

(2016) 10 MAN CK 0003
In the Manipur High Court
Case No : W.A. No. 63 of 2016

Khuraijam Surjit Singh

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2016) 5 GauLT 492

Hon'ble Judges : Rakesh Ranjan Prasad, ACJ. and N. Kotiswar Singh, J.

Bench : Division Bench

Advocate : Mr. R.K. Nokulsana Singh, Sr. Advocate, for the Appellants; Mr. N. Ibotombi Singh, Addl. AG, for the Respondents

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, (Acting) C.J. - This appeal is directed against the judgment and order dated 28.06.2016 passed by the learned Single Judge in W.P. (C) No. 326 of 2002 whereby and where under prayer made in the writ petition for a direction to the respondents to appoint the petitioners who came out successful in DPC in the post of Surveyors in the Department of Works, Government of Manipur was rejected.

2. The case of the writ petitioners/appellants is that pursuant to the advertisement issued by the Department of Works for appointment of 9 persons on the post of Surveyor, the petitioners/appellants did apply. They subsequently faced interview on 21.10.1999. When the results were not declared even after passing of couple of years, the petitioners filed a writ application before the Hon'ble Gauhati High Court, Imphal Bench. The court passed an interim order on 23.02.2001 directing the respondents to declare the result of the DPC held on 21.10.1999. In compliance of the said order results were declared whereby the petitioners were shown as successful as they figured at sl. nos. 1 to 9. Even thereafter, when the petitioners were not offered appointment, the made enquiry and came to know that on account of ban being imposed by the Department of Personnel and Administrative Reforms, Government of Manipur on direct

recruitment under orders dated 06.11.1999/19.3.2001, the appointment is being made. In such event writ application was challenging the action of the respondents as arbitrary and discriminatory as the State Government had exempted certain Departments; such as Home, Education, Health, etc. from imposition of such ban for holding DPC for direct recruitment but no such exemption was granted so far as it relates to appointment in the Department of Works.

3. The contention made on behalf of the petitioners was opposed by the respondent State by taking the plea that though the result of the DPC was declared pursuant to the order passed by the Court, the appointment was not made in view of the orders dated 06.11.1999/19.03.2001 putting ban on direct appointment. The other contention which was raised is that in spite of petitioners being selected, they do not have any indefeasible right to claim for appointment which proposition has been laid down by the Hon'ble Supreme Court in a case of *Shankarsan Dash v. Union of India*: (1991) 3 SCC 47.

4. The learned Single Judge by accepting the contention of the State respondents did hold on the basis of the decision rendered in the case of *Shankarsan Dash* (supra) that the petitioners do not have vested right to be appointed on the post of Surveyor. It was also held that action of the respondents is justified in not offering the appointment to the petitioners on account of ban being imposed on direct recruitment vide order dated 6.11.1999 and order dated 19.03.2001 issued by the Chief Secretary keeping in view the bad financial position of the State and thereby dismissed the writ petition. Being aggrieved with that order, this appeal has been preferred.

5. Mr. R.K. Nokulsana Singh, learned Sr. counsel appearing for the appellants submitted that it is true that ban had been imposed on the direct appointment but in spite of imposition of such ban, appointments have been made in other Departments, such as Home, Education, Health, etc. by lifting the ban but it was never lifted so far as the Works Department is concerned and thereby petitioners have differently been treated and as such the action of the respondents is discriminatory and arbitrary and thereby the learned Single Judge should have directed the respondents to appoint the petitioners on the post of Surveyor. Learned Sr. counsel by referring to number of orders passed by this court directing the respondent State to make appointment which was given effect to even during the period of ban being in operation, submits that the learned Single Judge should have passed the order in terms of those orders but the learned Single Judge without giving due consideration over it did pass the order dismissing the writ petition and thereby committed illegality and hence order impugned is fit to be set aside.

6. As against this Mr. N. Ibotombi Singh, learned Addl. A.G appearing for the respondents State submits that it has been well settled proposition that one does not have indefeasible right to claim appointment even if he is selected for appointment and that in view of the imposition of ban as notified under orders

dated 06.11.1999 and 19.3.2001 the learned Single Judge was absolutely justified in rejecting the claim of the petitioners particularly when the said orders under which ban was imposed has never been challenged and that such imposition of ban by the State Government has never been found to be arbitrary or unreasonable by this court while rendering decision in a case of Sorokhaiham Uttam Singh v. State of Manipur & Anr.: (2014) 3 NEJ 140(Man). It was further submitted that when the writ petitioners/appellants have not challenged the policy decision of the Government the prayer made for a direction to the State authority to make appointment would be unwarranted and untenable. In support of his submission, the learned Addl. AG referred to a decision rendered in a case of Gol Gajairung & Ors. v. State of Manipur & Anr.: 2006 (3) GLT 236.

7. Having heard learned counsel appearing for the parties, we do find much substance in the submissions advanced on behalf of the State wherein it has rightly been submitted that one does not have indefeasible right to make claim on the appointment even if one is selected for appointment. However, at the same time it has also been propounded that such decision of not making appointment must not be tainted with arbitrariness. This proposition has been laid down by the Hon"ble Supreme Court in Shankarsan Dash (supra) wherein it has been observed as follows:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. and if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwah, Neelima Shangla v. State of Haryana, or Jatinder Kumar v. State of Punjab."

8. Herein in the instant case, action of the respondents for not offering the appointment to the petitioners in view of office orders dated 6.11.1999/19.3.2001 never appears to be arbitrary as such decision delineated in para 4 of the order dated 19.3.2001 given herein a below has been taken, as per the case of the State, to maintain austerity in the wake of poor financial condition of the State.

"(4). Declaration of result of DPCs:

Result of DPCs which have not been announced so far, shall be treated as

cancelled Similarly, recommendation of DPCs which have been notified but for which orders for appointment have not yet been issued shall be treated as cancelled."

9. Said decision as has been taken under order of the Government dated 19.03.2001 has not been challenged. In absence of challenge to that decision, any prayer made by the petitioners/appellants for direction to the State respondents to appoint the petitioner would be unwarranted and thereby learned Single Judge was absolutely justified in rejecting the claim of the petitioners.

10. So far as the submissions advanced on behalf of the petitioners relating to discriminatory action on the part of the Government of lifting ban only for certain departments, such as Home, Education, Health, etc., is concerned that is devoid of any subsistence as it has been found by the learned Single Judge that wherever the ban was lifted that was lifted in view of the Cabinet decision which the Government does have the right to do so. So far as orders of the court are concerned to has been passed in the facts and circumstances appearing in those cases. But the facts remains that in absence of decision relating to imposition of ban being challenged, the relief as sought for cannot be granted. Under the circumstances, we do not find any merit in this appeal and hence it is dismissed.

However, there shall be no order as costs.