IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (C) No. 739 of 2017

Shri Sanoujam Shyamcharan Singh, aged about 56 years, S/o (L) S. Jugol Singh, resident of Chingamathak Yumnam Leikai, Ngakraba Leirak, P.O. & P.S. Imphal, Imphal West, Manipur.

… Petitioner

-Versus-

1. The State of Manipur, through the Principal Secretary/ Commissioner Social Welfare, Government of Manipur.

2. Smt. Sumatibala Ningthoujam, aged about nil, resident of Mayai Leikai Heirok-3, Thoubal District, Manipur.

… Respondents

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

For the petitioner	::	Shri S. Rajeetchandra, Advocate
For the respondents	::	Shri H. Debendra, Govt. Advocate; Shri A. Mohendro, Advocate
Date of Hearing	::	**28-01-2020**
Date of Judgment & Order	::	**04-02-2020**

JUDGMENT AND ORDER

[1] Heard Shri S. Rajeetchandra, learned Advocate appearing for the petitioner; Shri H. Debendra, learned Government Advocate appearing for respondent No. 1 and Shri A. Mohendro, learned counsel appearing for respondent No. 2.

[2] The validity and correctness of the order dated 29-09-2017 issued by the Deputy Secretary (SW), Government of Manipur is under challenge in this writ petition.

[3.1] According to the petitioner, he is an Advocate and is presently a member of the Manipur Commission for Protection of Child Rights (hereinafter referred to as "**the State Commission**"). He is a law abiding citizen and a resident of the State of Manipur.

[3.2] Shri S. Saratkumar Sharma was appointed as the Chairperson of the State Commission vide order dated 01-09-2015 issued by the Joint Secretary(SW), Government of Manipur and his term of appointment came to an end on 29-02-2016. But vide order dated 29-03-2016 issued by the Principal Secretary (SW), Government, he was allowed to continue to serve as the Chairperson as stop-gap arrangement with immediate effect and until further orders or till appointment of a Chairperson.

[3.3] The petitioner being eligible and aspirant for the post of Chairperson of the State Commission was awaiting a notice inviting applications for it as was done earlier in terms of Rule 6(A) of National Commissions for Protection of Child Rights Act, 2005 (hereinafter referred as "**the Child Rights Act, 2005**"). But to the shock and surprise of the petitioner, an order dated 29-09-2017 was issued by the Deputy Secretary (SW), Government of Manipur appointing the respondent No. 2 as the Chairperson of the State Commission in violation of the prescribed rules and norms and practices for selection to the post of Chairperson. No notice and wide publicity as contemplated under Rule 6(A) of the Child Rights Act, 2005 as has been done in the past for the appointment of the Chairperson, was issued by the State Government.

[3.4] As per Section 7 of the Child Rights Act, 2005**,** the present incumbent Chairperson should have been given an opportunity of being heard which was not done in the case. The appointment of respondent No. 2 was done in a hushed up manner in violation of the provision of the Act and rules made thereunder. Being aggrieved by the order dated 29-09-2017, the instant writ petition has been filed by the petitioner on the inter-alia grounds that despite various instructions having been issued in this regard, the State Government has violated the practices and norms while selecting/ appointing the new Chairperson.

[4.1] In the affidavit filed on behalf of respondent No.1, a preliminary objection as regards the maintainability of the writ petition has been raised on the ground that the petitioner has concealed material facts. Although the petitioner submitted his application for appointment to the post of Chairperson of the State Commission, he concealed it and therefore, the writ petition deserves to be dismissed. It has further been stated that the Selection Committee was constituted under Section 18 of the Child Rights Act, 2005 which examined and considered the cases of the petitioner and respondent No. 2 and after having considered and verified the relevant factors, the Selection Committee recommended respondent No. 2 for appointment to the post of Chairperson for the State Commission. The petitioner applied for appointment to the post of Chairperson of the State Commission though he was well aware that no advertisement inviting application for the said post, was made and no objection was made by him before the consideration of his case along

with respondent No.2 for appointment to the post of Chairperson of the State Commission. The petitioner filed the present writ petition challenging the validity of the selection process after he failed to be recommended by the Selection Committee and therefore, the petitioner has no locus standi to challenge the selection process. In exercise of power conferred by the Child Rights Act, 2005, the State Government framed the rule called "**The Manipur Commission for Protection of Child Rights Rules, 2011**" wherein there is no provision of Rule 6(A). It is nowhere provided in the said rules that for selection of the Chairperson or its members of the State Commission, the State Government ought to make an advertisement or wide publicity for submission of application. In other words, it is not mandatory for the State Government to make advertisement or wide publicity for selection of the Chairperson or member of the State Commission. Rule 6(A) referred by the petitioner concerns about the selection and appointment of Chairperson or member of the National Commission and not with the selection and appointment of Chairperson of the State Commission. The appointment of the respondent No.2 was made by the State Government on the recommendation of the three Member Selection Committee constituted vide order dated 08-09-2017 and after having considered the merits of both the candidates, the selection committee recommended the name of respondent No.2 for appointment as the Chairperson of the State Commission and the respondent No.2 was appointed vide order dated 29-09-2017. The respondent No. 2 joined the office on 04-10-2017. It has

been specifically denied that the appointment of the respondent No.2 was done in a hushed up manner in violation of the provisions of the Act and rules made thereunder. An affidavit has been filed by respondent No.2 and since the stand taken by her is similar to that of respondent No. 1 and therefore, the same are not repeated here for the sake of brevity. It has been stated by her that her appointment has been made after following all the procedures established by law and that there is no violation of the provisions of the Child Rights Act, 2005 and the rules made thereunder.

[4.2] In the rejoinder affidavit filed by the petitioner, it has been stated that the application submitted by him, prior to the constitution of the Selection Committee, to the Hon'ble Minister, Social Welfare was for appointing him as interim Chairperson to the deemed vacancy of the post of the Chairperson as the then incumbent Shri L. Saratkumar Sharma who was holding the post, should have demitted the office on his attaining the age of 65. It is not known as to how the respondent No.2 submitted her application, when there is nothing on record that the applications for the post of the Chairperson were invited. It is admitted by respondent No.1 that no advertisement inviting applications was made at any point of time. From the perusal of her qualification, it is crystal clear that the selection process is nothing but a political appointment as the respondent No.2 has no qualification remotely connected to the child rights for consideration for the post of the Chairperson of the State Commission.

[5] It has been submitted by Shri S. Rajeetchandra, learned Counsel appearing for the petitioner that since the appointment of the respondent No.2 has been made without any notice being given to the general public or in other words, no advertisement was issued inviting applications for appointment to the post of the Chairperson of the State Commission, the same is bad in law and is liable to be quashed by this Court. In support of his contention, he relied upon the decision rendered by the Hon'ble Supreme Court in ***Renu & ors. Vs. District & Sessions Judge, Tis Hazari & anr., AIR 2014 SC 2175*** wherein the subject matter in issue relates to the appointment of class-IV employees to the subordinate courts in Delhi. As the Hon'ble Supreme Court took up the matter in a larger perspective, suo motu notice was issued to all the Registrar generals of the High Court and the State Governments for filing their response. While deciding the above case, the Hon'ble Supreme Court examined and considered the rule of law which is the basis structure of the Constitution and the equality of opportunity enshrined in Article 14 and Article 16 of the Constitution of India which provides equal opportunity in matters relating to public employment. The Hon'ble Supreme Court held:

> ***"9.*** *In Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216, a larger Bench of this Court reconsidered its earlier judgment in Union of India & Ors. v. N. Hargopal & Ors., AIR 1987 SC 1227, wherein it had been held that insistence of requisition through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution.*

However, due to the possibility of non sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the Employment Exchange does not meet the requirement of the said Articles of the Constitution. The Court further observed:

> *"In addition, the appropriate department…..should call for the names by publication in the newspapers having wider circulation and also display on their office notice … and employment news bulletins; and then consider the case of all candidates who have applied. If this procedure is adopted, fair play would be sub served. The equality of opportunity in the matter of employment would be available to all eligible candidates." (Emphasis added) (See also: Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; and Kishore K. Pati v. Distt. Inspector of Schools, Midnapur & Ors., (2000) 9 SCC 405).*

10. *In Suresh Kumar & Ors. v. State of Haryana & Ors., (2003) 10 SCC 276, this Court upheld the judgment of the Punjab & Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.*

13. *A similar view has been reiterated by the Constitution Bench of this Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, observing that any appointment made in violation of the Statutory Rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. "Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment". The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.*

16. *Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."*

[6] On the other hand, it has been submitted by H. Debendra, learned Government Advocate appearing for the respondent No.1 that since the petitioner has not come before this Court with clean hands and he concealed material facts from this Court, no indulgence of this Court is called for and the writ petition deserves dismissal. Over and above, it has

been submitted by him that since the petitioner having participated in the selection process and having failed therein, he cannot be permitted to question it. Reliance has been made by him In three decisions rendered by the Hon'ble Supreme Court. The first decision is the one rendered in ***Prestige Lights Ltd. Vs. State Bank of India, (2007) 8 SCC 449*** wherein the Hon'ble Supreme Court held:

> ***"33.*** *It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.*
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> ***35.*** *It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are*

*suppressed or are distorted, the very functioning of the writ courts would become impossible**."***

A similar view has been taken by the Hon'ble Supreme Court in ***K.D Sharma Vs. Steel Authority of India Ltd & ors., (2008) 12 SCC 481*** wherein the subject matter in issue relates to tender, the Hon'ble Supreme Court held:

"34. *The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.*

36. *A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it."*

The third decision of the Hon'ble Supreme Court rendered in **D. Sarojakumari Vs. R. Helen Thiakom & ors, (2017) 9 SCC 478** relates to the appointment of a Music Teacher in schools run by the Church of South India. The respondent No.1 therein applied for being considered for appointment as Music Teacher in Samuel LMS High School but after she was not selected in the process of direct recruitment, she raised a plea that since the management of both the schools are same, she was entitled to be promoted as Music Teacher. The Hon'ble Supreme Court held:

> ***"4.*** *The main ground urged on behalf of the appellant is that Respondent 1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.*
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> ***11.*** *As far as the present case is concerned, an advertisement was issued by Respondent 6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent 1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid*

down by this Court. In view of this, we need not go into the other issues raised.”

The submissions of Shri A. Mohendro, learned counsel appearing for the respondent No.2 are similar to that of the learned Government and therefore, the same are not repeated here for the sake of brevity.

[7] There is no and can be no dispute as regards the law laid down by the Hon’ble Supreme Court in the above decisions relied upon by the counsel appearing for the parties. The only question which calls for consideration by this Court is as to whether the law laid down therein will have any application to the facts and circumstance of the present case.

[8] It is not in dispute that Shri S. Saratkumar Sharma was appointed as the Chairperson of the State Commission vide order dated 01-09-2015 issued by the Joint Secretary (SW), Government of Manipur for a term of three years from the date on which he assumed office or till he attains the age of 65 years. Since he having attained the age of 65 years 29-02-2016, he was allowed to continue to serve as the Chairperson as a stop gap arrangement with immediate effect and until further order or till the appointment of a new Chairperson vide order dated 29-03-2016. As the petitioner was, at that time, serving as a member of the State Commission, he submitted a representation dated 10-04-2017 to the Hon’ble Minister, Social Welfare offering himself for appointment as the Chairperson in-charge under Section 8(2) of the Child Rights Act, 2005, till full time Chairperson was appointed. The respondent No.2

appears to have her submitted her application but there is no material on record as to the date on which she submitted her application. A Selection Committee, consisting of three persons, was constituted vide order dated 08-09-2017 issued by the Deputy Secretary (SW), Government of Manipur under Section 18 of the Child Rights Act, 2005 to recommend suitable person for appointment to the post of Chairperson. The meeting of the Selection Committee was held on 13-09-2017 in the chamber of the Hon'ble Minister, Social Welfare and on perusal of the proceedings, it is seen that the applications of the petitioner and the respondent No.2 were considered and that after due consideration of the qualifications, experience, background etc., the name of the respondent No.2 was recommended for appointment to the post of Chairperson. The respondent No.2 was appointed as the Chairperson vide order dated 29-09-2017 issued by the Deputy Secretary (SW), Government of Manipur for a term of three years from the date on which she assumed office or till she attains the age of 65 years whichever is earlier. It is nowhere stated in the order dated 29-09-2017 that the appointment of the respondent No.2 was made on the recommendation of the Selection Committee.

[9] It is not denied by the respondent No.1 that no advertisement was issued inviting applications for appointment to the post of the Chairperson and the only stand taken by it in this regard, is that in the rules farmed by the State Government, there is no any requirement for issuing public notice or for that matter, the advertisement. The stand of

the State Government has no substance and merit for the reason that the rules framed by the State Government cannot prevail upon the provisions of Article 14 and 16 of the Constitution of India and in other words, it cannot stand contrary to the constitutional mandate. Article 16 provides for equal opportunity in matter relating to public employment. In other words, it provides for a constitutional scheme which has been explained by the Hon'ble Supreme Court in its various decisions including the one relied upon by counsel appearing for the petitioner.

[10] What does the expression "**selection process**" mean? It is not defined in the Child Rights Act, 2005 and the rules made thereunder by the State of Manipur. It will definitely mean a series of steps to be taken by the authority concerned towards the recruitment in respect of a post. In the service jurisprudence, it would mean the process of recruitment, for which various steps are to be taken by the authority concerned namely, the post is to be created; an advertisement is to be issued in the paper inviting applications from amongst the eligible persons; after the applications being received, a Selection Committee shall consider them and recommend the name(s) for appointment to the said post etc. In the present case, it may be noted that no advertisement was admittedly issued and therefore, it cannot be said in a true sense that the process of selection was initiated in accordance with law. The applications submitted by the petitioner and the respondent No.2 cannot be said to have been submitted pursuant to an advertisement which is one of the basic requirements in respect of a recruitment. In fact, the application was

submitted by the petitioner for appointment to the post of Chairperson as stop-gap arrangement, after the then Chairperson had attained the age of 65 years and that too, without knowing the fact that a Selection Committee would be constituted to consider his application. No material has been placed on record by the State Government to show that the petitioner was informed about the selection process being initiated by the State Government or for that matter, the proceedings of the Selection Committee. The facts of D. Sarojakumari case (supra) are not exactly the same as that of the present case for the reason that in D. Sarojakumari case, an advertisement was issued to initiate the process of selection, while no advertisement was issued in the present case. Therefore, the contention that the petitioner having participated in the selection process, has concealed it in his petition, has no substance and merit. But the fact remains that the applications of both the petitioner and the respondent No.2 were considered by the Selection Committee, the validity of its constitution has not been challenged by anyone. Even after having received a copy of the counter affidavit enclosing therewith a copy of the proceedings of the Selection Committee, the petitioner has not challenged it and moreover, there is no any allegation of malafide except stating that the appointment of the respondent No.2 was hushed up, for which there is no material on record to substantiate it. The appointment of the respondent No.2 was not stayed by this Court during the pendency of the writ petition except observing that the status quo as on 04-10-2017 be maintained, as a result of which the term of three years is going to come

to an end in few months. In view of the peculiar facts and circumstances of the present case, this Court is of the view that the impugned order dated 29-09-2017 need not be interfered till the completion of three years of the term of the Chairperson.

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

(a) The respondent No.2 shall be allowed to continue to serve as the Chairperson of the State Commission till the completion of the term of three years and not beyond that;

(b) Within six months prior to the expiry of three years from 29-09-2017, the Department of Social Welfare, Government of Manipur shall initiate the process of selection for appointment of a new Chairperson, in accordance with law, by giving wide publicity to the general public;

(c) All the eligible candidates shall be considered by a Selection Committee on their own merits without it being influenced by the earlier proceedings of the Selection Committee. The exercise of the selection process as aforesaid, shall be completed before the expiry of the term of three years from 29-09-2017 without fail.

JUDGE

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WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.04 13:58:30 +05'30'