

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

WP(C)No.540 of 2022

With

MC(WP(C))No.207 of 2023

1. Akoijam Bobby Singh, aged about 49 years old, S/O A.K.Shyamkishore Singh, a permanent Resident of Wangkhei Kojiam Leikai, PO Imphal PS Porompat, Imphal East District, Manipur, Imphal 795001.
2. Leimapokpam Bimol Singh, aged about 46 years old, S/o L.Mangi Singh, a permanent resident of Athokpam Mayai Leikai, PO & PS Thoubal, Thoubal District, Manipur, Thoubal 795138.
3. Khomdram Anupama Devi, aged about 44 years old, W/O (Late) Kh.Suresh Singh, a permanent resident Of Kwakeithel Bazar, Opposite Kwakeithel Girls High School, PO & PS Imphal West District, Manipur, Imphal 795001.
4. Thoujam Bandana Devi, aged about 44 years old, W/O M.Okendro Singh, a permanent resident of Heirangoithong Makha Mutum Leirak, PO & PS Singjamei, Imphal West District, Manipur, Imphal 795008.
5. Khangembam Mohen, aged about 48 years old, S/o (Late) Kh.Gouri, a permanent resident of Khurkhul Awang Leikai, PO & PS Sekmai, Imphal West District, Manipur, Imphal 795136.
6. Meitankeishangbam Jamuna Devi, aged about 47 years old, W/O Ng.Romson Singh, a Permanent resident of Chingmeirong Mamang Leikai, PO Porompat & PS Lamphel, Imphal East District, Manipur Imphal 795005.

7. Rajkumari Bhuvaneshwori Devi, aged about 53 years old, w/o Thingom Mangi Singh, a Permanent resident of Sagolband Tera Sapam Leirak, PO & PS Lamphel, Imphal West District, Manipur, Imphal 795004.
8. Lamneichong Haokip, aged about 51 years old, W/O Sheikhohao Kipgen, a permanent resident Of National Games Village, Langol, PO & PS Lamphel, Imphal West District, Manipur, Imphal 795004.
9. Hangzamoi Tonsing, aged about 49 years old, s/o T.Thongzathang, a permanent resident of Docras Road, Docras Veng, New Lamka, PO & PS Churachandpur, Churachandpur District, Manipur, Churachandpur 795128.
10. Rakhi Golmei, aged about 44 years old, W/o Dhanakumar P, a permanent resident of Uripok Tourangbam Leikai, PO & PS Imphal, Imphal West District, Manipur, Imphal 795001.

... Petitioners

-Versus-

1. The State of Manipur represented by the Commissioner (Law) Government of Manipur, Secretariat Block, PO & PS Imphal, Imphal West District, Manipur 795001.
2. The Manipur Public Service Commission Represented by the Secretary, Manipur Public Service Commission, North AOC, PO & PS Imphal, Imphal West District, Manipur 795001.
3. Shri Asem Neelakumar Singh, aged about 48 years Old, s/o Asem Nimai Singh, resident of Pishum Bazar, PO Imphal & PS Singjamei, Imphal West District, Manipur 795001.

... Respondents

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

For the Petitioners :: Mr.H.S.Paonam, Sr.Advocate,
Mr.S.Gunabanta, Advocate,

For the Respondents:: Mr.Y.Nirmolchand, Sr.Advocate,
Mr.L.Raju, Advocate,
Mr.S.Niranjan, Government Advocate &
Ms.O.Momota, Sr. Advocate.

Date of hearing :: 20.06.2024/17.12.2024

Date of order :: 27.12.2024

O R D E R (CAV)

[1] Heard Mr.H.S.Paonam, learned senior counsel assisted by Mr.S.Gunabanta, learned counsel for the petitioners, Mr.Y.Nirmolchand, learned Sr. Counsel assisted by Mr.L.Raju, Mr.S.Niranjan, learned Government Advocate, Ms.Momota, learned counsel for the respondents.

[2] By the present writ petition, petitioners are challenging the order dated 8.7.2022, interalia, on the ground that the same is done against the order dated 1.6.2022 passed in WP(C) No.2 of 2019 with WP(C) No.896 of 2018 and others.

[3] It is stated that filling up the post of Additional Public Prosecutor by promotion under the relevant Recruitment Rules has been a matter of concern since 2018 where the present petitioners who have been functioning as Regular Assistant Public Prosecutor since 2016 have claimed that they are eligible for promotion to the post of Additional Public Prosecutor, however, State Government has been denying the claim of the petitioners.

[4] It is further stated that while the State Authorities are making effort to appoint Addl PP by direct recruitment, the petitioners along with others have approached this Court by filing WP(C) No.896 of

2018 challenging the process for appointment and this Court was pleased to pass interim order directing the State respondents not to fill up the post of Addl PP by way of direct recruitment and the said order is extended from time to time.

[5] It is stated that the State respondents have notified for appointing Special Public Prosecutor by adjusting the post of Addl PP thereby denying the right of the petitioners to be considered for promotion to the post of Addl PP. Being aggrieved by such action the petitioners have challenged the Notification dated 28.12.2019 by way filing WP(C) No.5 of 2020 and this Court was pleased to pass interim order directing the State respondents that the appointment of Special Public Prosecutor by direct recruitment shall not be made against the vacant post of Addl. P.P.

[6] Further, it is stated that despite existence of the interim order dated 6.1.2020 passed in WP(C) No.5 of 2020, the State respondents have issued the order dated 16.12.2020 allowing the private respondent to function as Addl PP on extension of contract service. Thereafter, the petitioner No.1 have filed Contempt Case (C) No.119 of 2021 for violation of the order dated 6.1.2020 passed in WP(C) No.5 of 2020.

[7] It is stated that vide order dated 01.06.2022 passed by this Court in batch of writ petitions being WP(C) Nos. 2/2019, 896/2018, 5/2020 and 895 of 2021 (filed by one Asstt PP namely Ch.Thoibisana Devi), the same were disposed of all the writ petitions pertaining to the promotions of the petitioners and others including seniority issues and it was made clear that the promotional post to the post of Addl. PP (District) -cum- Addl Government Advocate (District) in the office of Public Prosecutor (District) should not be filled up by way of any other method except in terms of the directions passed by this Court. It was also directed that any promotion to the post of Addl. Public Prosecutor-cum Addl.

Government Advocate (District) should be made in accordance with the prevailing Recruitment Rules when the vacancies would arise.

[8] It stated that there is a Rule called Law Department, Manipur Public Prosecutor (District)/ Additional Public Prosecutor-cum-Additional Government Advocate Recruitment Rules, 1982, wherein at Column 10 it is clearly stated that the Method of Recruitment is only by way of Promotion filing which by direct recruitment, which would govern for recruitment/promotion of Assistant Public Prosecutor to Additional Public Prosecutor.

[9] It may be noted that State Government issued a Notification dated 18.12.2019 publishing Additional Public Prosecutor-cum-Additional Government Advocate (District) Recruitment Rules, 2019 in exercise of power under Article 309 of the Constitution in supersession of all previous rules in this regard. The qualification prescribed for the post is LLB degree, with minimum 7 years of practice and included in the panel of advocates maintained by the District Magistrate for appointment of Public Prosecutor under Section 24 of CrPC. The method of recruitment is by promotion from the post of Assistant Government Advocate-cum-Assistant Public Prosecutor (District) with 5 years of regular service in the grade, failing which by direct recruitment.

[10] It is the case of the petitioners who are Asst.GA-cum-Asst. PP (D) that the post of Addl. PP-cum-Addl. GA (D) is a promotional post from the post of the Asst.GA-cum-Asst. PP (D). If none is available for promotion, appointment by direct recruitment is a second option. This condition has been upheld by a decision of this Court in order dated 01.06.2022 in WP(C) No. 2 of 2019 and connected matters. In other words, appointment by direct recruitment cannot be resorted at the first instance without examining the promotional avenue. The appointment by direct recruitment can be made under the failing clause, only when eligible persons are not available amongst Asst.GA-cum-Asst. PP (D).

[11] In the present writ petition, the challenge of regularising the contractual service of the private respondent No.3 to the post of Addl. PP-cum-Addl. GA (D) is on the limited ground that such a post cannot be filled up by direct recruitment at the first instance. It is pointed out that such an endeavour is in violation of the RR and the order dated 01.06.2022 in WP(C) No. 2 of 2019 and connected matters. The petitioners are not questioning the qualifications of the private respondent No.3 for appointment as Spl. PP (D).

[12] This aspect was discussed during the course of hearing conducted on 16.04.2024. Mr. HS Paonam, learned senior counsel appearing on behalf of the petitioners limited the challenge to the regularisation of the private respondent to the post of Addl. PP-cum-Addl. GA (D) as contrary to RR and earlier order dated 01.06.2022. However, the petitioners did not have any grievance if the respondent No.3 would be regularised as Spl. PP. This Court observed that if the regularisation of the respondent No.3 would be made as Spl. PP as done in the case of Shri M. Raichand, the issue could be resolved without affecting the rights of the parties. In the circumstances, learned GA was directed to take instruction in this regard.

[13] In pursuance to the direction of this Court in order dated 16.04.2024, Deputy Secretary (Law), Govt. of Manipur filed an additional affidavit dated 04.06.2024 stating that since the respondent No.3 was regularised in the newly created post of Addl. PP-cum-Addl. GA (D) vide orders dated 08.07.2024, it will not be possible to regularise him to the post of Spl. PP.

[14] In the circumstances, the matter was heard on this limited point. It is an admitted fact that the respondent No.3 was initially engaged as Spl. PP (D) on contract basis along with few other incumbents. Later on, he was again engaged as Addl. PP-cum-Addl. GA (D) on contract basis and posted at various courts. Subsequently, he was regularised as Addl.

PP-cum-Addl. GA (D) vide impugned order dated 08.07.2022 against the newly created post by another order dated 08.07.2022.

[15] It is an admitted fact that RR prescribes the post of Addl. PP-cum-Addl. GA (D) as promotional post from the post of Asst. GA-cum-Asst PP (D), failing which by way of direct recruitment. This stipulates that promotion is the first option and in case of non-availability of eligible candidates, resort can be made by direct recruitment by virtue of failing clause. Whenever eligible candidates are available for promotion, appointment by direct recruitment cannot be undertaken. This position has also been settled by the direction of this Court in the order dated 01.06.2022 in WP(C) No. 2 of 2019, etc. On the other hand, the respondent No.3 is eligible for appointment as Spl. PP like Shri M. Raichand who was appointed in the same impugned order dated 08.07.2022.

[16] This Court is at lost to understand the rigid stand of the State respondents refusing to adjust the regularisation of Shri A. Neelakumar Singh (respondent No.3 herein) as Spl. PP as proposed by this Court vide order dated 16.04.2024 on the mutual suggestions of the parties. Otherwise, the regularisation of the respondent No.3 as Addl. PP-cum-Addl. GA (D) will not be able to sustain in view of the stipulation in the RR and confirmation by this Court that the said post is promotional post for the Asst. GA-cum-Asst. PP (D) at the first instance. Since the petitioners who are Asst. GA-cum-Asst. PP (D) are eligible for promotion, the regularisation of the respondent No.3 as Addl. PP-cum-Addl. GA (D) will amount to resorting to direct recruit when eligible persons are available for promotion.

[17] In the peculiar facts and circumstances of the present case, this Court does not incline to quash the regularisation of the respondent No.3 as Addl. PP-cum-Addl. GA (D). Accordingly, this Court modified the regularisation of the respondent No.3 to the post of Addl. PP-cum-Addl.

GA (D) as that to the post of Spl. PP wef 18.10.2022. If post of Spl. PP is not available on the relevant date, State respondents may create supernumerary post of Spl. PP. With this direction and observation, the writ petition is disposed of. Interim orders merge with final order and misc. applications, if any, are disposed of.

JUDGE

FR/NFR

Priyojit

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PRIYOJIT SINGH
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