

**(1994) 11 GAU CK 0003**

## In the Gauhati High Court

**Case No :** Civil Rule No"s. 273 and 219 of 1992 and 108 of 1994

Ngangom Tikendrajit Singh and Mangsatabam Sanaton Singh APPELLANT

 $V_S$ 

State of Manipur and Others RESPONDENT

**Date of Decision : 18-11-1994**

### Acts Referred:

**Citation :** (1995) 2 GLR 58

**Hon'ble Judges :** H.K. Sema, J

### Bench : Single Bench

**Advocate :** T. Nandakumar and N. Surjamani Singh, for the Appellant; G.A., A. Nilamani and B.P. Sahu, for the Respondent

## Judgement

H.K. Sema, J.—These batches of writ petitions involved common question of law and facts and as such, they are being disposed of by this common Judgment.

2. I have heard Mr. T. Nandakumar and Mr. N. Surjamani, learned Counsel for the Petitioners and Mr. A. Nilamani Singh and Mr. B.P. Sahu, learned Counsel for the Respondents.

3. The order dated 31.1.94 (Annexure - A/18) has been assailed in C.R. No. 108 of 1994. The impugned order reads as under:

The Governor of Manipur is pleased to order that Shri R.D. Mukherjee, Executive Engineer (Elec), Electricity Department, Manipur is to hold the current charge of the post of Superintending Engineer against the post vacated by Shri G.B. Sharma with immediate effect until further order without extra remuneration.

(Emphasis supplied)

4. The order has been assailed on the ground that the Petitioner is senior to Respondent No. 5 in the cadre of Executive Engineer in as much as the Petitioner has been recommended by DPC for promotion to the post of Executive Engineer against the vacancy arose in 1978 and the Respondent No. 5 has been recommended by the DPC against the vacancy arose in 1979 and as such, the

Petitioner is senior to Respondent No. 5 and the Petitioner ought to have been made to hold the current charge of the post of Superintending Engineer, instead of the Respondent No. 5.

5. At the outset Mr. A. Nilamani Singh, learned Counsel appearing for the 5th Respondent submits that by making the Respondent No. 5 to hold the current charge of Superintending Engineer cannot be treated as promotion in as much as he does not get salary of the post of Superintending Engineer. In this connection, Mr. A Nilamani Singh has referred to the decision if the Apex Court rendered in Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others,

6. In Ramakant (Supra), the Apex Court has observed in para 4 of the Judgment as under:

Asking an Officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop gap arrangement.

7. In the instant writ proceeding the Respondent No. 5 was not even allowed charge allowance. By the impugned order Respondent No. 5 was simply allowed to hold the current charge without any extra remuneration. In such a situation, the Petitioner cannot really lake the grievances that he has been superseded by his junior or that he has been treated unjustly. In view of the principle laid down by the Apex Court, there is no merit in these writ petitions and the same are, accordingly, dismissed, however, no costs.

8. Despite the dismissal of the petitions, one contention of the counsel for the Petitioners deserved utmost consideration. It has been contended by counsel for the Petitioners and not disputed to by counsel for the Respondents that out of the 5 (five) regular vacancies in the cadre of Superintending Engineer in the Department of Power only one post has been filled up on regular basis and the rest 4 (four) vacancies have been holding by in - charge arrangement. As observed by the Apex Court such arrangement is only resorted to meet exigency of public service. Such arrangement must be followed thereafter by regular promotion. If incharge arrangement is allowed to continue indefinitely, it may inbreed back door entry into the service of promotion posts. Therefore, such in-charge arrangement has to be discouraged in normal circumstances and even such arrangement is necessitated in exigency of service it should not be allowed to continue indefinitely. It should be for a specific purpose and for a short period. Because in the guise of exigency of service, the recruitment Rules, regulating the procedure for appointment and promotion cannot be circumvented.

9. In view of the observation aforesaid the Respondents are directed to fill up the

4 (four) regular vacancies in the cadre of Supreintending Engineer (Power) on regular basis. It is submitted at the Bar that the final seniority list in the cadre of Executive Engineer has not been finalized. The Respondents are directed to finalise the final seniority list in the cadre of Executive Engineer (Power) after taking into consideration all accounts within a period of 2 (two) months from the date of receipt of this Judgment. Thereafter the 4 (four) remaining regular vacancies in the cadre of Superintending Engineer shall be filled up within a period of 2 (two) months. Submission has been made at the Bar that by an order dated 2.7.94, one Shri A.K. Shyamkishore Singh Superintending Engineer, Electrical Circle No. 2 has been made to look after the charge of Superintending Engineer, Electrical Circle No. 3 in addition to his normal duties. Till the regular promotions are made in terms of the aforesaid direction, the present arrangement by an order dated 2.7.94 shall continue for the ends of justice. It is also made clear that any interim order with regard to the tentative or final seniority list in the cadre of Executive Engineer in any of the aforesaid Civil Rule shall stand vacated.

With the aforesaid directions, these writ petitions are disposed of. No costs.