

**(2005) 03 GAU CK 0063**  
**In the Gauhati High Court**

Moirangthem Nodia Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

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**Date of Decision :** 08-03-2005

**Acts Referred:**

**Citation :** (2005) 03 GAU CK 0063

**Hon'ble Judges :** M.B.K.Singh, J

**Bench :** Single Bench

**Advocate :** S.Nepolean Singh, N.G.Kumar, H.S.Paonam, Advocates appearing for Parties

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**Judgement**

1. This is to dispose of Writ petition(C) No. 728 of 2000 and W.P(C) No. 779 of 2000 wherein common question of law and facts are involved. In W.P(C)No.728 of 2000, hereinafter referred to as the "first case," petitioner, who is apparently being aggrieved by the delay in conveying a DPC for appointment to the post of Dy.Director(VS) in the Medical & Health Department on regular basis despite requisition made by the Government for holding DPC in this regard as early as in the month of July,1999, is praying mainly for quashing the final Seniority Lists of the officers holding the posts of Dy.Statistical Officer of Family Welfare Department and Assistant Director(VS) of Medical & Health Department, dated 4.4.2000 and 19.5.2000, which were prepared in supersession of an earlier Combined Final Seniority List of the said posts dated 30.8.1999 and for restoration of the said earlier list dated 30.8.99. In W.P(C) No. 779 of 2000, hereinafter referred to as the "second case," the said Seniority list dated 4.4.2000 and 19.5.2000 having been stayed vide interim order dated 21.6.2000 passed in the first case, and an order dated 9.5.2000 having been passed in W.P(C) No. 166 of 2000 directing the M.P.S.C. to proceed with the process of regular appointment to the said post of Dy. Statistical Director as per requisition within a period of 3(three) months from the date of receipt of the order, the petitioner is praying for quashing the said earlier Seniority list dated 30.8.1999. In the said seniority lists, dated 4.4.2000 and 19.5.2000, Shri M. Nodia Singh,

Assistant Director(VS), Medical & Health Department, who is the petitioner of the first case and the private respondent in the second case, is placed below Ph. Tombi Singh, Dy.Statistical Officer, Family Welfare Department, who is the petitioner of the second case and the private respondent in the first case. On the other hand, in the said earlier Seniority list dated 30.8.99, the said M. Nodia Singh is above the said Ph. Tombi Singh.

2. I have heard Mr. H.S. Paonam, learned Advocate appearing on behalf of said M. Nodia Singh in both the cases, Mr. Ng. Kumar, learned Advocate appearing on behalf of the said Ph. Tombi Singh in both the cases as well as Mr. Asok Potsangbam, learned A.G. Manipur assisted by Mr. S. Nepolean, Advocate appearing on behalf of the State respondents in both the cases.

3. On the basis of the pleadings of the petitioners and the private respondents in both the cases and upon hearing all the parties the following facts are ascertained.

A Deputy Statistical Officer of the Family Welfare Department with 5 years of regular service and an Assistant Director (VS) of Medical & Health Department with 5 years of regular service are eligible for consideration for the post of Dy. Director(VS) of Medical and Health Department as per Recruitment Rules of the post. Consequent upon retirement of Shri Th. Gourachand Singh on superannuation as Deputy Director, a requisition was made by the Government to the MPSC vide letter No. 1/35/99M dated 30.7.99 by submitting the name of Shri M. Nodia Singh, Assistant Director(VS) and Shri Ph. Tombi Singh, Deputy Statistical Officer without fixing their seniority position in connection with filling up of the said post of Dy. Director(VS). However, after receiving a request from the MPSC for fixing final seniority of the incumbents, the Under Secy. (Health), Govt. of Manipur sent a copy of Notification being No. 1/35/99M dated 30.8.99 showing the said Nodia Singh senior to the said Ph. Tombi Singh. The said notification, a copy of which is at Annexure A/13 of the first case, is as follows:

#### ?NOTIFICATION

Imphal, the 30th Aug. 1999. No. 1/35/99M: The Governor of Manipur is pleased to notify a combined final seniority list of Assistant Director (Vital Statistics), Assistant Director(Statistics) under the Medical, Health Department and the Dy. Statistical Officer under the Family Welfare Department Manipur as on 31.8.99 as below:

| Sl. | Name of Officer | Dt. of birth | Dt. of apptt. | Remarks |
|-----|-----------------|--------------|---------------|---------|
|-----|-----------------|--------------|---------------|---------|

No. to the pre

Sent grade.

|    |               |          |           |                 |
|----|---------------|----------|-----------|-----------------|
| 1. | Shri M. Nodia | 1.1.1950 | 25.7.1979 | (I) Regularised |
|----|---------------|----------|-----------|-----------------|

Singh, Assistant retrospectively

Director(VS),Medi w.e.f.25.7.79  
Cal,Health Deptt. with all benefits in  
pursuance of  
Gauhati High Court  
order Dt.17.6.92  
passed in CR No. 1  
of 1992 vide  
Health Department  
Order No.  
48/10/89M  
Dt.2.2.93.

2. Shri Ph.Tombi Singh 1.3.1949 25.5.1986 (i) Vide Order No  
Dy.Statistical Offi 14/85M(PF)Dt.  
Cer Family Welfare 20.1.1988.  
Department. (ii) Regularised  
Retrospectively  
w.e.f.24.11.78  
for the purpose  
of pension &  
retirement benefits  
only but not for  
seniority & or  
things vide F.W.  
Dept.order No.  
3/14/85M)(PF)Dt  
19.3.1999.

3. Shri N. Mani Singh 1.3.1948 9.3.1992  
Assistant  
DireCtor (StatistiCal),  
Health Services, Dept. (I) Health Dept.order

No. 1/18/88M(S)

Dt.9.3.1992.

Sd/(A.V.Shimray)

Under Secy.(Health)

Govt. Of Manipur.?

4. Thereafter, M.P.S.C. wrote a letter dated 5.10.99, a copy of which is at Annexure A/14 of the "first case," to the Government requesting for reexamination of the said seniority list by pointing out to the effect as to how the person (M. Nodia Singh) appointed on a later date was shown senior to the person(Ph.Tombi Singh) appointed on an earlier date. Then, the Government issued a notification dated 4.4.2000, a copy of which is at AnnexureA/18 of the first case, in supersession of all previous orders in that regard, by showing Shri Ph.TombiSingh as senior to Shri M. Nodia Singh. Said notification dated 4.4.2000 is as follows:

?NOTIFICATION

Imphal, the 4thApril,2000.

No.1/35/99M:The Governor of Manipur is pleased to notify a combined final seniority list of Assistant Director (Vital Statistics),Assistant Director(Statistics)under the Medical, Health Department and the Dy.Statistical Officer under the Family Welfare Department Manipur as on 31.8.99 as below:

Sl. Name of Officer Dt.of birth Dt.of apptt. Remarks

No. to the pre

Sent grade.

1. Shri Ph.Tombi Singh 1.3.1949 25.5.1986 (i) Vide Order No

Dy.Statistical Officer 14/85M(PF)Dt.

Family Welfare 20.1.1988.

Department. (ii) Regularised

Retrospectively

w.e.f.24.11.78

for the purpose

of pension &

retirement benefits

only but not

for seniority &

other things vide

F.W. Dept. order No.

3/14/85M)(PF)

Dt.19.3.1999.

2. Shri M. Nodia 1.1.1950 25.7.1979 (I) Regularised

Singh, Assistant retrospectively

Director(VS), Medi w.e.f.25.7.79

Cal, Health Deptt. with all benefits in

pursuance of

Gauhati High Court

order Dt.17.6.92

passed in CR No. 1

of 1992 vide Health

Department Order

No. 48/10/89M

Dt. 2.2.93.

3. Shri N. Mani Singh 1.3.1948 9.3.1992

Assistant Director

(Statistical), Health

Services, Dept. (I) Health Dept. order

No. 1/18/88M(S)

Dt.9.3.1992.

Sd/(A.V. Shimray)

Under Secy.(Health)Govt.

Of Manipur.?

5. Again, on 19.5.2000, in supersession of the previous notifications in that regard, the Government issued another order dated 19.5.2000, a copy of which is at Annexure A/19 of the first case, by making some modifications in the above said notification dated 4.4.2000. Said order dated 19.5.2000 is as follows:

? O R D E R S

Imphal, the 19th May, 2000

No.1/35/99M: In supersession of the previous notification in this regard, the Governor of Manipur is pleased to fix the final seniority of the officers holding the posts of Dy.Statistical Officer, Family Welfare Department and Assistant Directors(VS/Statistical) of Medical Health Department as shown below:

Sl. No. Name of Officer Date of birth. Appointment in the present grade.

1. 2. 3. 4.

1. Shri Ph. Tombi 1.3.49 25.5.86

Dy. Statistical

Officer, Family

Welfare Deptt.

2. Shri M.Nodia Singh 1.1.50 19.9.91.

Asstt.Director(VS)

Medical Health

Deptt.

3. Shri N. Mani Singh 1.3.48 9.3.92

Asstt. Director

(Statistical), Medical

Health Deptt.

By orders & in the name of

The Governor,

Sd/(A.V.Shimray)

Under Secy.(Health)Govt. Of Manipur.?

6. There is also no dispute in respect of the following facts:

That, Shri M.Nodia Singh, petitioner of the first case, who had joined service in the Medical Department as Statistical Assistant on 21.10.77 was given ad hoc promotion to the post of Assistant Director(VS) vide order dated 25.7.79. However, in 1981 in pursuance of the recommendations made by the DPC held in association with MPSC for filling up of two posts of Assistant Directors, one of which was held by said Nodia Singh and another one was held by one Shri Gourachand Singh on adhoc basis, the later (Th.Gourachand Singh) and one

Smt. Nungshi Devi, a deputationist) were given regular promotion to the said two posts vide Government order dated 31.1.84. Being aggrieved, said Nodia Singh challenged the appointment of Smt. T.Nungshi Devi in Civil Rule No. 39 of 1984 mainly on the ground that she being a deputationist was not having any right to the post. The Civil Rule was decided in favour of the said Nodia Singh vide order dated 31.1.84. A copy of the said judgment is at AnnexureA/3 of the first case. An S.L.P.(C) being No. 13409 of 1989 filed by said Smt. T.Nungshi Devi against the judgment of the High Court was dismissed. A copy of the order of the Hon"ble Supreme Court is at AnnexureA/4 of the first case. On initiations of the Government, a review DPC was held on 4.9.91 and on the recommendation of the Review DPC, said Nodia Singh was regularly promoted to the post of Assistant Director(VS) on 19.9.91 with the direction that his seniority would be fixed next below Shri Th.Gourachand Singh, Assistant Director. A copy of the said promotion order is at AnnexureA/6 of the first case. Said Nodia Singh filed Civil Rule No. 1 of 1992 praying for giving effect of the said promotion either from 31.1.84 which is the date on which the appointment orders in favour of the said Th.Gourachand Singh and Smt. T.Nungshi Devi were issued or from the date on which the first DPC was held or from 25.7.79 which is the date on which his ad hoc promotion was made. The case was decided on 17.6.92 and retrospective regularization was given in favour of the said Nodia Singh w.e.f. 25.7.79 with observations that he would be entitled to get all the benefits and that his seniority should be counted in accordance with Service rules and in absence thereof as per Government direction and law laid down by the High Court and the Apex Court and that no interference would be made in respect of the order of the Government to the effect that his seniority would be fixed next below Shri Th.Gourachand Singh. A copy of the said judgment dated 17.6.92 is at AnnexureA/7 of the first case. Then, the Government issued an order on 2.2.1993 regularising the service of said Nodia Singh to the post of Assistant Director(VS) w.e.f. 25.7.79 by modifying the earlier order dated 19.9.2000 restating the same direction that his seniority would be fixed below Shri Th.Gourachand Singh, Assistant Director.

7. There is no dispute in respect of the following facts also: that the said Ph.Tombi Singh was given ad hoc promotion vide Govt. order dated 8.11.78, to the post of Dy.Statistical Officer of the Family Welfare Department. On the recommendation of the MPSC, he was given regular appointment to the said post of Dy.Statistical Officer w.e.f. 25.5.86 vide Govt. order dated 20.1.88. AnnexureA/1 in the second case is a copy of the order of the above said ad hoc promotion and AnnexureA/2 in the same case is the copy of the order of the said regular appointment. A Civil Rule being No. 121 of 1991 was filed by the said Ph.Tombi Singh praying for granting him retrospective regularization of his service w.e.f. the date of his initial ad hoc appointment to the said post. The said case was disposed of in his favour on 7.8.98 stating that his service would be notionally deemed to be regularized from the date of appointment on ad hoc basis for the purpose of pension and other retrial benefits and not for the

purpose of seniority. AnnexureA/3 in the second case is the copy of the judgment of the High Court passed in C.R.No.121 of 1991. The Govt. issued an order dated 19.3.99 by way of giving effect to the said order of the High Court. AnnexureA/4 in the second case is the copy of the order of the Government.

8. There is, however, dispute in respect of the question as to who is to be taken as the senior in between the said M.Nodia Singh, Assistant Director(VS) and said Ph.Tombi Singh, Dy.Statistical Officer in connection with filling up of the vacant post of Dy.Director (VS) of Medical and Health Department. In the Government notification dated 30.8.99, M.Nodia Singh is shown as senior to Ph.Tombi Singh. In the subsequent two notifications dated 4.4.2000, 19.5.2000, said Ph.Tombi Singh is shown as senior to the M.Nodia Singh. Both of them have grounds in support of their respective claims on seniority. According to the said Nodia Singh, said Ph.Tombi Singh was not even eligible for consideration when the DPC for appointment to the post of Assistant Director(VS) was held from 11.1.84 and the DPC held on 4.9.91 pursuant to the judgment of the High Court in C.R.No.39 of 1984 was a review DPC of the DPC held in the year, 1984 and as such the direction given by the said Review DPC is to be considered as promotion made in 1984 itself, i.e., almost two years prior to the date of holding the DPC for appointment of the said Tombi Singh to the post of Dy. Statistical Officer in 1986. Further, according to the said Nodia Singh, since this Court in C.R.No.1 of 1992 has allowed his prayer for regularization w.e.f. 1979 without interfering with the order of the Government fixing his seniority next below, Th. Gourachand Singh, Assistant Director and since Government has issued order on 2.2.93 implementing the order of the High Court, he is entitled to be senior to the said Ph.Tombi Singh.

9. Shri H.S. Paonam, learned Advocate submits at length about the effect of the orders of the High Court passed on 19.9.89, 17.6.92 and 7.8.98 in Civil Rule Nos 39 of 1984, 1 of 1992 and 121 of 1991 respectively. On the other hand, according to said Ph.Tombi Singh, since he was regularly appointed to the post of Dy.Statistical officer on the recommendation of the MPSC w.e.f. 25.5.86, much earlier than the regular appointment of the said Nodia Singh as Assistant Director (VS) and since he also obtained an order of High Court giving him retrospective regularization w.e.f. the date of his initial ad hoc appointment, i.e. 8.11.76, he is entitled to be senior to the said Nodia Singh. Shri Ng. Kumar, Advocate submits that since the specific prayer of the said Nodia Singh made in C.R.No.1 of 1992 for directing to give effect of his appointment to the post of Assistant Director from 31.1.84 or the date from which the first DPC had been held, was not granted, it is to be taken as refused and as such when taken with observation of the High Court for counting his seniority in accordance with service rules and in absence thereof as per Government directions/guidelines and law laid down by the High Court and the Apex Court, he cannot claim to be senior to the said Tombi Singh. It is noted that learned Advocate General, who is appearing on behalf of the State respondents, supports the case of the said Tombi Singh. Cases are also cited during the course of hearing by both sides in support of their



respective stand. 10. There is, however, no need of discussing the submission of the learned counsel appearing for the parties any further for the purpose of determining by this Court as to who is to be considered as senior in between the said Nodia Singh and the said Tombi Singh. None of the seniority lists dated 30.8.99, 4.4.2000 and 19.5.2000 is found to have been issued after giving opportunity of making representation to any of the affected employees. Before fixing the seniority of employees finally, the principle of natural justice requires that opportunity should be given to the employees concerned to make representations. There is a specific pleadings from the side of Ph.Tombi Singh to the effect that prior to publication of seniority list dated 30.8.99 showing the said Nodia Singh as the senior, no tentative list was published by the Government inviting objections and as such there was no opportunity or chance of making objection in respect of the list. There is no denial in connection with the said pleadings from any of the parties. Accordingly, the said pleading is to be taken as correct. In respect of the said seniority lists dated 4.4.2000 and 19.5.2000 also, wherein the said Tombi Singh is shown as the senior, there is a specific pleading from the side of said Nodia Singh to the effect that the said two lists were issued in supersession of the earlier lists without publishing any tentative seniority list inviting objections from him. It is to be noted that seniority, once fixed, creates a right in favour of an employee. Any alteration of the seniority would adversely affect the right of the employee and as such any alteration of the seniority without notice to the person so affected would be opposed to the principles of natural justice. There is no denial in respect of the said pleading of Nodia Singh about giving him no notice before supersession of the said list dated 30.8.99 by the Government. Accordingly, this pleading of Nodia is also to be taken as correct.

11. In view of the above findings, all the seniority lists dated 30.8.99, 4.4.2000 and 19.5.2000 are not sustainable in the eye of law. The said seniority lists are hereby quashed. It is already seen that there are grounds in favour of both Nodia Singh and Tombi Singh in connection with their respective claims of seniority. The concerned authority will have to refix the seniority list in accordance with law. Before fixing the seniority list of the concerned Civil servants finally, the authority will have to give opportunity of making representations to them.

12. With the above observation and directions, these two Writ Petitions stand disposed of.