

(2019) 07 MAN CK 0020
In the Manipur High Court
Case No : Writ Petition (c) No. 546 Of 2016

Ningam Siro & Anr

APPELLANT

Vs

State Of Manipur & 33 Ors

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Citation : (2019) 07 MAN CK 0020

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : A. Mohendro, P. Tamphamani

Final Decision : Allowed

Judgement

Lanusungkum Jamir, J

Heard Mr. A. Mohendro, learned counsel for the petitioners.

Issue notice.

Mr. P. Tamphamani, learned counsel enters appearance and accepts notice on behalf of the respondents No. 1 & 2 and Mr. S. Sasi, learned counsel assisting Mr. A. Bimol, learned senior counsel on behalf of the respondents No. 9&10.

Petitioners are to take steps for service of notice on the respondents No. 3 to 8 and respondents No. 11 to 34 by speed post within three days from today.

By this writ petition, the petitioners are challenging the order dated 29-6-2019 issued by the Department of Personnel and Administrative Reforms (Personnel Division) whereby, the Final Seniority List of Manipur Police Service (MPS) Officers as on 1-10-2013 is published wherein, the petitioners are shown junior to the private respondents.

The petitioners are promotees who were appointed as MPS Grade-II on 1-3-2007 and the private respondents are direct recruits MPS-II who were appointed on 14-08-2007. The petitioners are claiming seniority over the private respondents

on the ground that they were appointed to an earlier point of time than the private respondents.

The Governor of Manipur enacted the Manipur Police Service Rules, 1965 which deals with appointment and seniority in respect of both the direct recruits as well as promotes in the Manipur Police Service.

The State respondents issued a Final Seniority List of Manipur Police Service officers as on 1-3-2007 by an order dated 11th November, 2008. Thereafter, a tentative seniority list of Manipur Police Service officers as on 1-11-2009 was published by order dated 19-12-2009. Being aggrieved with the order dated 19-12-2009, the present private respondents as petitioners filed WP(C) No. 235 of 2012 challenging the seniority list. The said writ petition was disposed of by an order dated 18-02-2013 directing the State respondents to finalize the inter-se seniority list of Manipur Police Service Grade-II Officers in accordance with law within a period of 45 days from the date of receipt of the said order.

Pursuant thereto, the State respondents issued a tentative seniority list of Manipur Police Service (MPS) Officers appointed as on 1-3-2013 by following the principle of Dovetailing system wherever applicable by an order dated 11-3-2013. The respondents issued another order dated 12-3-2013 in supersession of all previous orders publishing the Tentative Seniority List of Manipur Police Service (MPS) Grade-II Officers as on 1-3-2013 by following the principle of Dovetailing wherever applicable. On 17th May, 2013, an order was issued publishing the Final Seniority List of Manipur Police Service (MPS) Officers as on 1-4-2013 by again following the principle of Dovetailing system. Not satisfied with the order dated 17-5-2013, 15 (fifteen) MPS-II Officers (Promotees) filed WP(C) No. 366 of 2013 challenging the order dated 17-5-2013. During the pendency of the said writ petition, a review DPC meeting was held on 19-8-2016 and on the basis of the recommendation made by the review DPC, the Department of Personnel and Administrative Reforms (Personnel Division) issued an order dated 15th September, 2016 wherein, 14 incumbents including some of the petitioners were appointed on promotion to the post of MPS-II in order of merit w.e.f., 1-3-2007.

Further, during the pendency of WP(C) No. 366 of 2013, the State respondents again issued an order dated 20-1-2014 publishing the Final Seniority List of Manipur Police Service (MPS) officers as on 1-10-2013 and on the basis of which the State Government was to hold a DPC for promotion to the posts of MPS Grade-I. Therefore, an application being MC(WP(C)) No. 15 of 2014 was filed by the petitioners in WP(C) No. 366 of 2013 wherein, an order dated 19-2-2014 was passed by this Court permitting the respondents to convene the DPC but to keep the proceedings in a sealed cover. However, the official respondents instead of keeping the proceedings in a sealed cover, declared the result of the DPC and an order dated 19-2-2014 was issued promoting the private respondents and therefore, the petitioners filed WP(C) No. 120 of 2014 praying for quashing the entire proceedings of the DPC held on 18-2-2014 and the order dated 19-2-2014.

WP(C) No. 366 of 2013 and WP(C) No. 120 of 2014 were jointly heard by this Court and disposed of by judgment and order dated 17-7-2017 and the operative portion reads as under:

"[14] For the reasons stated herein above, the writ petitions being WP(C) No. 366 of 2013 and WP(C) No. 120 of 2014 are allowed and consequently, the Government orders dated 17-05-2013, 20-01-2014 and 19-02-2014 impugned herein, in respect of the petitioners and the private respondents, are quashed and set aside with the following directions:

(a) The State Government shall prepare a seniority list afresh in respect of the MPS Officers, after taking into account the observations made by this Court hereinabove, within a period of three months from the date of receipt of a copy of this judgment and order;

(b) While preparing the seniority list of MPS Officers, the State Government shall follow the guidelines/instructions contained in the Office Memorandum dated 07-2-1986 which is adopted by the State Government vide order dated 18-02-2013 passed by the Hon'ble Gauhati High Court in WP(C) No. 235 of 2012. There shall be no order as to costs."

Against the judgment and order dated 17-7-2017, no appeal was filed by the State respondents. However, the present private respondents as appellants filed an appeal against the judgment and order dated 7-7-2017 which was registered as WA No. 66 of 2018. At that relevant point of time, no Division Bench was available in this High Court and therefore, the appellants/private respondents moved a Transfer Petition (C) No. 2195 of 2017 before the Hon'ble Supreme Court for transferring the appeal and the Hon'ble Supreme Court by order dated 23-1-2018 transferred the appeal before the Hon'ble Gauhati High Court. After hearing the parties, the Hon'ble Division Bench of the Gauhati High Court disposed of WA No. 66 of 2018 by judgment and order dated 26-9-2018 and the relevant portion reads as under:

"24. Coming back to the present case, the admitted position is that selection to the post of MPS Grade-II for direct recruits and promotes were not held together but separately. The private respondents were earlier appointed on promotion to the post on 01-03-2007 while the appellants were appointed by direct recruitment on 14-08-2007 and 24-11-2007 respectively. Being promoted at an earlier point of time, the private respondents will naturally have seniority over the appellants as they had entered the cadre of MPS Grade-II earlier before the appellants were born in the cadre. Therefore, in our considered view, the above position being very clear there was no reason to embark upon the interpretation of the word/words 'year' or 'for that year' as gone into by the learned Singh Judge.

25. Thus, having regard to the facts and circumstances of the case and the decisions of the Apex Court as referred to above, we are of the considered opinion that the seniority of the rival MPS Grade-II officers will have to be

counter from the dates of their substantive appointment to the post i.e., the dates of their entry into the cadre of MPS Grade-II.

26. In the result, we uphold the Judgment and Order of the learned Single Judge but in the background of our own reasonings. The writ appeal thus fails and is dismissed. Interim order passed earlier stands vacated.

27. It is needless to mention herein that the State respondents shall now proceed to take necessary steps in terms of paragraph No. 14 of the Judgment and Order of the learned Single Judge."

As there was no compliance to the judgment and order dated 17-7-2017 passed by the learned Single Judge as well as the judgment dated 26-9-2018 passed by the Hon'ble Division Bench of Gauhati High Court, a Contempt Case No. 224 of 2018 was filed by the petitioners before this Court. During the pendency of the contempt petition, the respondents issued an order dated 29-6-2019 and accordingly, the said contempt petition was closed by order dated 2-7-2019. Thereafter, the present writ petition has been filed challenging the order dated 29-6-2019.

Learned counsel for the petitioners submits that the order dated 29-6-2019 has been issued in total violation of the direction passed by the learned Single Judge in the judgment and order dated 17-7-2017 as well as judgment of the Hon'ble Division Bench of the Gauhati High Court dated 26-09-2018 and therefore, an interim order suspending the order dated 29-6-2019 is called for at this stage.

It is the case of the petitioners that once an order has been issued directing the respondents to take steps in a particular manner, the respondents are bound by such directions. However, in the instant case, the said directions passed by the learned Single Judge as well as the Hon'ble Division Bench has been totally ignored.

Mr. N. Kumarjit, learned AG, Manipur as well as Mr. A. Bimol, learned senior counsel appearing for some of the private respondents jointly submits that the order dated 29-6-2019 by which the final seniority list of Manipur Police Service (MPS) officers as on 1-10-2013 has been published was strictly done in terms of the principles laid down by the Hon'ble Supreme Court in the case of Union of India and Ors Vs. N.R Parmar and Ors, reported in (2012)13 SCC 340 with regard to seniority between the direct recruits and promotees. It is submitted that the judgment and order dated 17-7-2017 passed by the learned Single Judge as well as the judgment dated 26-9-2018 passed by the Hon'ble Division Bench of the Gauhati High Court were passed per incuriam to the principles of law with regard to seniority laid down by the Hon'ble Supreme Court in the case of N.R Parmar (Supra). Therefore, as the said two judgments of the learned Single Judge as well as the Hon'ble Division Bench were passed per incuriam, the respondents were at liberty to issue the impugned order dated 29-6-2019 publishing the final seniority list of Manipur Police Service (MPS) officers as on 1-10-2013 in accordance with law laid down by the Hon'ble Supreme Court in the

case of N.R Parmar (Supra). Further reliance has also been made in the judgment dated 3-10- 2018 passed by the Hon'ble Supreme Court in the case of Hon'ble Punjab and Haryana High Court at Chandigarh -Vs- State of Punjab and Ors (Civil Appeal Nos. 5518-3523 of 2017) Rebutting the submissions made by the learned AG, Manipur as well as Mr. A. Bimol, learned senior counsel for some of the private respondents, learned counsel for the petitioners also places reliance in the judgment dated 7th September, 2018 passed by the Hon'ble Supreme Court in the case of Prabhat Ranjan and Anr. Vs. R.K Kushwaha and Ors [Civil Appeal No. (S) 9176 of 2018 @ SLP (C) No. (S) 22444 of 2017] wherein, the Hon'ble Supreme Court had explained the law laid down in the case of N.K Parmar (Supra) and submits that the same is not applicable to the present case in hand.

After hearing learned counsel for the parties, this Court is of the tentative view that an interim is called for at this stage and accordingly, it is directed that the impugned order dated 29-6-2019 publishing the final seniority list of Manipur Police Service (MPS) Officers as on 1-10-2013 issued by the Department of Personnel and Administrative Reforms (Personnel Division) shall remain suspended till the next returnable date.

The respondents are allowed to file counter affidavit.

List the matter again on 29th August, 2019.