
(2017) 01 MAN CK 0013
In the Manipur High Court
Case No : 101 of 2008

Moirangthem Raghumani Singh

APPELLANT

Vs

The Manipur Public Service commission & ors.

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

[Recruitment and Leave Rules, 1991](#), Rule 4

Citation : (2017) 01 MAN CK 0013

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Kh. Tarunkumar, I. Lalitkumar, Rojeshon, Th. Sobhana

Judgement

1. Heard Shri Kh. Tarunkumar, the learned counsel appearing for the petitioner; Shri I. Lalitkumar, the learned Sr. Advocate assisted by Shri Rojeshon, the learned counsels appearing for the MPSC and Smt. Th. Sobhana, the learned Government Advocate appearing for the State respondents.

2. The instant writ petition has been filed by the petitioner praying for quashing/ setting aside the impugned letter dated 20-09-2007 issued by the Manipur Public Service Commission (hereinafter referred to as "the MPSC"). Another prayer made in the petition is to direct the respondents to hold a special/fresh DPC for appointment on promotion to the post of Librarian of the Government College.

3.1. According to the petitioner, he was initially appointed as the Assistant Librarian at the United College, Chandel which was, at the relevant time, an Aided College vide order dated 05-04-1990 issued by the Chairman, Governing Body in pursuance of a resolution thereof. While the petitioner was serving in that capacity, the Under Secretary (DP), Government of Manipur published the Recruitment Rules, 1991 for appointment to the post of Librarian of the Government Colleges vide order dated 31-08-1991 and as per the said Recruitment Rules 1991, the post of Librarian is to be filled up by promotion failing which by direct recruitment. The essential qualifications prescribed therein are: (a) First or Second Class B.A./B.Sc./B.Com. Degree plus a First or Second

M.Lib. Science Degree from a recognized University or (b) First or Second Class M.A./M.Sc./M.Com. Degree and 1st or 2nd class B.Lib. from a recognized University.

3.2. The United College, Chandel was taken over by the State Government vide its order dated 26-07-1996 and the petitioner along with other incumbents were appointed to their respective posts w.e.f. 01-06-1996 vide order dated 05-11-1996 issued by the Secretary (Higher Education), Govt. of Manipur subject to the conditions mentioned therein. Accordingly, the petitioner was appointed to the post of Assistant Librarian in the scale of pay of Rs. 1350-2200/- p.m. and after the petitioner having been appointed to the post of Assistant Librarian, he was permitted to undergo/enrol for studying Degree of Bachelor in Library and Information Science at Indira Gandhi National Open University which he completed in the year 1998. The petitioner underwent further studies of Master's Degree in Library and Information Science at the Indira Gandhi National Open University and after completion of the said courses in Library & Information Science, the petitioner submitted a representation dated 03-12-2004 to the Director of Hr. Education, Government of Manipur praying for grant of promotion to the post of Librarian through proper channel.

3.3. The Additional Director of University & Hr. Education, Government of Manipur issued a notification dated 01-08-2006 publishing the Seniority List of Assistant Librarians of the Government Colleges wherein the name of the petitioner appeared at Sl. No. 5. Pursuant to the said representation, the State Government proposed to the MPSC names of Assistant Librarians of the Government Colleges including that of the petitioner for promotion to the post of Librarian which was turned down by the MPSC vide its letter dated 20-09-2007, impugned herein, on the ground that as per the existing UGC Guidelines adopted by the Government of Manipur, the post of Librarian of Government Colleges is to be filled up by direct recruitment and there is no provision for appointment by promotion. Prior to availing of a copy of the said letter dated 20-09-2007, the petitioner submitted a representation dated 31-10-2007 to the Secretary, MPSC, Imphal requesting him to furnish a copy of the said proposal. Thus, being aggrieved by the said letter dated 20-09-2007, the instant writ petition has been filed by the petitioner.

4. The MPSC contested the petition by way of an affidavit-in-opposition wherein it is stated that the petitioner is not eligible for appointment by promotion to the post of Librarian as he passed the B.Sc. Examination in simple pass securing 48.4% only and the letter from the Registrar, Manipur University is not applicable so long as the essential qualification of 1st or 2nd Class B.A./B.Sc./B.Com Degree is in force. The second point raised in their affidavit is that there is no provision for appointment by promotion to the post of College Librarian under the UGC Guidelines which govern the terms and conditions as well as the scale of pay of the College Lecturers and Librarians. It is further stated that UGC Guidelines are to be followed strictly and in this regard, the Ministry of Human

Resource Development (Department of Education), Government of India issued a letter/ circular dated 22-07-1988 as regards the revision of pay scales of Teachers in Universities and Colleges and the same was adopted by the Government of Manipur vide its Office Memorandum dated 23-05-1989 as a result of which the post of Librarian is required to be filled up through all Indian advertisement and selection. Taking a similar stand, an affidavit-in-opposition on behalf of the respondent Nos. 2 and 3 namely, the State respondents has been filed wherein it is stated that admittedly as per the Recruitment Rules, 1991 for the post of Librarian of the Government Colleges, the Assistant Librarian is a feeder post and the post of Librarian is to be filled up by promotion failing which by direct recruitment but with the adoption of the UGC Guidelines by the State Government, the said Recruitment Rules, 1991 has become obsolete and are no longer in force and as per the said UGC Guidelines, the post of Librarian of the Government Colleges is one to be filled up by direct recruitment and there is no provision for appointment by promotion. Moreover, even before the adoption of the UGC Guidelines, the case of the petitioner could not be considered for promotion to the post of Librarian as he did not fulfil the minimum qualification prescribed in the existing relevant Recruitment Rules, 1991. In his rejoinder, it has been stated by the petitioner that he is eligible for appointment on promotion to the post of Librarian as per the Recruitment Rules, 1991 as the marks secured by him in his B.Sc. Examination is 48.4% which is more than 45% marks required for 2nd class. At the time of passing his B.Sc. Examination, the pattern of the result of examination conducted by the M.U. was pass and distinction and there was no grading of 1st or 2nd Class at all. The eligibility of all the candidates including the petitioner is to be decided by the DPC and not by the MPSC alone. The Recruitment Rules which were framed in the year 1991 are still in existence and were followed by the Department of Higher Education while appointing three incumbents on regular basis as Librarians on 31-08-1994 which was issued on the recommendation of a special DPC held on 26-08-1994. In the Office Memorandum dated 23-05-1989, it is nowhere mentioned that the appointment of the Librarian of the Government Colleges shall be made on all India merit by issuing advertisement and the Guidelines of the UGC have not yet been adopted by the State Government. Surprisingly, the stand of the State Government came to be altered by way of a supplementary affidavit which was, according to the State Government, filed in order to rectify the bona fide and inadvertent error/mistake on factual position that has been committed while filing the main affidavit, wherein it is stated that the main affidavit-in-opposition was drafted by the State Government Counsel on the basis of the parawise comments furnished by the then Additional Director of University & Higher Education, Government of Manipur. It is further stated that on a direction being issued by the High Court to the State Government Counsel for obtaining instruction as to whether the State Government framed the Recruitment Rules, 1991 for the post of Librarian of the Government Colleges in accordance with the UGC Guidelines or not, the Administrative Department examined the matter in detail and found that the parawise comments furnished by the Directorate office

were factually inconsistent as per the relevant file maintained by the Administrative Department. On further examination, it has been detected that the then Additional Director (University & Higher Education), Government of Manipur while furnishing the parawise comments to the office of the Government Advocate, was endorsed to the Administrative Department a copy thereof which was placed on record without any examination thereof. As per the relevant file maintained by the Administrative Department, the process for filling up the post of Librarian of the Government Colleges took a pretty long time due to movement of file and one of the issues involved was whether the Recruitment Rules, 1991 should be amended in accordance with the UGC Guidelines before filling up the posts or whether it should be deemed to have adopted the UGC Guidelines as the Administrative Department had already prescribed the UGC scale of pay for the Librarians under the State Government. Since the UGC directed to follow its norms and guidelines, the MPSC insisted for necessary modification of the existing Recruitment Rules, 1991, as a result the matter reached the State Cabinet and ultimately, the Government in consultation with the DP and Finance Department took a decision to the effect that the posts of Librarian of the Government Colleges, vacancies of which occurred prior to introduction of the UGC scale of pay, shall be filled up on the basis of the existing Recruitment Rules, 1991. Accordingly, the Joint Secretary (Higher Education), Government of Manipur addressed a letter dated 24-06-2008 to the MPSC requesting it to take up necessary action for appointment of Assistant Librarian on promotion to the post of Librarian of the Government Colleges and the same is still pending before the MPSC. Till the date of filing the affidavit, the State Government had not adopted the UGC Guidelines in respect of appointment and hence, the Recruitment Rules, 1991 are still in force and accordingly, a requisition was made to the MPSC for holding the DPC vide its letter dated 02-06-2008.

5. The learned Single Judge vide its Judgment and Order dated 31-07-2012 allowed the writ petition holding inter-alia that in the light of the averments made by the State respondents in their Supplementary Affidavit filed on behalf of the respondent Nos. 2 and 3 that the State Government which is the competent authority, has not adopted the UGC Guidelines and resultantly, the impugned letter dated 20-09-2007 cannot be sustained and is accordingly quashed. A writ appeal being W.A. No. 19 of 2013 was preferred by the MPSC which came to be allowed by this court on 13-11-2014. In the said writ appeal, the MPSC assailed the order of the learned Single Judge on the sole ground that even if the Recruitment Rules, 1991 are applicable, the respondent No.1/the petitioner is required to have 2nd Class Degree at the Graduation level and the respondent No.1/the petitioner having not secured the percentage of marks required for the 2nd Class, is not eligible for promotion to the post of Librarian. In view of the stand taken by the MPSC that the respondent No.1/the petitioner is not eligible for promotion, as he passed the B.Sc. Examination in simple pass securing 48.4% and since the question has not been addressed to by the learned Single

Judge even though it was raised in the counter, the Division Bench of this Court sent the case back to the learned Single Judge for disposal of the writ petition afresh. One of the questions formulated by the Division Bench of this Court is as to whether the respondent No.1/the petitioner is qualified to be promoted to the post of Librarian or not as per the Recruitment Rules, 1991?

6. Shri I. Lalitkumar, the learned Senior Advocate appearing for the MPSC has submitted that while remitting the matter to the learned Single Judge of this court, the Division Bench has kept all issues open for consideration by the learned Single Judge and accordingly, he has further submitted that after the adoption of the UGC Guidelines by the State Government, the post of Librarian can be filled up by direct recruitment only. His submission has no substance at all in view of the stand taken by the State Government in its supplementary affidavit that vacancies in respect of the post of Librarian occurred prior to the adoption of the UGC Guidelines, must be filled up in accordance with the Recruitment Rules, 1991. Therefore, the only question to be considered by this court is the one formulated by the Division Bench and so far as this question is concerned, Shri Kh. Tarunkumar, the learned Counsel appearing for the petitioner has fairly submitted that if the provisions of the Recruitment Rules, 1991 are strictly applied and followed, the petitioner will become ineligible for appointment on promotion. Then, the only submission that he made is that in the given facts and circumstances, the petitioner could have been considered for appointment on promotion, for which he has emphasised three circumstances - one, while framing the Recruitment Rules, 1991, the State Government has committed an error because it has not taken into account the fact that there was no grading of 1st and 2nd Class at two years Degree Course under the 10+2+2 system in the year 1985; two, under the Recruitment Rules 1991, the State Government is competent to relax the provisions thereof which it has failed to do so and three, a person who passed his two years Degree Course under the 10+2+2 system with simple pass securing less marks than him, has been appointed as Librarian on regular basis. As regards the first circumstance, it is true that the State Government, while framing the Recruitment Rules, 1991, has not taken into account the fact that there was no grading of 1st and 2nd Class at two years Degree Course under the 10+2+2 system when the petitioner did his two years Degree Course in 1985. It may be noted that under the 10+2+2 system, grading was only pass and distinction. But since the validity and correctness of the Recruitment Rules, 1991 have not been questioned in the present writ petition, this court cannot go into it. However, the fact remains that the petitioner has been put to disadvantage, for no fault of his, as a result he can never be considered for promotion, although he has served for more than 25 years as Assistant Librarian. With respect to the second circumstance, the grievance of the petitioner is that although enough power is conferred upon the State Government under Rule 4 to relax the provisions of the Recruitment Rules 1991, it has failed to exercise it. The learned counsel appearing for the petitioner, contending that the State Government ought to have exercised it to remove

petitioner's disadvantage, has relied upon the decision of the Hon'ble Supreme Court in *Ashok Kumar Uppal & anr. Vs. State of J & K and ors.*, reported in (1998) 4 SCC 179 wherein the Government promoted five Stenographers to the post of Senior Stenographers by relaxing the requirement of possessing the requisite qualification. The writ petition questioning the State action was dismissed and the letters patent appeal filed against the judgment and order of the learned Single Judge, was also dismissed in limine. Allowing the appeal, the Hon'ble Supreme Court held: "30. In view of the above, the Government can exercise the power to relax the Rules in all those cases in which hardship is caused in the implementation of those Rules to meet a particular situation or where injustice has been caused to either individual employee or class of employees. Of course, this power cannot be exercised capriciously or arbitrarily to give undue advantage or favour to an individual employee.

31. Since power to relax the Rule was available to the Government and since, on a scrutiny of facts of this case, we are satisfied that the power to relax the standard prescribed for promotion to the post of Senior Scale Stenographer was properly exercised so that the appellant, who topped the list of 26 candidates, recommended by the State Recruitment Board for promotion by relaxing the Rules as they were nearest to the prescribed standard, may be promoted to the posts on which persons who were far below in merit, and even those who had failed in the test, had already been promoted as Senior Scale Stenographers, the order dated 19-12-1986 by which appellants were promoted has to be upheld as valid and properly passed by the State Government."

The facts of the said case are not exactly the same but are similar in the sense that in the present case, the State Government is empowered to relax the provisions of the recruitment rules. Without the said recruitment rules being relaxed, the petitioner cannot be considered for promotion at all. Although the occasions on which the power of relaxation can be exercised, are not stipulated therein, the impossibility of passing two years Degree Course at 1st or 2nd Class by the petitioner could be one of the valid reasons for relaxation of the Recruitment Rules, 1991. As regards the third circumstance, Shri I. Lalitkumar, the learned Senior Advocate appearing for the MPSC has vehemently contended that an illegal order issued by the State Government cannot be allowed to be perpetuated and in support of his contention, he has relied upon the decision rendered by the Hon'ble Supreme Court in *Pramod Kumar Vs. UP Secondary Education Services Commission & ors.*, reported in (2008) 7SCC 153 wherein the appellant was appointed to a teaching post, for which prescribed educational qualification was B.Ed. Degree, on the basis of a degree obtained from an Institution not recognised by the UGC. Accordingly, he was given an opportunity to obtain degree from a recognised University, to which he produced only mark-sheets and not degree from Maharishi Dayanand University. Later on, a show cause notice was served upon him on the ground that he obtained appointment through fabricated and illegal B.Ed. Degree and on completion of the departmental proceeding, his service was terminated. The Hon'ble Supreme

Court has held that an appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly when the statute in no unmistakable term says so. Only an irregularity can be. He has placed reliance also in *State of Karnataka & ors. Vs. Gadilingappa & ors.*, reported in (2010) 2 SCC 728 wherein the respondents were appointed as primary school teachers without possessing the TCH qualification, which was the minimum prescribed qualification for the post of teacher, the Hon'ble Supreme Court held: "6. Admittedly, the respondents herein were working as primary school teachers for a long period of time and they had rendered service as such continuously without any break. However, after perusing the relevant documents on record what comes to light is the fact that none of the respondents had undergone the TCH course, which was the minimum prescribed qualification at the relevant time for being appointed to the post of a teacher. Since the respondents did not possess the minimum prescribed qualification and because of which their appointment was in contravention of the Cadre and Recruitment Rules, we are of the considered view that their appointments were illegal appointments."

He has placed further reliance in *State of Orissa & anr. Vs. Mamata Mohanty*, reported in (2011) 3 SCC 436 wherein the question as to whether Article 14 of the Constitution is meant to perpetuate an illegality arose, the Hon'ble Supreme Court held: "56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (vide *Chandigarh Admn. v. Jagjit Singh*, *Yogesh Kumar v. Govt. of NCT of Delhi*, *Anand Buttons Ltd. v. State of Haryana*, *K.K. Bhalla v. State of M.P.*, *Krishan Bhatt v. State of J&K*, *Upendra Narayan Singh and Union of India v. Kartick Chandra Mondal.*)"

It may be noted that all that the learned counsel appearing for the petitioner submitted is that a person who is neither 1st Class nor 2nd Class in two years Degree Course and who passed it in simple pass securing less marks than him, has been regularized as Librarian and therefore, the case of the petitioner may also be considered for appointment on promotion as Librarian. It is not the case of the petitioner that an illegal order issued by the State Government ought to be allowed to be perpetuated and moreover, the State Government has not decided that the order dated 31-08-1994 issued by it is illegal nor has it been declared by any court as illegal. It may be relevant to mention here that the State Government in its affidavit dated 29-07-2016 states that on the recommendation of a special DPC, it has regularized the services of two ad-hoc Librarians vide order dated 31-12-2013 issued by the Department of Higher Education but its justification given by the State Government was that it was not the case of granting promotion but a case of regularization based on one time Government policy. However, one thing which needs to be noted is that in respect of the appointment of a Librarian, whether it is by way of direct recruitment or

promotion, the requisite qualifications remain the same. Therefore, although there can be no any dispute as regards the law laid down by the Hon''ble Supreme Court in the said decisions relied upon by the learned counsel appearing for the MPSC, the same is not relevant so far as the present case is concerned. The further submission of the learned counsel appearing for the petitioner is that the fact that a person who secured less marks than him in the examination of two years degree course, has been regularized as Librarian, could be one of the circumstances for consideration of the petitioner's case. Having heard the learned counsels appearing for the parties, this court is of the view that in the peculiar facts and circumstances of the present case as narrated herein above, it may be appropriate for the respondents to consider the case of the petitioner for appointment on promotion as Librarian. Another aspect which needs to be kept in view is that the petitioner is on the verge of retirement and in case his case is not considered for promotion as Librarian, he will retire as Assistant Librarian with no promotion during his entire career as government servant.

7. For the reasons stated hereinabove, the instant writ petition is disposed of with the direction that the respondents shall consider the case of the petitioner for appointment on promotion as Librarian, within a period of one month from today, in terms of the circumstances narrated hereinabove at para 7 and shall issue a speaking order in respect thereof.