
(2022) 09 MAN CK 0023

In the Manipur High Court

Case No : Writ Petition (C) No. 1002 Of 2018, Miscellaneous Case (Writ Petition (C)) No. 228 Of 2021, Ref:- Writ Petition (C) No. 1002 Of 2018

Nongmaithem Memcha Devi & Ors

APPELLANT

Vs

Nongmaithem Memcha Dev & Ors

RESPONDENT

Date of Decision : 19-09-2022

Acts Referred:

Citation : (2022) 09 MAN CK 0023

Hon'ble Judges : MV Muralidaran, J

Bench : Single Bench

Advocate : A. Golly, H. Debendra, Dr. RK Deepka, G. Pushpa

Final Decision : Dismissed

Judgement

M.V. Muralidaran, J

(CAV)

1. This writ petition has been filed seeking issuance of a writ of certiorari to quash the Notification bearing No.7/4/2015-MPSC(DR), dated 5.7.2017, the amendment bearing No.7/4/2015-MPSC(DR), dated 31.8.2017, issued by the Secretary, MPSC in respect of only eleven posts of Child Development Project Officer in Social Welfare Department and to quash the subsequent advertisement bearing No.5/2018, dated 11.10.2018 issued by the Secretary, MPSC for appointment to eight posts of Child Development Project Officer in the Social Welfare Department, Government of Manipur and to further direct the respondents to fill up on regular basis the clear vacant posts of Child Development Project Officer in Social Welfare Department, Government of Manipur, falling against the promotion quota as per the relevant recruitment rules of Child Development Project Officer in Social Welfare Department, Government of Manipur, within a reasonable time frame, prior to filling up of the posts falling against the direct recruitment quota.

2. The facts in a nutshell are as under: According to the petitioners, they are

either working as Statistical Assistants or Supervisors (ICDS) in the Social Welfare Department on regular basis for the last 27 to 32 years without getting any promotion since their initial appointments. The next avenue of promotion for the posts of Statistical Assistant and/or Supervisor (ICDS) is Child Development Project Officer (ICDS). According to the petitioners, there are altogether 43 sanctioned posts of Child Development Project Officer in the Social Welfare Department, out of which 19 posts are held on regular basis and 24 posts are held on in-charge basis and, therefore, the 24 posts are substantively vacant.

3. It is stated that for recruitment to the post of Child Development Project Officer, the State Government framed the Recruitment Rules called the Department of Social Welfare, Manipur (Child Development Project Officer) Recruitment Rules, 2017. As per the said Rules of 2017, 75% of the vacancies are to be filled by promotion and 25% by direct recruitment. Within the promotion quota, 80% of the vacancies are to be filled by Supervisors (ICDS)/ Assistant Child Development Project Officer (ICDS) with five years regular service in the grade and 20% of the vacancies are to be filled up from Statistical Assistant with five years regular service in the grade.

4. It is further stated that there are in all 452 posts in the feeder cadres referred to above for promotion to the 43 posts of Child Development Project Officer and due to lack of adequate number of posts in the cadre of Child Development Project Officer, there is no career advancement for years and for many employees the posts they hold in the feeder cadre turn out to be dead-end jobs.

5. It is the case of the petitioners that, at present, there are 24 vacancies in the post of Child Development Project Officer, of which 18 vacancies are to be filled by promotion and the remaining 6 vacancies should be filled by direct recruitment as per the Rules of 2017. However, the Secretary, MPSC, issued the advertisement bearing No.5/2018, dated 11.10.2018 notifying eight posts of Child Development Project Officer to be filled by direct recruitment. The aforesaid advertisement is stated to be in continuation of the earlier notification dated 5.7.2017, notifying recruitment to various posts, including 11 posts of Child Development Project Officer, which notification was amended by the subsequent notification dated 31.8.2017.

6. The notifications dated 5.7.2017 and 31.8.2017 were the subject matter of challenge in W.P. (C) Nos.535 and 830 of 2017. The said writ petitions were subsequently withdrawn based on the assurance given by the authorities of the State Government that the grievance of the Statistical Assistants and Supervisors with regard to their promotion and calculation of quota would be safeguarded.

7. According to the petitioners, the calculation of percentage of the quota for promotes and direct recruits is to be done based on the available vacant posts as provided under the Rules of 2017 and the notification of eight vacant posts of Child Development Project Officer (ICDS) for filling up by direct recruitment under the impugned notification is in excess of the quota prescribed for direct

recruitment and, therefore, the impugned notification is liable to be quashed.

8. It is the further plea of the petitioners that many of the personnel rendering regular service as Statistical Assistants and Supervisors are due to retire shortly and they are entitled to be considered for promotion against the available vacant posts of Child Development Project Officer (ICDS) in the promotion quota as statutorily provided under the Rules of 2017, prior to the appointment of candidates by direct recruitment. It is added that the non-consideration of the case of the petitioners for promotion against the promotion quota and the eagerness to appoint Child Development Project Officer by direct recruitment is highly arbitrary, capricious, discriminatory and unconstitutional inasmuch as the respondents have not treated the candidates who are due to be promoted equally with the direct recruit candidates.

9. The writ petition has been strongly opposed by the first respondent/State Government. It is submitted that during the pendency of the writ petition qua direct recruitment of 8 vacant posts of Child Development Project Officer, 21 posts of Child Development Project Officer meant for promotion quota were filled by giving promotion amongst the eligible Supervisor/Statistical Assistant/Asst. Child Development Project Officer vide Government Order dated 25.11.2020. Therefore, it does not lie in the mouth of the petitioners to plead that promotion quota vacancies are not filled. It is further stated that, at present, there are 26 regular Child Development Project Officers and they are all promoted. By virtue of filling up of 21 posts of Child Development Project Officer by promotion during the pendency of the writ petition, the same has rendered infructuous and is liable to be dismissed.

10. It is further stated by the first respondent that the Department has been providing benefits of financial upgradation to employees who did not get promotion to higher posts. Three such financial upgradations are allowed on completion of 10/20/30 years of regular service counted from the date of entry.

11. It is the specific case of the first respondent that as per the existing norms, allocation of seats for direct recruitment and promotion is not based on the vacancy available, but it is based on total sanctioned posts. To buttress the aforesaid plea, a reference has been given to the Office Memorandum No.1/17/20-MPSC(RR)/DP, dated 9.10.2020. Out of 43 posts of Child Development Project Officer, 32 posts are to be reserved for promotion and 11 posts are to be reserved for direct recruitment. The department has adhered to the Rules of 2017 and there is no question of violation thereof. The cadre strength is to be calculated by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in the cadre.

12. It is the case of the third respondent that it is the prerogative of the State Government to increase or shrink the sanctioned strength of posts and the Office Memorandum dated 9.10.2020 provides the ratio on the basis of total sanctioned

posts and thus the number of posts for direct recruitment comes to 11.

13. Heard learned counsel on either side and perused the documents available on record.

14. At the outset, it is to be noted that pending the writ petition, this court, by order dated 30.10.2018, allowed the respondents to go ahead with the process of direct recruitment, with the condition that the result shall not be declared without the leave of the court. The order aforesaid is reproduced hereunder:

“Heard Shri A. Bimol, learned Senior Counsel appearing for the petitioners.

By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari to quash and set aside the notification dated 5/7/2017, the amendment dated 31/8/2017 and the advertisement dated 11/10/2018 mainly on 2 (two) grounds — one, the determination of the number of posts is erroneous in view of the Recruitment Rules and two, without process for giving promotion to the petitioners being initiated, the respondents have proceeded with the direct recruitment of filling up of 8 (eight) vacancies.

In view of the above, let the petition be admitted and notice be issued to the respondents returnable on 23/11/2018 (Friday).

Shri H. Debendra, learned Government Advocate accepts notice on behalf of Respondent Nos. 1 & 2 and Dr. R.K. Deepak, learned counsel accepts notice on behalf of Respondent No. 3 and hence, no formal notice is called for.

When the matter was listed yesterday, i.e. 29/10/2018 Shri H. Debendra, learned Government Advocate was given time to seek instructions in the matter and today, Shri H. Debendra, learned Government Advocate has submitted on instructions that the Department has agreed to the claim of the petitioners to complete the process for promotion before the completion of the direct recruitment process. Respondent Nos. 1 & 2 are directed to file an affidavit incorporating therein the instructions given to the learned Government Advocate.

In view of the above said submission, the respondents are permitted to go ahead with the process for direct recruitment but the result thereof shall not be declared without the leave of this Court. However, it is open to the State Government to approach this Court for modification of this interim order. A copy of the order may be furnished to Shri H. Debendra, learned Government Advocate for doing the needful.”

[emphasis supplied]

15. However, it is seen that one Arbin Salam, who appeared in the written examination conducted for direct appointment to the vacant posts of Child Development Project Officers, filed W.P.(C) No.517 of 2021 seeking, inter alia, to declare the result of written examination conducted for appointment to the post of Child Development Project Officer. In the said writ petition, this court, by order dated 27.8.2021, directed the Public Service Commission to declare the result of

the written examination held in pursuance of the impugned advertisement dated 11.10.2018 and conduct viva-voice. The said exercise was directed to be undertaken within a period of three months from the date of receipt of a copy of the said order.

16. As the Public Service Commission is bound to comply with the direction of this Court dated 27.8.2021 passed in W.P. (C) No.517 of 2021, they filed M.C.No.228 of 2021 to declare vacate/modify the interim order dated 30.10.2018 passed in W.P.(C) No.1002 of 2018.

17. At this juncture, it is apposite to refer to the Office Memorandum dated 9.10.2020, by which an amendment of MPSC Form 8 was effected as under:

"Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer & percentage of the total sanctioned post to be filled by various methods."

18. It is the case of the petitioners that the number of posts to be filled up by promotion and direct recruitment should be calculated based on the number of vacancies. Such submission of learned counsel for the petitioners runs counter to the settled principles of law. The Hon'ble Apex Court considered the difference between "post" and "vacancy" and the right to be considered for appointment/quota for each source of recruitment specified in the Rules in the case of Srikant Roy and others v. State of Jharkhand and others, (2017) 1 SCC 457. In paragraph 24 of the said judgment, it has been held as under:

"24. The High Court has overlooked the distinction between "post" and "vacancy". If the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in service judicial officers by promotion through Limited Competitive Examination. The cadre strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of quota has to be worked out in relation to number of posts which form the cadre and has no relevance to the vacancy that would occur. This aspect has been glossed over by the High Court in the impugned judgment. Suffice it to observe that as no post for direct recruits existed as on 30th April, 2008, the challenge to the selection process to fill up the vacancy by promotion through Limited Competitive Examination, at the instance of aspiring candidates by direct recruitment cannot be countenanced. The Writ Petition filed by such aspiring candidates (WP(S) No. 4159/2008), therefore, ought to have been dismissed by the High Court."

[emphasis supplied]

19. The Hon'ble Apex Court had emphatically held that the percentage of quota has to be worked out in relation to number of posts which form the cadre and

has no relevance to the vacancy that would occur. Therefore, the entire argument of learned counsel for the petitioners for fixation of the number of posts based on the vacancies has no legs to stand and is a misconception.

20. Moreover, the State Government by dint of the Office Memorandum dated 9.10.2020 is empowered to increase or shrink the sanctioned strength of posts and provides the ratio on the basis of total sanctioned posts and not on the number of vacancies.

21. It is beyond any demur that during the pendency of the writ petition, 21 posts of Child Development Project Officer were filled by giving promotion to the eligible Supervisor/Statistical Assistant/Asst. Child Development Project Officer vide Government Order dated 25.11.2020. Thereafter, by order dated 9.3.2022, the Government of Manipur, appointed many of the petitioners herein to the post of Child Development Project Officer by way of promotion. Therefore, it cannot be pleaded by the petitioners that they are working in dead-end jobs and were deprived of their promotion.

22. For the foregoing reasons, we do not find any merit in this writ petition and the same is accordingly liable to be dismissed.

23. Consequently,

a) the writ petition is dismissed;

b) M.C. (WP(C)) No.228 of 2021 to vacate the interim order dated 30.10.2018 passed in W.P. (C) No.1002 of 2018 is allowed.

c) The Respondent authorities may proceed further and complete the direct recruitment process in accordance with law.

d) There will be no order as to costs.