IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (C) No. 196 of 2013

K. Bipinchandra Sharma, S/o (late) K. Rajnikanta Sharma, resident of Kwakeithel Mayai Koibi, P.O. Imphal, P.S. Lamphel, District – Imphal West, Manipur.

… Petitioner

-Versus-

1. The Hon'ble Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura and Arunachal Pradesh) represented by its Registrar General, Gauhati High Court, Principal Seat, Guwahati.
2. Administrative Council, Gauhati High Court, Guwahati - 781001 represented by the Registrar General, Gauhati High Court.
3. The Registrar, Hon'ble Gauhati High Court, Imphal Bench, Imphal.
4. The State of Manipur represented by the Chief Secretary, Government of Manipur, Secretariat, Imphal.
5. The Secretary, Law and Legislative Affairs Department, Government of Manipur, Imphal.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	::	Shri H.S. Paonam, Sr. Advocate asstd. by Shri N. Bipin, Advocate
For the respondents	::	Shri M. Rarry, Addl. AG; Shri A. Bimol, Sr. Advocate asstd. by Shri H. Suraj, Advocate
Date of Hearing & Order	::	**14.02.2020**

O R D E R
(ORAL**)**

Kh. Nobin Singh, J.

[1] Heard Shri H.S. Paonam, learned Senior Advocate assisted by Shri N. Bipin, learned Advocate appearing for the petitioner; Shri M. Rarry, learned Addl. A.G and Shri A. Bimol, learned Senior Advocate assisted by Shri H. Suraj, learned Advocate appearing for the High Court.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the resolution dated 25-01-2012 adopted by the Administrative Committee, Hon'ble Gauhati High Court; to quash and set aside the resolution dated 06-02-2012 of the Full Court by which the petitioner was not allowed to continue in service; to quash and set aside the letter dated 23-02-2012 issued by the Registrar, Imphal Bench, Gauhati High Court to the Secretary (Law), Government of Manipur requesting him to issue necessary notification expeditiously to retire the petitioner from service pursuant to the recommendation dated 06-02-2012 made by the Full Court, Hon'ble Gauhati High Court. Further prayers have been made in the writ petition to issue a writ of mandamus or any other appropriate writ directing the respondents to forthwith recall/ rescind/ forbear from giving effect to the resolutions dated 25-01-2012, 06-02-2012 and the letter dated 23-02-2012 and in addition thereto, a prayer has been made to expunge the directions/ observations/ remarks made by the Hon'ble Gauhati High Court in various orders as detailed therein.

[3] According to the petitioner, an advertisement dated 20-11-2000 was issued for appointment to a post of the Manipur Judicial Services Grade–I (hereinafter referred to as "**the MJS Grade-I**"). The petitioner, being eligible, applied for it in the prescribed manner. On 27-09-2001, the Registrar, Hon'ble Gauhati High Court, Imphal Bench, after following due process of selection, recommended the petitioner for appointment to the said post of MJS Grade-I by the Government of Manipur.

[4] The said recommendation dated 27-09-2001 came to be challenged by Shri Th. Ibohal Singh, the then Addl. Government Advocate (High Court) before the High Court by way of a writ petition being WP(C) No.1512 of 2001. A transfer petition (Civil) No.331 of 2002 was filed before the Hon'ble Supreme Court praying for transfer of the said WP(C) No. 1512 of 2001 to any other High Court which was dismissed by the Hon'ble Supreme Court vide its order dated 12-07-2002.

[5] The said writ petition being WP(C) No.1512 of 2001 was dismissed by the learned Single Judge, Hon'ble Gauhati High Court vide its order dated 31-01-2003 holding inter-alia that the recommendation dated 27-09-2001 did not suffer from any illegality or infirmity. The order dated 31-01-2003 passed by the learned Single Judge was challenged by Shri Th. Ibohal Singh in writ appeal being WA No. 45 of 2003 which was dismissed by the Hon'ble Division Bench of the Gauhati High Court with a direction to the State Government to take up the matter in respect of the petitioner's appointment within a period of 3 (three) weeks. The Court's order dated 11-05-2014 was challenged by Shri Th. Ibohal Singh before the Hon'ble Supreme Court by way of a petition for special leave to appeal

being SLP(C) No.10471 of 2004 which was dismissed on 28-05-2004. Despite the SLP being dismissed by the Hon'ble Supreme Court, the necessary order for appointment of the petitioner was not issued which compelled him to file the Contempt (Civil) Case No.144 of 2004 before Hon'ble Gauhati High Court. After a lapse of more than 3½ years, the petitioner was appointed as the Addl. District & Sessions Judge, Imphal East vide order dated 11-03-2005 issued by the Government of Manipur.

[6] The petitioner was transferred and posted as the Judge, Special Court (NDPS), Manipur vide Notification dated 06-11-2006 and he continued on the same post till June, 2009. Thereafter, the petitioner was transferred and posted as the Presiding Officer, Revenue Tribunal/ MACT, Manipur whereon he continued till July, 2010. In the meanwhile, the Registrar, Gauhati High Court vide its letter dated 05-06-2010 communicated to him the ACR's of the years, 2007 and 2008 with the remark "**average**" and also with the observation of the Accepting Authority that he was not yet fit for promotion to higher grade. The petitioner was transferred and posted as the District & Sessions Judge, Manipur West vide order dated 30-07-2010 and hardly a month's later, the Registrar addressed a letter dated 27-08-2010 to him communicating therewith ACR for the year, 2009 with the grading "**good**" and he was declared fit for promotion to the higher grade. But during his tenure as the District & Sessions Judge, Manipur West, a series of adverse remarks were made against him in various judicial orders by the Hon'ble Gauhati High Court, some of which being that he failed to comply with the orders as regards the submission of Enquiry Reports for which the Registry was directed vide

Court's order dated 15-12-2011 and other orders to issue show cause as to why contempt proceedings should not be initiated against him. On receipt of the show cause notices for initiating contempt proceedings, the petitioner submitted his replies explaining the reasons for his inability to complete the enquiries and tendering unconditional apology with a prayer for pardoning him.

[7] The Registrar, Imphal Bench vide its letter dated 03-02-2012 informed the petitioner that the Hon'ble High Court had considered the matter regarding the promotion of the petitioner to the higher grade and had refused to recommend his name. The petitioner was served with a copy of the minutes of the Administrative Committee in its meeting held on 25-01-2012 and presided by the Hon'ble Chief Justice. The item No. 2 of the minutes of the meeting pertained to the promotion of the petitioner to higher grade, while item No. 6 pertained to his disobedience and lapses, in connection with the order passed in WP(C) No. 224 of 2002, committed by him while submitting the enquiry report. The Administrative Committee resolved not to recommend the petitioner for promotion to selection grade and directed the matter to be put up before the appropriate Committee. The petitioner submitted a representation dated 23-02-2012 for reconsideration of the said resolution dated 25-01-2012. The petitioner was served on 24-02-2012 with a letter dated 23-02-2012 addressed by the Registrar, Imphal Bench to the Secretary (Law), Government of Manipur requesting him to issue a necessary notification expeditiously to retire the petitioner from service and this letter dated 23-02-2012 was issued pursuant to a recommendation made by the Full Court in its

meeting held on 06-02-2012 to the effect that the Full Court accepted the resolution of the Committee for not allowing him to continue in service.

[8] As the intimation about the recommendation of the Full Court was not received by him, the petitioner filed an application dated 27-02-2012 under the Right to Information Act but the information sought for by him was not received by him till the date of filing the writ petition. The petitioner submitted a representation dated 07-03-2012 seeking reconsideration of the resolution taken by the Full Court in its meeting held on 06-02-2012 and recalling the letter dated 23-02-2012 addressed to the Law Secretary, Government of Manipur. According to the petitioner, the facts and circumstances have been stated therein to demonstrate that the delay was due to unavoidable and bonafide reasons and that there was no deliberate attempt on his part in order to willfully cause delay, but the same came to no effect. Being aggrieved by the inaction on the part of the High Court, the instant writ was filed by him contending inter-alia that the recommendation of the Full Court was in gross violation of the principles of natural justice and that it did not adhere to the provisions pertaining to Rule 20 of the Manipur Judicial Services Rules, 2005 which governs the retirement in public interest. The adverse remarks/ strictures passed by the High Court in various judicial orders were the basis on which the resolutions were taken against the petitioner without giving an opportunity of clarifying his stand and that too, without adverting to the representations submitted by him resulting in the violation of the provisions of Article 14 and 16 of the Constitution of India.

[9] Despite a number of opportunities being given to the respondents, no counter affidavit on behalf of the State of Manipur was filed. The stand of the Hon'ble Gauhati High Court as indicated in its affidavit filed by the Registrar General, is that the Screening Committee consdered the continued utility of all judicial officers in all seven States by examining the relevant records including that of the petitioner. The Screening Committee, after making an objective evaluation of service records, was of the view that the petitioner did not have continued utility and a recommendation was made by it for consideration by the Full Court which in its meeting held on 06-02-2012 resolved that the service of the petitioner was no longer required and on the basis of its recommendation, the petitioner was given compulsory retirement vide order dated 15-06-2012 issued by the State Government. It has further been stated in the affidavit that the exercise leading to compulsory retirement of the petitioner was neither a punitive one nor was it accentuated by malice or extraneous consideration. It being a mere routine exercise for removal of dead wood, there was no scope for judicial review under the facts and circumstances. Denying the averments made in the writ petition except those which are matter of records, detailed comments have been made therein.

[10] During the pendency of the writ petition, the petitioner has attained the age of superannuation and since the issue involved herein has become academic, the instant writ petition cannot be considered and decided by this Court on merit. Conscious about this, Shri H.S Paonam, the learned counsel appearing for the petitioner has emphasized his

arguments on two points-one, relating to the denial of retiral benefits to the petitioner, as he was not given appointment in time for no fault of his and two, relating to far reaching consequence at the fake end of his career on account of the adverse action being taken against him.

[11] As regards the first point, it has been submitted by the counsel appearing for the petitioner that on 27-09-2001, the petitioner was recommended for appointment to the said post of MJS Grade-I but because of it being challenged by Shri Th. Ibohal Singh in the High Court which was carried upto the Hon'ble Supreme Court, he was not given the appointment in time and he was appointed only on 11-03-2005. It is not in dispute that during this period of more than 3 ½ years, there was no any order passed by the Hon'ble High Court or the Hon'ble Supreme Court restraining the State Government from issuing the appointment order. The reason as to why the appointment order was not issued in time by the State Government was best known to it. Had the appointment order been issued in favour of the petitioner in time, the issue relating to grant of retiral benefits would not have arisen at all now. It is, in fact, a lapse on the part of the State Government which cannot be attributed to the petitioner. In other words, he cannot be penalized for it. In order to substantiate his contention, the learned counsel appearing for the petitioner has submitted that in similar cases where persons could not be given appointment due to pending litigation, the benefit attached with the service was found to have been extended to them. There are instances where the State Government has issued orders/ corrigendum granting notional benefit from the actual date of entitlement of appointment and one such being the corrigendum dated 20-01-2017 issued in favour of Shri Hanjabam Bobby Sharma. Combating his submission, Shri M. Rarry,

learned Addl. Advocate General has submitted that the facts of that case are different from that of the present case and therefore, the decision rendered in Shri Hanjabam Bobby Sharma's case will have no application. It may be true that the facts of both the cases are not exactly the same but that decision can be taken as one of the factors which can be taken into account by the State Government while considering the case of the petitioner.

[12] So far as the second point is concerned, the submission of the learned counsel appearing for the petitioner has some substance and merit, in the sense that since the present writ petition is not going to be decided by this Court on merit, the validity and correctness of the recommendation of the Full Court, based on the adverse remarks/ strictures recorded in various judicial orders, will remain intact and undisturbed. Even though it has been stated in the affidavit filed on behalf of the High Court that it was only a compulsory retirement of the petitioner but it was not punitive in nature, the people will not know about it and consequently, it will have a far reaching consequence upon the career of the petitioner.

[13] For the reasons stated hereinabove, the instant writ petition stands disposed of with the following directions:

(a) The petitioner shall submit a detailed representation to the State Government, as regards the grant of retiral benefits, within a week from the date of receipt of a copy of this order and in the event of such a representation being received by the State Government, the same shall be considered sympathetically by it and disposed of within two months from date of receipt of the representation. The peculiar facts and circumstances of the

present case as narrated hereinabove, shall be taken into account by the State Government while considering the representation;

(b) The compulsory retirement of the petitioner shall not attach any stigma on him and it is made clear that the fact that the petitioner has been allowed to retire compulsorily, shall not be rendered and treated an impediment or an embargo in his pursuit of any appointment/ engagement in any form and capacity as may be permissible in law.

JUDGE **JUDGE**

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Victoria

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.21 13:47:41 +05'30'