

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 72 of 2023

W. Robby Singh, aged about 51 years old, S/o Late W. Bangshidhor Singh, a resident of Uripok Polem Leikai, P.O. Imphal & P.S. Lamphel, Imphal West District, Manipur-795001.

..... Appellant/s

- Versus -

1. Shri Athokpam Dolendro Singh, aged about 52 years old, S/o Late Athokpam Manihar Singh, a resident of Keishamthong Thangjam Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

..... Respondent/s

2. The State of Manipur represented by the Principal Secretary/Commissioner/Secretary (Tribal Development and Hills), Government of Manipur, Secretariat Block, P.O. & P.S. Imphal, Manipur-795001.
3. The Manipur Tribal Development Corporation Ltd. Represented by the Managing Director, Manipur Tribal Development Corporation Ltd., Government of Manipur, Lamphelpat, P.O. & P.S. Lamphelpat, Manipur-795004.

.....Proforma Respondent/s

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Appellant :: Mr. BP. Sahu, Sr. Adv. assisted by Mr. DP. Sahu, Adv.

For the Respondents :: Mr. HS. Paonam, Sr. Adv. assisted by Ms. Lekhakumari, Adv., Mr. M. Rarry, Sr. Adv. assisted by Ms. M. Nikita, Adv. & Mr. D. Julius Riamei, Adv.

Date of Hearing :: 28.04.2025

Date of Judgment & Order :: **20.05.2025**

JUDGMENT & ORDER (CAV)

A. Guneshwar Sharma, (J)

[1] Heard Mr. BP. Sahu, learned senior counsel assisted by Mr. DP. Sahu, learned counsel for the appellant, Mr. HS. Paonam, learned senior counsel assisted by Ms. Lekhakumari, learned counsel for respondent No. 1, Mr. M. Rarry, learned senior counsel assisted by Ms. M. Nikita, learned counsel for respondent No. 2 and Mr. D. Julius Riamei, learned counsel for respondent No. 3.

[2] By the present appeal, the appellant has challenged the impugned judgment and order dated 31.08.2023 passed by the Ld. Single Judge in WP(C) No. 527 of 2023 whereby the order dated 26.07.2023 issued by the Deputy Secretary (TA & Hills), Government of Manipur conferring in-charge assignment of the Chief Engineer, Manipur Tribal Development Corporation Ltd. (MTDC Ltd.) to the appellant, was set aside and directed the authority to appoint the respondent No. 1 herein/writ petitioner as Chief Engineer, Manipur Tribal Development Corporation Ltd. The relevant portion of the order dated 31.08.2023 is reproduced as:

- “33. In the result,
- (i) the writ petition is allowed.
 - (ii) The impugned order dated 26.07.2023 passed by the Deputy Secretary (TA & Hills), Government of Manipur, is set aside.
 - (iii) The respondent authorities are directed to confer the charge of Chief Engineer, in Manipur Tribal Development Corporation Ltd, Lamphelpat to the petitioner.
 - (iv) No costs.”

[3] The brief fact of the case is that respondent No. 1 herein filed a writ petition being WP(C) No. 527 of 2023 challenging the impugned order dated 26.07.2023 conferring the charge of Chief Engineer in Manipur Tribal Development Corporation Ltd. on in-charge basis to the appellant herein (respondent No. 3 in the writ petition) and to consider the case of respondent No. 1/writ petitioner as in-charge Chief Engineer, MTDC Ltd.

[4] It is stated that the respondent No. 1 is functioning as Project Director of MTDC Ltd. and appellant herein is facing departmental enquiry for misconduct. There is a service seniority dispute between the appellant and respondent No. 1 where the respondent No. 1 has claimed that he is senior to the appellant amongst the Assistant Engineers (Degree Level) in MTDC Ltd by filing WP(C) No. 327 of 2022 and the same was pending. In that writ petition, the respondent No.1 herein challenged the seniority list as on 31.08.2021 where the appellant herein is shown as senior to the respondent No.1.

[5] Respondent No. 1 has also challenged the conferment of in-charge Superintending Surveyor of work to the appellant by filing WP(C) No. 330 of 2022 and the same is also pending. It is also stated that the appellant is facing a departmental enquiry for payment of mobilization advance security to the tune of Rs. 12,66,64,862/- against fake bank guarantee and bank cheque. In spite of this, the State Government, instead of taking appropriate departmental enquiry against the appellant, conferred the charge of Chief Engineer to the appellant by overlooking the fact that the respondent No. 1 was holding the higher post of Project Director in MTDC Ltd. against the norms.

[6] It is the case of the State respondent that neither the appellant nor the respondent No. 1 were eligible as per the Recruitment Rules to be considered for appointment to the post of Chief Engineer, MTDC Ltd on regular basis. Hence, the senior most amongst the officers belonging to the feeder post/cadre of that particular post has to be appointed to hold the post on in-charge basis. It is also stated that substantive regular post held by the appellant and respondent No. 1 is the post of Assistant Engineer (Degree civil) in MTDC Ltd. according to the seniority list of Assistant Engineer in MTDC Ltd. as on 31.08.2021.

[7] It is the contention of the State respondent that in the said seniority list of Engineer in MTDC Ltd. as on 31.08.2021, the appellant's name is shown at serial No. 1 and respondent No. 1/writ petition is shown at serial No. 2 and hence, the appellant is senior to the respondent No. 1/writ petitioner.

[8] It is the case of the State that in terms of para 4(ii) of the Office Memorandum dated 03.10.2020, the State appointed the appellant as Chief Engineer, MTDC Ltd. on in-charge basis by the order dated 26.07.2023. It is also stated that pendency of the departmental enquiry against the appellant cannot be a basis to overwrite the mandatory provisions of the O.M. dated 03.10.2020. It is further pointed out that the Project Director for EMRS project taken by MTDC Ltd. for which respondent No. 1 is in-charge, cannot be considered to be promotion to a higher post or/and not an appointment on regular basis and the post of Project Director is co-terminous with the project.

[9] It is the case of the appellant that he is always senior to the respondent No.1 from the date of initial appointment till date and the appellant

was rightly conferred the charge of Chief Engineer, MTDC Ltd. It is stated that there is no pending departmental enquiry against the appellant. By relying on the O.M. dated 03.10.2020 where in-charge appointment has to be made in favour of the senior most Officer in the feeder cadre and considering the seniority of the Assistant Engineer as on 31.08.2021, where the appellant is placed at serial No. 1 and the respondent No. 1/writ petitioner at serial No. 2, the appellant claims that there is no infirmity in the order dated 26.07.2023 conferring in-charge assignment of Chief Engineer, MTDC Ltd. to him.

[10] The Ld. Single Judge allowed the writ petition filed by the appellant herein and set aside the impugned order dated 26.07.2023 conferring the charge of Chief Engineer, MTDC Ltd. to the appellant herein. It was held that since the seniority list of Assistant Engineers is being challenged in writ petition being WP(C) No. 327 of 2022, the appellant cannot be considered as senior to respondent No. 1/writ petitioner. Departmental proceeding was pending against the appellant herein and respondent No. 1 was holding the higher post of Project Director of MTDC Ltd. Accordingly, it was directed that respondent No. 1/writ petitioner be appointed as Chief Engineer of MTDC Ltd. on in-charge basis.

[11] Being aggrieved, the appellant filed the present writ appeal amongst on the following grounds that:

- (i) Since there was no interim stay of the seniority list of Assistant Engineer as on date 31.08.2021 in WP(C) No. 327 of 2022, the Ld. Single Judge was wrong in holding that the appellant is not senior to the respondent No.1/petitioner.

- (ii) As per the O.M. dated 03.10.2020, the appointment of in-charge basis has to be given to the senior most in the feeder cadre when none is eligible for appointment on regular basis and admittedly, the appellant is the senior most in the feeder cadre.

[12] It is the specific case of the appellant that Ld. Single Judge failed to appreciate the factum of enquiry pending against the appellant is not strictly against him. It is clarified that the enquiry is regarding encashment of fake bank guarantee and bank cheque and the matter relates to the account section. The Ld. Single Judge also failed to appreciate the admitted position that respondent No. 1/writ petitioner was also involved in the vigilance case relating to forfeiture of Rs. 14.7 crore regarding a project of construction of 69 bridges in Myanmar and the Ld. Single Judge considered the pending enquiry against respondent No. 1 alone.

[13] Vide orders dated 28.08.2024 and 23.10.2024 passed by this Court in the present appeal, the learned senior counsel for the State respondent was directed to take instruction qua the appointment of Chief Engineer in MTDC Ltd. on regular basis. Further, another order dated 11.11.2024, the State respondent was directed to take necessary steps in accordance with law qua appointment of Chief Engineer in MTDC Ltd. on regular basis.

[14] Mr. M. Rarry, learned senior counsel for the State respondent produces a copy of letter dated 17.12.2024 sent by the Managing Director, MTDC Ltd. informing the Deputy Secretary, TA & Hills, Government of Manipur that there is no sanction post of Chief Engineer in MTDC Ltd. and the framing of

Recruitment Rules is in process and has been placed before the Board of Director for necessary approval and requested the administrative department for some time so that recruitment process may be initiated. Letter dated 17.12.2024 is taken on record during the course of hearing.

[15] Mr. BP. Sahu, learned senior counsel for the appellant has pointed out that O.M. dated 03.10.2020 does not speak about the pendency of any criminal or departmental proceeding for appointment on in-charge basis and the consideration is solely on the basis of seniority in the feeder cadre. It is submitted that Ld. Single Judge has wrongly allowed the writ petition filed by respondent No. 1 solely on the basis of the pendency of the departmental proceeding against the appellant. It is highlighted that Ld. Single Judge failed to examine pendency of the vigilance case against respondent No. 1/writ petitioner. O.M. dated 09.03.2021 relating to pendency of enquiry and criminal cases was not mentioned and not discussed by learned Single Judge in the impugned order, even though the in-charge appointment of the appellant was quashed on the basis of pending departmental enquiry against him.

[16] Mr. BP. Sahu, learned senior counsel has also submitted that mere pendency of the writ petition challenging seniority list, does not amount to automatic stay of the same and the Ld. Single Judge was wrong in holding that the appellant is not senior to respondent No. 1/writ petitioner. It is stated that the impugned order dated 31.08.2023 passed by the Ld. Single Judge be set aside and the appellant be allowed to hold the post of Chief Engineer on in-charge basis.

[17] It may be noted that the O.M. dated 09.03.2021 was issued by the State Government in continuation of the earlier O.M. dated 03.10.2020 regarding pendency of the departmental enquiry and criminal cases against officers to be considered in connection with the appointment on in-charge basis, specially for Head of Departments. As the said O.M. dated 09.03.2021 was not on record before the Ld. Single Judge and considering its relevancy in deciding the issue in the present appeal, this Court permitted respondent No. 1/writ petitioner to place the same on record, vide order dated 12.10.2023 in WA No. 72 of 2023. It may also be noted that vide order dated 14.09.2023 issued by the authority in compliance of the impugned order dated 31.08.2023 passed by the Ld. Single Judge in WP(C) No. 527 of 2023 and in supersession of the earlier order dated 26.07.2023, the respondent No.1/writ petitioner i.e. Shri Athokpam Dolendro Singh was assigned as in-charge Chief Engineer in MTDC Ltd.

[18] Mr. HS. Paonam, learned senior counsel for respondent No. 1, submits that in pursuance of the subsequent order dated 14.09.2023 issued by the authority in compliance of the direction in the impugned order dated 31.08.2023 in WP(C) No.527 of 2023, the respondent No. 1/writ petitioner is still holding the charge of Chief Engineer in MTDC Ltd. on in-charge basis.

[19] Considered the submissions made by the learned counsel for the parties at the bar, the materials on record and the subsequent events.

[20] The issue involved in the present appeal is regarding the appointment of Chief Engineer in MTDC Ltd. on in-charge basis, when none is eligible for appointment on regular basis. There are three relevant office

memoranda in this regard i.e. O.Ms. dated 03.10.2020, 09.03.2021 and 04.09.2023. The relevant portions are reproduced as:

“(i) O.M. dated 03.10.2020:

GOVERNMENT OF MANIPUR
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE
REFORMS
(PERSONNEL DIVISION)

OFFICE MEMORANDUM
Imphal, the 3rd October, 2020

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4. Thus, with a view to bring uniformly, clarity and enforceable norms in making such in-charge appointments, the following norms are hereby issued for compliance by all concerned:
- i. Appointment on in charge basis shall be made against a post only when there is no official eligible as per RR to fill up the said post, either by direct recruitment or by promotion through duly constituted DPC.
 - ii. In the absence of any official eligible as per RR to fill up a particular post, the senior most person amongst cadre/officials belonging to the feeder post of the said particular post shall be appointed to hold the said post on in-charge basis, at no extra remuneration and in addition to the substantial post held by the appointee in the lower post. Needless to say, the appointee shall draw pay against the lower post substantiality held by him.
 - iii. Where no arrangement can be made as in para (ii) above, an in-charge appointment shall be made to a vacant post from a person holding a similar post (at same rank and/or designation), at no extra remuneration.
 - iv. An official appointed on in-charge basis against any post shall have the same financial power as a person appointed on substantial basis against the said post would enjoy.”
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(Ningthoujam Geoffrey)
Special Secretary (DP),
Government of Manipur.”

“(ii) O.M. dated 09.03.2021:

GOVERNMENT OF MANIPUR
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE
REFORMS
(PERSONNEL DIVISION)

OFFICE MEMORANDUM

Imphal, the 9th March, 2021

No. 23/20/2019-Misc.(PHED)/DP: In continuation of this Department's Office Memorandum No. 23/20/2019-Misc.(PHED) dated 3rd October, 2020 regarding appointment on in-charge basis to various posts and conditions for making such appointment, etc.

The following norms are hereby issued for compliance by all concerned in addition to para 4(i) (ii) (iii) (iv) of Department of Personnel Office Memorandum of even number dated 3rd October, 2020:

(v) Integrity certificate based on Vigilance Clearance, non-pendency of Department Enquiry, non-pendency of FIR cases which has been taken cognizance by Magistrate etc. is mandatory for in-charge appointments, especially the Head of Departments.

(N. Geoffrey)
Special Secretary (DP),
Government of Manipur."

“(iii) O.M. dated 04.09.2023:

GOVERNMENT OF MANIPUR
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(PERSONNEL DIVISION)

OFFICE MEMORANDUM

Imphal, the 4th September, 2023

No. 23/20/2019-Misc.(PHED)/DP: In continuation of this Department's O.M. of even No. dated 03.10.2020 and 09.03.2021 regarding appointments on in-charge basis to various posts and conditions for making such appointments, etc., the following shall be added at para 4(ii) after the existing provision:

However, in the case of HoDs, if more than one person is holding the seniormost feeder post, then the selection of the person to hold the post shall be done from amongst these officers taking into regard proven leadership qualities and administrative efficiency, apart from the conditions at sub-para (v).

(Dr. Vineet Joshi)
Special Secretary (DP),
Government of Manipur."

[21] It is seen that at the time of passing of the impugned order dated 31.08.2023, the O.Ms. dated 03.10.2020 & 09.03.2021 are relevant. The O.M.

dated 03.10.2020 has been issued by the State Authority to bring uniformity, clarity and in respect of appointment on in-charge basis when none are found eligible for appointment on regular basis and para 4(ii) stipulates that in absence of any eligible persons as per the Recruitment Rules to fill a particular post, the seniormost amongst the feeder cadre shall be considered for appointment to the said post on in-charge basis. The O.M. dated 09.03.2021 added para 4(v) stipulating that integrity certificate from Vigilance Clearance for non-pendency of Departmental Enquiry and FIR cases which has been taken cognizance by the Court is mandatory for appointment of in-charge, especially the Head of Departments.

[22] Reading altogether these two O.Ms. dated 03.10.2020 and 09.03.2021, it is cleared that for appointment on in-charge basis, an Officer should be seniormost in the feeder cadre and should not have any departmental enquiry and criminal cases taken cognizance by the competent court against him, especially for appointment of Head of Departments. However, the O.M. dated 04.09.2023 was issued after passing of the impugned order by the Ld. Single Judge and it stipulates that in case of Head of Departments and when more than one person are holding the seniormost feeder post, the person with proven leadership quality and administrative efficiency shall be considered.

[23] In the impugned judgment, the Ld. Single Judge only considered the O.M. dated 03.10.2020 and did not at all mention the O.M. dated 09.03.2021 which stipulated non-pendency of the department enquiry and criminal cases. The O.M. dated 03.10.2020 mandated that the seniormost in the feeder cadre has to be preferred for appointment on in-charge basis when eligible persons

are not available for appointment on regular basis. However, the O.M. dated 09.03.2021 stipulating non-pendency of the departmental enquiry and non-pendency of the criminal cases after cognizance against the officer was not at all mentioned in the impugned order and hence, the same could not be a ground for setting aside the order appointing the appellant as Chief Engineer on in-charge basis. Ironically, the appointment of the appellant on in-charge basis was set aside mainly on the ground that the appellant was facing departmental enquiry. At the same time, the Ld. Single Judge has also failed to consider the pendency of the vigilance case against the respondent No. 1/writ petitioner.

[24] In the circumstances, we set aside the impugned order dated 31.08.2023 passed by the Ld. Single Judge in WP(C) No. 527 of 2023 and the matter is remanded to the State respondent with a direction to complete the process of appointment of Chief Engineer in MTDC Ltd. on regular basis. If the appointment of Chief Engineer in MTDC Ltd. on regular basis is not possible in the near future due to any reason such as non-creation of the post and non-finalization of the Recruitment Rules, etc., an endeavour shall be made to appoint the Chief Engineer, MTDC Ltd. on in-charge basis by following the relevant O.Ms. dated 03.10.2020, 09.03.2021 & 04.09.2023 and/or any other applicable rules. In doing so, the appellant, respondent No.1 herein and any other eligible Officers have to be considered for such appointment on regular or on in-charge basis.

[25] The exercise for appointment of the Chief Engineer in MTDC Ltd. on regular basis, failing which on in-charge basis, has to be completed within a period of two months from the date of passing of this order. Till then, the

respondent No. 1/writ petitioner shall be in-charge Chief Engineer in MTDC Ltd., if he is still holding the same post on in-charge basis as on today in terms of the order dated 14.09.2023 issued by the authority in compliance of the direction in the impugned order dated 31.08.2023 in WP(C) No.527 of 2023.

[26] It is also clarified that mere pendency of a writ petition challenging the seniority position of the officers/employees does not amount to automatic stay of the seniority list and such list can be relied and considered by the authority.

[27] With these observations and directions, writ appeal is disposed of. No cost.

[28] Accordingly, MC(WA) No. 125 of 2023 is also disposed of.

[29] Registry is directed to forward a copy of this order to the Principal Secretary/Commissioner/Secretary (TA & Hills), Government of Manipur and Managing Director, MTDC Ltd. for information and necessary compliance.

JUDGE

CHIEF JUSTICE

Kh. Joshua Maring

**KH. JOSHUA
MARING**

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