

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

WP(C) No. 322 of 2022

Dhruba Oinam

.....Petitioner/s

- Versus -

State of Manipur

.... Respondent/s

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Order (Oral)

02.09.2024

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Ms. K. Mercy, learned counsel for the petitioner, Mr. Th. Sukumar, learned G.A. for the State respondent and Mr. L. Raju, learned counsel for private respondent No. 3.

[2] The petitioner who is Assistant Engineer in the erstwhile Irrigation and Flood Control Department, Manipur (now re-designated as Water Resources Department) challenged the seniority list dated 25.11.2015 of Section Officer Grade –I (Civil/Mechanical/Electrical) in IFCD limited to Annexure – A/3 where his name is show at Serial No. 9 after 8 (eight) S.Os. Grade – I were converted from work-charged and should be below him.

[3] Being aggrieved by the same, the petitioner challenged the seniority list dated 25.11.2015 with respect to Annexure – A/3 i.e. final seniority list of S.O. Grade – I of degree holder by way of the writ

petition being WP(C) No. 1018 of 2015 and the same was heard along with writ petition being WP(C) No. 681 of 2013 filed by one of the converted S.Os. Grade – I from work-charged. Vide common judgment and order dated 10.02.2017, writ petition being WP(C) No. 1018 of 2015 filed by the petitioner was dismissed holding that 8 (eight) work-charged S.O. Grade – I converted from work-charged would have service benefit in case of seniority as well as promotion. Being aggrieved by the common judgment and order dated 10.02.2017 passed by the Ld. Single Judge, the petitioner preferred an appeal being W.A. No. 9 of 2017 and vide a detailed judgment dated 21.08.2019, the Hon'ble Division Bench held that 8 (eight) S.Os. Grade – I converted from work-charged could not be considered as part of the cadre of S.O. Grade – I, as their absorption were not in compliance of the statutory rule and in violation of the ratio laid down by the Hon'ble Supreme Court in the case of Uma Devi. Accordingly, writ appeal was allowed and the judgment of the Ld. Single Judge was set aside and the writ petition being WP(C) No. 1018 of 2015 was allowed and the impugned seniority list dated 25.11.2015 of S.O. Grade – I was set aside and the State respondents were directed to prepare fresh seniority list in terms of the direction passed by the Division Bench. The relevant para 11 of the judgment dated 21.08.2019 passed by the Division Bench is reproduced as:

“11. From the perusal of the judgment and order of the learned Single Judge, it is seen that the learned Single has failed to discuss and consider as to how the private respondents were initially appointed and whether the conversion was in accordance with the constitutional

scheme. The learned Single Judge has examined only the applicability of the order dated 19-03-2001 to the facts of the present case and after having held that it would not apply to the private respondents, the contention of the counsel appearing for the appellant was rejected. It may be noted that the appointment by absorption or by conversion is not one of the methods of recruitment as prescribed in the recruitment rules for appointment to the post of Section Officer Grade-I. The method of appointment as prescribed in the Recruitment Rules, is 70% by direct recruitment and 30% by promotion. The sanctioned strength/ posts had been determined or fixed by the State Government from time to time in respect of the Section Officer Grade-I. As seen from the above, only the persons who are appointed either by direct recruitment as against 70% or by promotion as against 30%, would constitute the service/ cadre of Section Officer Grade-I. No other person could claim to have become a member of the service/ cadre. The posts created by the State Government for conversion of work-charged employees into regular establishment, did not form part of the sanctioned strength/ posts and accordingly, they were shown to be zero in the MGEL, as they would WA No. 9 of 2017 Contd.../- [28] stand abolished as and when the incumbents including the private respondents would retire on superannuation or on termination of their services. The private respondents were not initially appointed against the regular posts nor were they appointed by following the procedure prescribed in law and in particular, the recruitment rules. No posts were created at the time of their initial appointment. No advertisement was made for their appointment and on top of that, no DPC was held by the State Government. Since their conversion was totally against the constitutional scheme as explained in the Uma Devi case and mandated in Article 16 of the Constitution, they could not have been treated at par with the Section Officer Grade-I who were appointed on regular basis strictly in accordance with the recruitment rules. The conversion was only for a limited purpose, in the sense that it was intended to provide some kind of help to those, including the private respondents, who had worked many years continuously. The posts against which they were converted to regular establishment, were for a limited purpose and they could not have been brought into the service/ cadre of Section Officer Grade-I and if they were not brought to the service/ cadre, the question of their being included in the seniority list did not arise at all. Since their initial

appointment was not as per the recruitment rules for the post of Section Officer Grade-I and that too, not against regular posts, it was illegal and not even irregular which could have been regularized under the exception carved out in the Uma Devi case and M.L. Kesari case. It would be absolutely unreasonable and illegal, if they were to be treated at par with WA No. 9 of 2017 Contd.../- [29] those who were appointed on regular basis and that too, in accordance with the recruitment rules. The learned Single Judge has also proceeded erroneously on the assumption that since the private respondents had been converted to regular establishment, they ought to be automatically treated at par with the Section Officers Grade-I officers who were appointed on regular basis and that they ought to be included in the seniority list. In our view, the conclusion of the learned Single Judge is absolutely incorrect because there is no any rule for doing that except the scheme which provides nothing about seniority and in the office order dated 05-12-1998 itself, it is specifically stated that the inter-se seniority would be decided in due course. No rule on the basis of which the seniority of the private respondents could be determined, was brought to the notice of this Court except the order dated 02-06-2010 passed by the Hon^{ble} Gauhati High Court, Imphal Bench which would have no application to the case of the appellant as has been explained hereinabove.”

[4] It may be noted that during the pendency of the writ appeal, vide order dated 29.07.2017 one Shri H. Rajen Singh S.O. Grade – I (Mech) (one of the 8 (eight) S.Os. converted from the work-charged) was promoted to the post of Assistant Engineer, IFCD subject to the outcome of the writ petition or writ appeal pending before this Court. Later on, the petitioner was promoted to Assistant Engineer (Civil/Mechanical) in the Water Resources Department vide order dated 08.10.2021.

[5] By the present writ petition, the petitioner is challenging the impugned order dated 22.07.2020 promoting 8 (eight) persons to

the post of Assistant Engineer (Civil) confining to Shri S. Chandrasekhar who is respondent No. 3 in the present writ petition.

[6] After the decision of the Division Bench in writ appeal, the State Government has prepared combined seniority list dated 13.01.2019 of S.O. Grade – I after deleting the names of those persons converted from work-charged and the petitioner was placed at Serial No. 19 and respondent No. 3 i.e. Shri S. Chandrasekhar at Serial No. 20.

[7] It is the case of the petitioner that since the writ appeal was decided in his favour, the petitioner ought to be at Serial No. 1 in the erstwhile seniority list dated 25.11.2015 and he ought to be considered for promotion on 29.07.2017, the day Shri H. Rajen (S.O. converted from work-charged) was promoted to Assistant Engineer.

[8] During the course of hearing, Mr. Kh. Tarunkumar, learned senior counsel for the petitioner, submits that his client is ready to accept notional promotion with effect from 29.07.2017 and effective promotion from 08.10.2021 for promotion to the cadre of Assistant Engineer. It is submitted that the writ petition may be disposed of in this manner and it will not impose any financial burden to the State and would not affect the promotion of private respondent No. 3.

[9] Mr. Th. Sukumar, learned G.A. for the State respondent, submits that the State Government has published a final seniority list in terms of the direction of the order dated 21.08.2019 passed by the Hon'ble Division Bench of this Court in WA No. 9 of 2015 and in the combined seniority list, the petitioner is at Serial No. 19 and respondent

No. 3 is at Serial No. 20. Learned G.A. has pointed out that the petitioner has not challenged the promotion of Shri H. Rajen Singh, vide order dated 29.07.2017 from S.O. Grade – I to Assistant Engineer. Regarding the plea of notional and effective date of promotion for the petitioner, this Court may pass appropriate order

[10] Taking into consideration the materials on record, Mr. L. Raju, learned counsel for respondent No. 3, submits that in view of the alternate prayer Mr. Kh. Tarunkumar, learned senior counsel for the petitioner, to give notional promotion from 29.07.2017 and effective promotion from 08.10.2021, the respondent No. 3 has no objection, if his promotion vide order dated 22.07.2020 is not disturbed by this Court in any manner.

[11] Mr. Kh. Tarunkumar, learned senior counsel for the petitioner, is also agreeable to the submissions made by Mr. L. Raju, learned counsel for respondent No. 3, keeping in mind that the respondent No. 3 is junior to the petitioner.

[12] This Court has considered the materials on record and modified prayer made at the bar. At the instruction of the parties and as agreed, the writ petition can be disposed of with the following directions and observations:

- (i) The promotion of the petitioner to the cadre of Assistant Engineer (Civil/Mechanical) in the Water Resources Department, Manipur will be notional from 29.07.2017 and effective from 08.10.2021

and the position of the petitioner will be just above the respondent No. 3.

- (ii) In view of the directions in (i), the impugned order dated 22.07.2020 for promotion of 8 (eight) S.O. Grade – I to the post of Assistant Engineer (Civil) in Water Resources Department is not interfered including that of the respondent No. 3 herein.

[13] With these observations and directions, writ petition is disposed of. No cost.

JUDGE

Kh. Joshua Maring

**KH. JOSHUA
MARING**

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