

(2020) 01 MAN CK 0012

In the Manipur High Court

Case No : Writ Petition (c) No. 1122 Of 2018

Md. Sikander And Ors

APPELLANT

Vs

State Of Manipur And Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Citation : (2020) 01 MAN CK 0012

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : RK. Deepak, H. Samarjit

Final Decision : Dismissed

Judgement

[1]. Mr. RK. Deepak, learned counsel appears for the petitioner and Mr. H. Samarjit, learned GA appears for the respondents.

[2]. This writ petition has been filed by the petitioners seeking to quash the final seniority list of Havildars in Police Department as on 29.8.2013 and other earlier final seniority list issued without inviting objections and to make the direct recruits including the petitioners who were appointed in the recruitment year 2000-2001 en bloc senior to 219 promotees who were appointed by promotion vide order dated 14.11.2001 in the recruitment year 2001-2002 and also to direct the respondents to make necessary changes/modifications to the position or status of the private respondents by making necessary changes in the seniority of the private respondents vis-a-vis the direct recruits including the petitioners.

[3]. The case of the petitioners is that they were appointed to the post of Havildar along with 40 others by way of direct recruitment vide order dated 18.1.2001. On the other hand, respondent Nos.4 to 222 were appointed by promotion vide order dated 14.11.2001. Some of them may have retired, expired or further promoted to Jemadars since the time they were initially appointed on 14.11.2001.

[4]. Further case of the petitioners is that they recently came to know the existence of final seniority list of Havildars as on 29.8.2013 issued by the third respondent and a draft seniority list as on 1.10.2002 issued on 22.10.2002. In the said seniority lists, the direct recruits including the petitioners who were appointed by direct recruitment in the recruitment year 2000-2001 were dovetailed with those who were appointed by promotion in the recruitment year 2001-2002. Since the petitioners were not aware of the circulation or publication of any tentative seniority list, calling claims or objections to any such list which may have been issued any time after their initial appointments, they were aggrieved by the issuance of final seniority list of Havildars as on 29.8.2013.

[5]. According to the petitioners, they have submitted representations dated 20.10.2018 and 26.11.2018 to the DGP, Manipur to review and modify the final seniority list of 2013 and the said representations have not been considered by the said authority. The Government of Manipur is contemplating to promote several Havildars to the posts of Jemadars shortly on the basis of the final list dated 29.8.2013 and they are aggrieved that if any promotion is made on the basis of the said list, they will be prejudiced. Hence, the present petition with the relief aforesaid.

[6]. Respondent No.3 filed affidavit-in-opposition stating that the final seniority list of Havildars was issued on 28.8.2013 after the draft list issued on 5.6.2013 thereby invited objection from all quarters. It is stated that the Manipur Reservation of Vacancies in Posts and Services (for Scheduled Castes & Scheduled Tribes) Act, 1976 as amended from time to time is not related with the inter-se seniority involved in the present case. The seniority list was compiled as per the prevailing rules and norms. The recruitment year with reference to inter-se seniority is nowhere defined either in the State or Centre Rules. Calendar year is normally adopted for inter-se seniority in the Manipur Police Department and hence the seniority list was compiled as per the relevant rules applicable. Therefore, there is no merit in this writ petition and prayed for dismissal of the same.

[7]. Assailing the impugned final seniority list dated 29.8.2013, the learned counsel for the petitioners submitted that the petitioners who are direct recruits cannot be dovetailed with the promotees and therefore, the final seniority list of Havildars in the police Department as on 29.8.2013 is in violation of the existing rules and the principles of service jurisprudence and therefore, the same is liable to be set aside.

[8]. Per contra, the learned counsel for the State submitted that after publishing draft seniority list and after inviting objections from all quarters, the final seniority list of Havildars was issued on 28.8.2013 and the petitioners all along keeping quiet, suddenly cannot seek to reopen the seniority already settled. He would submit that the seniority list of 2013 was published as per relevant rules and therefore, at the distant point of time, the petitioners have no right to question and/or reopen the impugned seniority list of 2013.

[9]. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[10]. The petitioners were appointed as Havildars by way of direct recruitment on 18.1.2001 and the private respondents were appointed by promotion on the recommendation of Class III DPC held on 10.9.2001 to the post of Havildars on 14.11.2001 by the third respondent. The next higher promotional post of Havildars is the Jemadars. The post of Jemadar is a selection post and the method of recruitment is 50% by promotion and 50% by direct recruitment. The said 50% promotional quota is to be filled up on the basis of the following method:

(1) 10% of the sanctioned posts for promotion quota to be filled from Havildars of Manipur Rifles who are declared outstanding sportsmen by All India Police Sports Control Board/Recipients of President's Police Medal for Gallantry.

(2) 40% of the sanctioned posts for promotion quota to be filled from Havildars of Manipur Rifles (MR/IRBs) having passed the pre-promotion selection test prescribed by the IGP and having regular service of:

(i) 2 years in case of personnel having passed graduation or above;

(ii) 3 years in case of personnel having passed PUC/ equivalent examination;

(iii) 5 years in case of personnel having passed Metric/ HSLC examination.

[11]. According to the petitioners, they came to know recently the existence of final seniority list of Havildars as on 29.8.2013, where they were placed at Serial Nos.203, 213 and 218 respectively. The case of the petitioners is that they were appointed by direct recruitment in the recruitment years 2000-2001 i.e., 1.4.2000 - 31.3.2001 and were dovetailed with those who were appointed by promotion on 14.11.2001 in the recruitment year 2001-2002 i.e., 01.4.2001 to 31.03.2002.

[12]. It is admitted by the petitioners that a draft seniority list as on 1.10.2002 was published, wherein their names appeared at Serial Nos. 485, 497 and 505 respectively. According to the petitioners, the seniority lists as on 1.10.2002 and 29.8.2013 published were not known to them and after knowing the same, they have submitted representations on 20.10.2018 and 26.11.2018 respectively to the third respondent to review and modify the senior list of 2013. According to the petitioners, the said representations have not been considered by the third respondent till date.

[13]. On the other hand, the learned counsel for the respondents, by placing reliance upon the Office Memorandum dated 04.3.2014 of the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and training, Government of India, submitted that seniority already settled with reference to the applicable interpretation of the term availability, cannot be reopened.

[14]. It would be pertinent to extract the Office Memorandum dated 04.3.2014

for reference:

No. 20011/ 1/2012-Estt. (D)

Government of India

Ministry of Personnel, Public Grievances & pension

Department of Personnel & Training

North Block, New Delhi,

Dated the 4th March, 2014

OFFICE MEMORANDUM

Subject: Inter se seniority of direct recruits and promotees - instructions thereof

The undersigned is directed to refer to the subject mentioned above and to say that the fundamental principles of inter se seniority of direct recruits and Promotees in Central Civil services/posts were laid down in the Department of Personnel & Training (DOPT) O.M. No. 9/11/55-RPS dated 29.12.1959 which provided, inter alia, that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively, in the Recruitment Rules.

2. The carrying forward of unfilled slots of a vacancy year, for being fitted up by direct recruits of later years, was dispensed with through modified instructions contained in DoPT O.M. No.35014/2/80- Estt.(D) dated 7.2.1986 which provides that rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. The unfilled direct recruitment/promotion quota vacancies would be carried forward and added to the corresponding direct recruitment/promotion quota vacancies of the next year (and to subsequent years where necessary) for taking action for the total number of direct recruitment/promotion according to the usual practice. Thereafter, in that year, while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees, as determined according to the quota for that year, the additional direct recruits/promotees selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee/direct recruit, as the case may be, in the seniority list, based on the rotation of vacancies for that year.

3. All the existing instructions on seniority were consolidated by DoPT through a single O.M. No. 22011/7/86-Estt(D) dated 03.07.1986.

4. In view of divergent stance taken by different Ministries/Departments on interpretation of 'available direct recruits and promotees' in the context of OM

dated 7.2.86, the DoPT had issued O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008 which provided that the actual year of appointment, both in the case of direct recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority.

5. The matter has been examined pursuant to Hon'ble Supreme Court Judgment in on 27.11.2012, in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar vs. UOI & Ors in consultation with the Department of Legal Affairs and it has been decided, that the manner of determination of inter-se-seniority of direct recruits and promotes would be as under:

a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/withdrawn ab initio;

b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;

c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;

d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;

e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.

f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;

g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;

h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors 2

i) The cases of seniority already settled with reference to the applicable interpretation of the term availability as contained in DoPT O.M. dated 7.2.86/3.7.86 may not be reopened.

7. As the conferment of seniority would be against the Recruitment Year in which

the recruitment process is initiated for filling up of the vacancies, it is incumbent upon all administrative authorities to ensure that the recruitment process is initiated during the vacancy year itself. While requisition for filling up the vacancies for direct recruitment should be sent to the recruiting agency, complete in all respects, during the vacancy year itself, the timelines specified in the Model Calendar for DPCs contained in DoPT O.M. No.22011/9/98-Estt(D) dated 8.9.98 and the consolidated Instructions on DPCs contained in O.M. No.22011/5/86-Estt(D) dated April 10, 1989 should be scrupulously adhered to, for filling up the vacancies against promotion quota. " (emphasis supplied)

[15]. Adopting the aforesaid office Memorandum dated 04.3.2014, the Government of Manipur issued Office Memorandum dated 21.12.2017. The Office Memorandum dated 21.12.2017 published in the Manipur Gazette dated 29.12.2017 reads thus:

"No.23/42/17-MISC/DP: Reference is invited to the communication from the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) vide O.M.No.20011/1/2012-Estt.(D) dated 4th March 2014 whereby general principles for determining inter-se seniority of direct recruits and the promotees of various Central services/posts have been laid down.

2. Having due regard to the principles as laid down and the need to address the issues of inter-se seniority of officers in various organized services, the State Government decides to adopt the above referred O.M.No.20011/1/2012 Esst. (D) dated 4th March, 2014 of the DoPT in respect of all services/posts under the State Government of Manipur. The existing Recruitment Rules of all services/posts under the State Government shall be deemed to be amended accordingly.

3. All the criteria/pre-requisites as laid down in the aforesaid O.M. shall be taken into consideration for fixation of inter-se seniority for, all the appointment (Direct recruits or the Promotees) made hereafter. Appointments/promotions made before the issue of this O.M. will not be covered by this O.M.

4. The Seniority already fixed as per the existing rules followed earlier in the State prior to the issue of this O.M. may not be reopened.

5. This O.M. will come into effect from 01.01.2018 with a publication in the Gazette." (emphasis supplied)

[16]. Thus, it is clear that the seniority already fixed as per the existing rules followed earlier in the State of Manipur prior to the issuance of the Office Memorandum dated 21.12.2017 cannot be reopened. The petitioners, for the first time in 2018, have submitted representation requesting to revisit and review the final seniority list of Havildars in Manipur Police Department as on 29.8.2013. As stated supra, before publishing the final seniority list, a draft seniority list was issued on 5.6.2013 calling for objections from all quarters. At that time the petitioners have not submitted any objection qua seniority list and after a lapse

of nearly 6 years, they have come up with the present petition seeking to review the seniority list by contending that they should not have been dovetailed with the promotees since they were appointed a year ahead of the promotees i.e., private respondents. The excuse sought to be condoned by the petitioners is only for the purpose of filing the present writ petition. This Court is of the view that at the distant point of time, the final seniority list published on 29.8.2013 cannot be reviewed and the ground on which the petitioners seeking to review the seniority list of 2013 is unsustainable in law. Moreover, the seniority already fixed/settled as per the then existing rules followed by the State cannot be reopened.

[17]. For the foregoing discussions, this Court is of the view that no valid ground has been made to interfere with the final seniority list of 2013 issued by the third respondent and the petitioners having failed to challenge and/or question the seniority list of 2013 at the relevant point of time, cannot challenge the same in 2018 and therefore, the writ petition is liable to be dismissed on the ground of delay and laches, apart from being devoid of merits.

[18]. In the result, the writ petition is dismissed. No costs.