

Item No.7-9

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

MC(WP(C))No.620 of 2024

With

MC(WP(C))No.501 of 2024

With

WP(C)No.599 of 2024

Athokpam Dolendro Singh

...Petitioner

- Versus-

State of Manipur & 5 Ors.

...Respondents

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

24.10.2024.

[1] Heard Mr. HS Paonam, learned senior counsel assisted by Mr. Chinglemba, learned counsel on behalf of the applicant, Mr. M. Rarry, learned senior counsel on behalf of the State respondents and Mr. D. Julius Riamei, learned counsel on behalf of MTDC.

[2] In the main writ petition being WP(C)No.599 of 2024, the petitioner main prayer is for quashing the vigilance case pending against him. The petitioner has filed application being MC(WP(C))No.620 of 2024 for giving direction to the respondents to issue integrity certificate by the concerned authority which is required for considering the case of the petitioner for promotion to the higher post.

[3] As requested by the MTDC, the Director of Vigilance issued a letter dated 02.11.2024(Annexure-A4) stating that the Vigilance case No.2/PE/SP/-V&AC/2023 is pending against the petitioner.

[4] In MC(WP(C))No.620 of 2024,Mr. HS Paonam, learned senior counsel for the applicant is praying for issuance of integrity certificate implying complete clearance of the petitioner from any other criminal cases.

[5] Mr. M. Rarry, learned senior counsel for the State respondents and Mr. D. Julius Riamei, learned counsel for MTDC have pointed out that if the prayer in this misc. case is allowed, it amounts to allowing the main writ petition without hearing on merit and the application may be rejected at this stage.

[6] Mr. HS Paonam, learned senior counsel for the petitioner draws the attention of this Court to the office memorandum dated 16.11.1996(Annexure-A7) issued by the Department of Personnel and Administrative Reforms(Personnel Division), Government of Manipur laying down the guidelines to be followed at the time of promotion of the Government Servant and the relevant paras are reproduced hereunder:

“2. It has been that in some cases the above instructions have been misconstrued and the sealed cover procedure has been resorted to merely on the ground that the Vigilance Department has reported the pendency of an enquiry against the Government servant or that a compliant has been lodged with the Police against him for an alleged

criminal offence. It is, therefore, clarified that it is only when charge-memo in a disciplinary proceedings or a Charge-sheet in a criminal prosecution is issued to the employee or filed in the Court, that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/Charge-sheet is issued and the disciplinary proceedings/criminal case is pending. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure.

3. It may be mentioned that the preliminary investigations normally take an inordinately long time. Many times, they never result in the issue of any charge-memo/charge-sheet. Great care and application of mind are pre-requisites before taking a decision based on the facts and circumstances of each case. Whenever Vigilance/Police Department intimates pendency of an enquiry/case against an officer, Administrative Department may call for details of the same, particularly, where promotion of the concerned officer has to be considered. If the allegations against the Government servant are serious and the authorities are keen in investigating them, it shall not take much time to collect the relevant evidence and finalise the charges. Further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules and the suspension by itself permits to resort to the sealed cover procedure.

[7] Mr. HS Paonam, learned senior counsel appearing for the petitioner further draws the attention of this Court to the above para 2 & 3 stating that the that it is only when charge memo and the charge-sheet are submitted in the Department Enquiry regular cases, the case

of the Government's servant may not be considered for promotion and inordinate delay of submission of the memo and charge-sheet against the employee and in the circumstance, it is stated that the certificate issued by the Director, Vigilance dated 2.11.2023 does not falls within the restricted category as mentioned in the office memorandum.

[8] This Court has considered the materials on record and submission made at the bar. The dated 02.11.2023 issued by the Director, Vigilance is only a statement of a pending criminal case against the petitioner and the same does not indicate the submission of charge-sheet in the vigilance case. It is the status of the pending vigilance case.

[9] It is also admitted fact that no Departmental Enquiry is pending against the petitioner with respect to the subject matter or in any other matter. Para 2 of the memorandum dated 16.11.1996 bars consideration for promotion of the employee against whom charge memo has been submitted in the Department Enquiry or charge-sheet is submitted in the criminal case.

[10] It is observed that the authority may consider the certificate dated 02.11.2023 in terms of the office memorandum dated 16.11.1996 while considering the case of the petitioner for promotion to the higher post.

[11] With the above observations, this application being MC(WP(C)No.620 of 2024 is disposed of.

[12] Mr. M. Rarry, learned senior counsel for the State respondents submits that counter affidavit is sent for signature and prays for two weeks' time for filing the same.

[13] Mr. D. Julius Riamei, learned counsel appearing on behalf MTDC submits that he will adopt the counter affidavit of the State respondents.

[14] List on 15.11.2024.

JUDGE

John Kom