputy Secretary on promotion vide order dated 22.09.2014 with immediate effect and thereafter, the respondent No.3 has been appointed on promotion to the post of Joint Secretary on the recommendation of the DPC and the respondent No.3 is discharging duty as Joint Secretary. Similar plea is taken by respondent No.3 in her counter affidavit.

[10] Ms. B. Bidyalakshmi, learned counsel for the petitioner has drawn the attention of this Court that only one post of Under Secretary was advertised by respondent Nos.1 & 2. However, the respondent No.3 was appointed as Under Secretary vide order 22.12.2011 in excess of the post advertised, after appointment of one Km. Santasri Elangbam as Under Secretary vide order dated 18.11.2011. It is stated that the same is in violation of the settled proposition of law as held in the case of **Rakhi Ray v. High Court of Delhi: (2010) 2 SCC 637** that vacancies cannot be filled up over and above the advertised and the candidate on panel cannot be appointed against the vacancy arising out of subsequent resignation of the person appointed. It is also stated that the petitioner did not apply for the post of Under Secretary as only one post was advertised. If more than one post were to advertised, he would have applied as he was eligible for the same post.

[11] Mr. Kh. Tarunkumar, learned senior counsel for the respondent Nos. 1 & 2 has raised the preliminary objections that – (i) the delay of 5 years for filing the writ petition has not been

explained properly, (ii) the petitioner has no locus to file the present writ petition as he did not apply for the post of Under Secretary, and (iii) the issue will be academic only as the petitioner will not be eligible in subsequent recruitment process due to age bar. On merit, learned senior counsel submits that there is no illegality in appointing more candidates than the number of post advertised, as it was specifically mentioned in the advertisement that the number of vacancy may be increased subject to availability of vacancy. In its proceedings dated 10.11.2011, the DPC for direct recruitment of Under Secretary recommended the name of Santasri Elangbam for appointment and that of the respondent No.3 as wait list panel to meet anticipated exigency of vacancy. It is clarified that the respondent No.3 was appointed against the resultant vacancy available. It is submitted that the writ petition be dismissed being devoid of any merit.

[13] Mr. N. Ibotombi, learned senior counsel for the respondent No.3 also adopts the submission of Mr. Kh. Tarunkumar, learned counsel for respondent Nos. 1 & 2. He further submits that the petitioner has no locus for filing the writ petition as he has not applied for the post of Under Secretary in pursuance of the Notification dated 14.10.2011. He refers to the decisions in the case of **RK Jain v. Union of India: (1993) 4 SCC 19** and **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Association: (2006) 11 SCC 731** to the point that third party has no locus in service matter. Learned senior counsel also refers to the case of **P S Sadasivaswamy v. State of Tamil Nadu: (1975) 1 SCC 152** to the point of unexplained delay in approaching court and reluctance of the court to entertain such petition to unsettle the already settled matter. It is pointed out that the petitioner has miserably failed to explain the delay of 5 years and during this time, respondent No.3 has been promoted to Deputy

Secretary and Joint Secretary. It is also stated that the petitioner has not rebutted the averments of the respondents by filing rejoinder affidavit thereby admitting the same as held in **(1993) Suppl 4 SCC 46** and **(2003) 8 SCC 673**. It is prayed that the writ petition be dismissed.

[14] Mr. H. Samarjit, learned GA submits that the present case relates to Manipur Legislative Assembly and State Government has no role in the appointment made by it.

[15] This Court has considered the materials on record, the submissions made by the parties and relevant law in this regard.

[16] From the pleading of the parties, it is seen that the petitioner did not apply for the post of the Under Secretary in pursuance to the Notification dated 14.10.2011 and hence, he is not an aggrieved party. Accordingly, he has no locus to challenge the appointment of the respondent No.3 as Under Secretary in the Manipur Legislative Assembly. It is the settled proposition of law that a third party has no locus to challenge appointment order of a person by a writ of certiorari, except for a writ in the nature of quo warranto on limited question of ineligible person occupying public office. Besides, the petitioner has not able to explain the delay of 5 years in approaching this Court. By entertaining and allowing this writ petition, it will amount to unsettle the established arrangement and the respondent No.3 is now promoted to the post of Joint Secretary. On merit also, the Notification specifically mentioned that the vacancy may be increased subject to availability and the respondent No.3 who was on panel, was adjusted against available vacancy. The case law cited by the learned counsel for the petitioner is not applicable in the present case.

[17] Accordingly, the writ petition is dismissed both on maintainability as well as on merit. No cost.

JUDGE

FR/NFR

Priyojit

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by RAJKUMAR
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