

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

WP(C)No.534 of 2023

Shri Lairenjam Maipak Singh, aged about 44 years, S/o(L) Nabakishore Singh, resident of Lilong Chajing Marenkhong, PO & PS Lilong, District Thoubal, Manipur-795130 & **4 Ors.**

...Petitioners

Vs.

The State of Manipur represented by the Additional Chief Secretary/Commissioner/ Secretary(RD & PR), Government of Manipur, Secretariat South Block, Babupara PO & PS Imphal, District Imphal West, Manipur-795001 & 14 Ors.

...Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI
O R D E R
(Oral)**

16.12.2024

D. Krishnakumar, C.J. :

Mr. N. Kumarjit, learned senior counsel assisted by Mr. N. Zequeson, learned counsel, appears for the petitioners, Mr. H. Debendra, learned Deputy AG, appears for the State respondents and Mr. BP Sahu, learned senior counsel, appears for the private respondents.

The instant writ petition has been filed challenging the impugned notification dated 21.07.2023 issued by DP & AR. (Personnel Division), Government of Manipur for one time relaxation of recruitment of years of service as Assistant

Engineer(Civil/Mechanical) for promotion to the post of Executive Engineer(Civil) in the Rural Engineering Department, Manipur.

Mr. N. Kumarjit, learned senior counsel appearing for the petitioners would submit that these writ petitioners being appointed as Assistant Engineer on contract basis in the respondents department vide notification dated 14.11.2012 by direct recruitment. Subsequently, their services were regularized by the department on 16.09.2016. The final seniority list of AEs(Civil/Mechanical) of RED has been published vide notification dated 25.07.2023 issued by Joint Secretary(RD&PR), Government of Manipur and in the aforesaid final seniority list, the writ petitioners' names appeared at serial Nos. 2, 13, 14, 16 & 21 respectively. That being so, the respondent department has issued the instant notification for granting one time relaxation to the Assistant Engineers for recruitment of number of service as per the Rules.

These writ petitioners being aggrieved by the aforesaid impugned order dated 21.07.2023, they filed the present writ petition before this Court.

According to the learned senior counsel appearing for the petitioners, the aforesaid notification issued by the respondent department dated 21.07.2023 which has been invoked under the power conferred provisions under Article 309 of the Constitution of India, but the said power cannot be invoked under Article 309 of the Constitution of India unless the Government has framed the Rules for granting such relaxation or by any amendment of the Rules. However, he would

submits that the Government has framed the Rules on 28.09.2022, called the Rural Engineering Department (RED) under RD&PR, Government of Manipur Executive Engineer (Planning)/Surveyor of Works (Civil); Executive Engineer (Civil); SW (Executive Engineer-Plg/Admn.) and SW/Executive Engineer Recruitment Rules 2022. In the aforesaid Rules No.5 which clearly has given the power to the State to grant relaxation and therefore, the said Rule has been framed by granting power for relaxation. The aforesaid Rules have not been followed. Hence, the order of the impugned notification issued by the impugned order passed by the Department respondent for grant of such relaxation is liable to be set aside.

Though the learned Deputy AG has strongly made an objection for the said submissions made by the learned senior counsel appearing for the petitioners by stating that the State Government has the power to grant such relaxation under Article 309 of the Constitution of India and there was no illegality in the order passed by the authority concerned for granting relaxation. The learned Deputy AG further submits that there are 25 (twenty five) vacant posts for considering for the promotion to the post of Executive Engineer in the respondents department. It is also brought to the notice of this Court that pursuant to the said notification, exemption has also been issued by the Manipur Public Service Commission on 21.07.2023.

According to the respondents, at that time there was no qualified Assistant Engineers for considering the said promotion of Executive Engineer, and

taking the aforesaid circumstance, the State Government has granted such relaxation for number of years required for experience in the department. Under such circumstances, the order has been passed by the State Government.

The learned senior counsel appearing for the private respondents endorsed the stands of the department and further submits that altogether there are only 22(twenty two) Assistant Engineers working in the aforesaid department who are eligible for considering for promotion to the post of Executive Engineer and since 25(twenty Five) posts are vacant, no prejudice will be caused to the petitioners, since these petitioners can also be accommodated.

Upon considering the submission made by the parties, the point for considering the present writ petition is that whether the notification issued by the Government dated 21.07.2023 for granting such one time relaxation for the recruitment of years of service as Assistant Engineers for promotion to the post of Executive Engineer is legally valid or not?.

According to the petitioners herein, the said notification has been passed by the State Government and the same is published on 21.07.2023 where there is no such source of power for passing such an order and granting relaxation to the Assistant Engineer though the said order has been passed stating that the power conferment under Article 309 of the Constitution of India and the decision of the State Cabinet in its sitting held on 04.01.2022. Hence, on this short grounds, the said impugned be set aside.

Though Mr. H. Debendra, learned Deputy AG for the State respondents has made an attempt to convince this Court that the power of the State Government is considering the situation where there is no qualified Assistant Engineers available and therefore, such exemption has been granted by the State Government and hence, no prejudice will be cause to the respondents herein if the said relaxation granted, those who were not completed the recruitment years as per rules. The said submission also made by the private respondent in support of the submissions made by the State respondents.

On considering the submissions, it is necessary to consider the impugned notification dated 21.07.2023 which states as follows:

"GOVERNMENT OF MANIPUR

DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS

(PERSONNEL DIVISION)

NOTIFICATION

Imphal, the 21st July, 2023

No. RRDP-37/4/2023-DP-DP: In exercise of the powers conferred by the Proviso to Article 309 of the Constitution of India read with the decision of the State Cabinet in its sitting held on 04.01.2022, the Governor of Manipur is pleased to order one time relaxation of the requirement years of service as Assistant Engineer(Civil/Mechanical) for promotion to Executive Engineer(Civil/Mechanical) occurring in column(11) of the MPSC Form 8 of the Recruitment Rules for the post of Executive Engineer(Planning)/Surveyor of Works(Civil); Executive Engineer(Civil); SW(Executive Engineer-Plg/Admn) and SW/Executive Engineer in the Rural Engineering Department, Manipur vide Notification No.1/16/21-RR(RED)/DP dated 28th September, 2022 as Column (11) of MPSC Form 8 vide Notification No.1/16/21-RR(RED)/DP dated 28th September, 2022.

<i>One Time Relaxation -as-</i>	<i>In place of following existing provision</i>
<i>(11)</i>	<i>(11)</i>
PROMOTION a. Assistant Engineers(Civil/Mech) with 4(four) years regular services in case of Engineering Degree holders Or b. Engineers(Civil/Mech) with 6(six) years regular service in case of Engineering Diploma holders Or c. In case of Diploma Holders who have passed both sections A&B of AMIE Examination of Institution of Engineers(India), 5 Years from the date of passing the Exam. or 6 years in the Grade as Assistant Engineers(Civil/Mech), whichever is shorter	PROMOTION a. Assistant Engineers(Civil/Mech) with 6(four) years regular services in case of Engineering Degree holders OR b. Engineers(Civil/Mech) with 9(nine) years regular service in case of Engineering Diploma holders OR c. In case of Diploma Holders who have passed both sections A&B of AMIE Examination of Institution of Engineers(India), 6 Years from the date of passing the Exam. or 7 years in the Grade as Assistant Engineers(Civil/Mech), whichever is shorter

2. It is also ordered that the concerned Rules and also standing orders/instruction bearing upon the subject and which are in force at present shall be deemed to have been amended accordingly, as one time relaxation.

3. This one time relaxation shall come into force from the date of publication in the Manipur Gazette and valid for three months only.

*By Orders & in the name of Governor
Bidyarani Ayekpam,
Joint Secretary(DP)
Government of Manipur."*

Mr. N. Kumarjit, learned senior counsel appearing for the petitioners has stated that the Government has framed the Rules dated 28.09.2022 and the power has been granted under Rule 5 of the said Rules for the State Government to grant such relaxation which states that for reasons to be recorded in writing and in consultation with the Manipur Public Service Commission, for relaxation of any of the provisions these rules with respect to any class or category of persons or posts.

On perusal of the said impugned notification issued by the State Government, there is no such consultation with Manipur Public Service Commission. Besides that the State Government has issued the said impugned notification for granting relaxation of the requirement years of service as Assistant Engineer for promotion to Executive Engineer(Civil/Mechanical) is without any authority or jurisdiction to issue such notification by the State Government. In such circumstances, we are of the view that such notification cannot be sustained and the same is liable to be set aside.

Considering the submission made by the parties, since the Executive Engineer post has not been filled up for the past two years and it is also brought to the notice of this Court that there are 25(twenty five) posts still vacant for filling up the Executive Engineer Post in the respondent department and in such circumstance, the State Government has to examine it and to consider if any such request is made or the authority concerned shall take appropriate decision for

granting of such relaxation under Rule 5 of the Rural Engineering Department(RED) under RD&PR, Government of Manipur Executive Engineer(Planning)/Surveyor of Works(Civil); Executive Engineer(Civil); SW(Executive Engineer-Plg/Admn.) and SW/Executive Engineer Recruitment Rules 2022.

We are not expressing any opinion for considering the said granting of relaxation to the Assistant Engineers by invoking Rule 5 of the aforesaid Rules. Therefore, in the light of the above, the impugned notification dated 21.07.2023 issued by the State respondents is set aside.

Considering the fact that more than 2(two) years have been lapsed for filling up the said vacant posts of Executive Engineer in the respondent department and considering that 25(twenty five) posts are still vacant for filling the post of Executive Engineer in the respondent department and according to the respondents that 22(twenty two) qualified Assistant Engineers are available for consideration for the post of aforesaid Executive Engineers.

In the circumstances, we are of the view that the State Government is directed to consider and to take appropriate decision in the light of the Rural Engineering Department(RED) under RD&PR, Government of Manipur Executive Engineer(Planning)/Surveyor of Works(Civil); Executive Engineer(Civil); SW(Executive Engineer-Plg/Admn.) and SW/Executive Engineer Recruitment Rules 2022 as early as possible within a period of 3(three) months from the date of receipt of a copy of this order and we make it clear that we are not expressing any positive

direction for the State Government to consider for granting relaxation. Needless to say that it is for the Government to take appropriate decision, considering the vacancies available in the respondent department.

Needless to say that it is for the Manipur Public Service Commission(MPSC) to take appropriate decision for considering the exemption to these qualified Assistant Engineers for promotion to the post of Executive Engineers.

With the above directions, writ petition is allowed.

JUDGE

CHIEF JUSTICE

John Kom