IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Cont. Cas(C) No. 211 of 2019

Okram Ibomcha Singh ....***Petitioner***

-Versus-

J. Suresh Babu, IAS & Anr …***Respondents***

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

For the Petitioner :: Mr.B.P.Sahu, Sr.Advocate

For the respondents :: Mr.N.Kumarjit, A.G.,Manipur & Mr.Y.Nirmolchand, Sr.Advocate

Date of hearing :: 17.06.2020

Date of judgment & order::

JUDGMENT AND ORDER
(C A V)

By this Contempt Petition, the petitioner is praying for initiating contempt proceedings against the respondent Nos. 1 and 2 under the Contempt of Courts Act, 1971 for non compliance of the Judgment and Order dated 14-11-2019 passed in WP(C) No. 613 of 2018.

[2] The petitioner joined the Medical Health Services as Medical Officer in the year 1993. By an order dated 6-10-2015, the petitioner along with another person was appointed on promotion to the post of Manipur Health Services, Special Grade on the recommendation of a Departmental Promotion Committee in association with the Manipur Public Service Commission and was posted as Director, Health Services. The Manipur Health Services (2nd Amendment) Rules, 2014 (herein after Rules of 2014) governs the service condition of the petitioner.

[3] A disciplinary proceeding was initiated against the petitioner and therefore, the Department of Personnel and Administrative Reforms (Personnel Division) by an order dated 13-4-2017 placed the petitioner under suspension with immediate effect. The petitioner filed WP(C) No. 634 of 2017 challenging the suspension order on the ground that his suspension was not reviewed before the expiry of 90 days as provided under CCS (CCA Rules, 1964). WP(C) No. 634 of 2017 was disposed of by an order dated 10-11-2017 allowing the writ petition and the order of suspension dated 13-4-2017 was set aside. Thereafter, the Department of Personnel and Administrative Reforms (Personnel Division) issued an order dated 1st December, 2017 revoking the suspension order with immediate effect and without prejudice to the disciplinary or criminal proceedings initiated against him.

[4] The petitioner was transferred and posted as a Consultant in the District Hospital, Chandel with immediate effect by an order dated 19-1-2018 issued by the Department of Personnel and Administrative Reforms (Personnel Division). The said order dated 19-1-2018 was again challenged by the petitioner by filing WP(C) No. 73 of 2018 on the ground that the post of Consultant is a lower post in Grade-1 and that the petitioner was already appointed in the Special Grade which is higher to the Grade-1. During the pendency of WP(C) No. 73 of 2018, the Health Department, Government of Manipur issued another order dated 17th April, 2018 transferring and posting the petitioner to the post of Officer on Special Duty (Health) with immediate effect and until further orders. The order further provided that the petitioner shall continue to draw his pay in his present grade i.e., Manipur Health Services, Special Grade. Thereafter, another order dated 24th May, 2018 was issued by the Health Department, Government of Manipur creating a supernumerary post of Officer on Special Duty as a post personal to the petitioner who has been posted as Officer on Special Duty by the order dated 17-4-2018.

[5] It was the contention of the petitioner in WP(C) No. 73 of 2018 that the transfer order dated 17-4-2018 transferring the petitioner to the post of Officer on Special Duty (Health) was issued when the post of Officer on Special Duty was not even created. WP(C) No. 73 of 2018 was disposed of by an order dated 11-6-2018 holding that a

person holding a higher post cannot be transferred to a lower post and therefore, the order dated 19-1-2018 was not sustainable. It was further held that the transfer order dated 17-4-2018 was issued to a post which was yet to be created at the time of the issuance of the transfer order, but subsequently created only on 24-5-2018 and therefore, the transfer order was not valid in the eye of law as it amounts to transfer to a non-existing post. Accordingly, the transfer order dated 17-4-2018 was set aside. However, liberty was given to the authorities to pass a fresh order by taking into consideration all relevant orders passed by the Government of Manipur in this regard including the post creation orders. The petitioner was also given liberty to approach this Court if aggrieved by any order which may be passed including the order dated 17-4-2018 creating one supernumerary post of Officer on Special Duty.

[6] Thereafter, an order dated 4-7-2018 posting the petitioner as Officer on Special Duty in the Manipur Health Services, Special Grade against the post created by the Government order dated 24-5-2018 was issued. Being aggrieved, the petitioner again approach this Court by filing WP(C) No. 613 of 2018 challenging the order dated 24-5-2018 and 17-4-2018 on the ground that the order 4-7-2018 has been issued in violation of all norms and rules which are in violation of the Fundamental Rights of the petitioner and that the action of the respondents in posting the petitioner as Officer on Special Duty by illegally creating the post only for

him cannot be justified under any circumstances and the only object of the respondents was to humiliate the petitioner.

[7] The contention of the petitioner in WP(C) No. 613 of 2018 was contested by the State respondents stating that creation of the post is a policy decision of the Government after taking into consideration of all relevant facts and the post of OSD was created due to the pendency of the Departmental Enquiry against the petitioner.

[8] This Court after hearing the parties came to the conclusion that in the Rules of 2014 there is no post of OSD in the Special Grade and that the post of OSD created by the order dated 24-5-2018 is an ex-cadre post which does not come under the regular cadre. Therefore, the post of OSD is in pit and substance an ex-cadre post where the petitioner cannot be transferred without obtaining his consent. It was also held, that it is well within the powers of the Government to transfer the petitioner to any other post within the Manipur Health Services, Special Grade if the Government deems that the charges are very serious against the petitioner. This Court therefore came to the conclusion that while issuing the order dated 24-5-2018, the Government had failed to take into consideration the Rules of 2014 and therefore the decision of the Government was arbitrary and such arbitrariness has resulted in infringement of the rights of the petitioner. Accordingly, the order dated 24-5-2018 and 4-7-2018 were set aside and quashed. However, liberty was granted to the

respondents to transfer the petitioner to any other post under the Manipur Health Services, Special Grade under the Rules of 2014, if so advised. The relevant portion of the Judgment and Order dated 14-11-2019 passed in WP(C) No. 613 of 2018 is reproduced herein below:

> **"[10] In the light of what has been discussed hereinabove, this Court is of the considered opinion that the post of OSD is not a cadre post under the Rules of 2014 and therefore, has no hesitation to come to the conclusion that the orders dated 24-5-2018 and 4-7-2018 stands vitiated and are accordingly set aside and quashed.**
>
> **However, the respondents are at liberty to transfer the petitioner to any other post of MHS Special Grade under the Rules of 2014, if so advised.**
>
> **The writ petition is, accordingly allowed. However, no order as to costs."**

[9] The respondents failed to comply with the Judgment and Order dated 14-11-2019 passed in WP(C) No. 613 of 2018 and therefore, the petitioner filed the present contempt petition on 16th December, 2019 against the present respondents. The present contempt petition was admitted and notice was issued to the respondents on 17-12-2019.

[10] During the pendency of the present contempt petition, the Health Department, Government of Manipur issued an order dated 22nd April, 2020 creating one post of Officer on Special Duty in Manipur Health Services, Special

Grade and ordered to reflect the created post in Schedule 1 (Authorized Cadre Transfer) to the Manipur Health Services Rules, 1982 (hereinafter the Rules of 1982). Thereafter, by a Notification dated 29th May, 2020 which was gazette in the Manipur Gazette on 30th May, 2020, the Manipur Health Services (1st Amendment) Rules, 2020 was notified by amending the Schedule 1 to the Rules of 1982 by substituting the post of Officer on Special Duty as a cadre post in the Special Grade along with the post of Director of Medical and Health Services, Director of Family Welfare Services and Director of AYUSH. Rules 7 (3) (e) (ii) was also substituted by the said amendment. The Notification dated 29th May, 2020 is reproduced herein below:

"

MANIPUR GAZETTE

Extraordinary
Published by Authority

No.38. Imphal, Saturday, May, 30, 2020 (Jaistha 9,1942)

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

N O T I F I C A T I O N
Imphal, the 29th May, 2020

No.1/51/83-MHS/DP(III): In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and other powers enabling him in this behalf, the Governor of Manipur is pleased to make the following rules further to amend the Manipur Health Service Rules 1982, namely:

1. Short title and commencement:

1) These rules may be called the Manipur Health Service (1st Amendment) Rules, 2020,
2) These rules shall come into force with immediate effect.

2. Amendment of Rule of Special Grade of Schedule-I (Authorized Strength) of MHS Rules, 1982:

The existing Rule of Special Grade of Schedule-I (Authorized Strength) of MHS Rules, 1982 as amended from time to time, shall be substituted by the following:

Schedule-I
Authorized Strength

Grade	Particulars	No.of post	Total	Permanent	Temporary
Special Grade	1.Director of Medical & Health Services 2.Director of Family Welfare Services 3.Director of AYUSH 4.Officer on Special Duty	1	4	1	3

3. Amendment of Rule 7(3)(e)(ii):

The existing Rule 7(3)(e)(ii) shall be substituted by the following

" The post of Director of Medical & Health Services and the Director of Family Welfare Services and Officer on Special Duty in MHS Special Grade shall be filled by promotion from officers in MHS Grade-I with 3 (three) years regular services in the grade and possessing P.G degree, failing which, officers with 8 (eight) years combined regular service in MHS Grade-I and MHS Grade-II and possessing P.G.Degree."

By orders & in the name of Governor,
Sd/

K.Nalini Devi
Under Secretary to the Government of Manipur."

[11] The State Government also filed an appeal against the Judgment and Order dated 14-11-2019 passed in WP(C) No. 613 of 2018 and the same was registered as Writ Appeal No. 4 of 2020. In view of the amendment to the Rules of 1982 by substituting the Officer on Special Duty as a cadre post, Writ Appeal No. 4 of 2020 was disposed of as infructuous by an order dated 6-5-2020 passed by the Hon'ble Division Bench of this Court.

[12] Heard Mr. B.P Sahu, learned senior counsel assisted by Mr. D. P Sahu, learned counsel appearing for the petitioner. Also heard Mr. P. Tamphamani, learned counsel appearing for the respondent No. 1 and Mr. Y. Nirmolchand, learned senior counsel assisted by Mr. L. Raju, learned counsel for the respondent No. 2.

[13] Mr.B.P.Sahu, learned senior counsel for the petitioner submits that the judgment and order dated 14.11.2019 passed in WP(C) No.613 of 2018 is unambiguous in so far as the direction to the respondents are concerned. He has, particularly referred to para-10 of the Judgment and order dated 14.11.2019 and argues that when this Court had set aside and quashed the orders dated 24.5.2018 and 4.7.2018, by which the post of Officer on Special Duty in the Manipur Health Services was created and posting the petitioner as Officer on Special Duty respectively, the

respondents ought to have posted the petitioner to the post of Director of Health Services, particularly, when this Court had given liberty to the respondents to transfer the petitioner to any other post of MHS Special Grade, under the Rules of 2014. Instead, the respondents had proceeded to issue an order dated 22.4.2020 creating one post of OSD in the Manipur Health Services, Special Grade. Thereafter, the Manipur Health Services (First Amendment) Rules, 2020 was published in the Gazette on 30.05.2020. He submits that the same is not permissible in law inasmuch as the respondents are trying to frustrate this Court's judgment and order by notifying the Manipur Health Services (1st Amendment) Rules, 2020. He places reliance in the case of **Bihar State Government Secondary School Teachers Assn Vs Ashok Kumar Sinha & Ors** reported in **(2014) 7 SCC 416** and also in the cases of **Bhushan Power & Steel Ltd. v. Rajesh Verma** reported in **(2014) 5 SCC 551, State Of Rajasthan & Ors vs Jagdish Narain Chaturvedi** reported in **(1997) 2 SCC 621** and also in the Judgment dated 19.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal No.(s) **8833 of 2019** (**K.Meghachandra Singh & Ors Vs Ningam Siro & Ors)**.

[14] Mr.Y.Nirmolchand, learned senior counsel appearing on behalf of respondent No.2, on the other hand submits that if any subsequent order is issued by the respondents in compliance with the judgment and order passed by this Court the petitioner has to challenge the order

before the appropriate forum if he is not satisfied. He submits that in a Contempt proceeding, this Court will have to examine whether there is substantial compliance of the direction given by this Court and when there is no willful and deliberate disobedience by the respondents the contempt petition should be closed. He submits that after the judgment and order dated 14.11.2019 was passed, the respondents had taken all steps in earnest and thereafter had issued the order dated 22.4.2020 creating one post of Officer on Special Duty in the Manipur Health Services Special Grade and ordered to reflect the created post in Schedule-I (Authorized Cadre Strength) to the Manipur Health Services, Rules, 1982. Thereafter, the Notification dated 29.5.2020 was issued amending the Manipur Health Services, Rules 1982 by the Manipur Health Services (First Amendment) Rules, 2020 which was gazetted in the Manipur Gazette on 30.05.2020. In the said Notification dated 29.5.2020 the post of OSD has been en-cadered within the authorized strength of the Manipur Health Services, Special Grade at Schedule-I. He, therefore, submits that the respondents have complied with the judgment and order of this Court and, therefore, the contempt proceedings should be closed. He places reliance in the case of **J.S.Parihar Vs Ganpat Duggar & Ors** reported in **(1996) 6 SCC 291**, **Viswajeet Khanna & Ors Vs Sukhwinder Singh & Ors** reported in **(2017) 9 SCC 608** and **Ashok Papar Kamgar Union Vs Dharam Godha & Ors** reported in **(2003) 11 SCC 1.**

[15] Mr.N.Kumrjit, learned Advocate General, Manipur, assisted by Mr.P.Tamphamani, learned counsel appearing for the respondent No.1 endorses the submission made by Mr.Y.Nirmolchand, learned senior counsel for respondent No.2 and submits that as the respondents have complied with the judgment and order passed in WP(C) No.613 of 2018, the present Contempt Petition may be closed.

[16] I have considered the submissions forwarded by the learned counsel for the parties.

Para 10 of the judgment and order dated 14.11.2019 passed in WP (C) No.613 of 2018 has already been reproduced hereinabove. A reading of the para 10 of the said judgment would clearly indicate that the respondents were given liberty to transfer the petitioner to any other post of MHS Special Grade under the Rules of 2014, if so advised. Thereafter, the respondents had proceeded to issue the order dated 22.4.2020 creating one post of Officer on Special Duty in the Manipur Health Services Special Grade and to reflect the created post in Schedule-I (Authorized Cadre Strength) to Manipur Health Services Rules, 1982. The same was done after a Cabinet decision taken on 3.3.2020 and also after obtaining the concurrence of the Finance Department (PIC), Government of Manipur. A Notification dated 29.5.2020 was thereafter issued amending the Manipur Health Services, Rules, 1982 by the Manipur Health Services (First Amendment) Rules, 2020. Therein the post of OSD was

encadred in the authorized strength of the Manipur Health Services, Special Grade at Schedule-I. The said Notification was gazetted in the Manipur Gazette on 30.05.2020.

[17] After the judgment and order dated 14.11.2019 was passed by this Court, the respondents had proceeded to issue orders and also amending the Manipur Health Services by encadering the post of OSD into the Manipur Health Services, Special Grade. This Court is of the considered opinion that once an order passed by the Government on the basis of a direction issued by this Court a new cause of action would arise to the petitioner for seeking redressal before the appropriate forum if he is still not satisfied with the order passed by the respondents. However, the action of the respondents cannot be considered to be willful violation of this Court's judgment and order even if it is not palatable to the petitioner. The correctness of the order cannot be examined by this Court under a contempt jurisdiction.

[18] The grievance of the petitioner in the writ petition was that he was transferred to a post which is not a cadre post under the Manipur Health Services (Senior Grade). It was after considering the merits in the writ petition that this Court had passed the judgment and order dated 14.11.2019 in WP (C) No.613 of 2018, giving liberty to the respondents to transfer the petitioner to a cadre post under the Manipur Health Service. It is pertinent to note here that in the Judgment and order dated 14.11.2019 passed in WP(C)

No.613 of 2018 this Court did not give any direction to the respondents to post the petitioner to any particular post. The respondents were only directed to transfer the petitioner to any other post of MHS Special Grade under the Rules of 2014 if so advised. In order to implement this Court's direction, the respondents have taken steps as enumerated hereinabove. If the action of the respondents is not acceptable to the petitioner the same would give a fresh cause of action to the petitioner to avail opportunity of a judicial review against such actions. However, this cannot be considered as a willful violation of this Court's order by the respondents.

[19] This Court has also taken into consideration the authorities relied upon by the learned senior counsel appearing for the petitioner and is of the considered opinion that the same has no relevance to the facts and circumstances of the present case in hand.

[20] Accordingly, no case has been made out for initiating contempt proceedings against the respondents and accordingly, the present Contempt Petition is dismissed. However, liberty is granted to the petitioner to challenge the subsequent actions of the respondents, before the appropriate forum, if so advised.

No cost.

JUDGE

Kim/Priyojit

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.08.17 15:54:16 +05'30'