

(2005) 09 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 299 of 2002

O. Premkumar Singh and Others	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Posts and Services (For Scheduled Castes and Scheduled Tribes) Act, 1975 — Section 7

Citation : (2005) 09 GAU CK 0019

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Advocate : H.S. Paonam, for the Appellant; Jalaluddin, for the Respondent

Judgement

T.N.K. Singh, J.—Heard Mr. H.S. Paonam, learned Counsel for the Petitioners as well as Mr. Jalal Uddin, learned Government Advocate for all the Respondents.

2. The short factual matrix of the Petitioners' case is that the Director, Manipur Fire Services, Government of Manipur issued requisition form dated 29.10.1999 for notifying vacancies in the Fireman Driver to the Employment Exchanges and others. In the said requisition form it had been mentioned very clearly that the said 11 (eleven) posts of Fireman Driver, for which the said requisition form of notifying vacancies was issued, are temporary. Admittedly, out of the said eleven vacancies in the post of Fireman-Driver, 4 (four) vacancies had been reserved for the Scheduled Tribe candidates and 7 (seven) vacancies were for the general candidates. In pursuance of the said requisition made by the Director, Fire Services, Government of Manipur for the said eleven vacancies, in the post of Fireman/Driver, all the present writ Petitioners along with others were sponsored by their respective Employment Exchanges for consideration for appointment to the said posts of Fireman/Driver.

3. A large number of sponsored candidates including the writ Petitioners appeared in the Physical Test for the said eleven vacancies in the posts of Fireman/Driver and by notification dated 5.6.2000 issued by the Director,

Manipur Fire Services, Government of Manipur, for notifying the list of successful candidates in the said physical test, only 17 (seventeen) general candidates including the present Petitioners (4 in Nos) had been declared successful for the said post of Fireman/Driver. As none of the ST candidates were successful for the said four reserved vacancies for the post of Fireman/Driver, the Director, Fire Services, Government of Manipur under his letter being No. 1/1/Estt./ 99-FS/5481 dated 20.12.99 sought the necessary permission/approval from the Home Department, Government of Manipur for re- advertisement of the said four reserved vacancies in the post of Rifleman. The Home Department, Government of Manipur under letter of the Deputy Secretary (Home), Government of Manipur being No. 12/I(33)/99- H dated 13.1.2000, in reply to the said letter of the Director of fire Services, Government of Manipur dated 20.12.99 directed the Director, Fire Services to the effect that-if at the moment, the reserved candidates are not available vacancies maybe carried forward and the vacant posts may be filled up by the General Candidates. Action may be taken upto accordingly. For easy reference, the said letter of the Deputy Secretary, Home, Government of Manipur dated 13.1.2000 is quoted hereunder:

Government of Manipur Home Department No. 12/1/33/99-H Imphal, the 13th Jan., 2000. To The Director, Fire Services Department, Manipur. Subject: Appointment/recruitment of Sub- officer/Fireman Driver and Fireman by direct recruitment-Regarding. Sir,

I am directed to refer to your letter No. 1/1/ Estt./99-FS/5481 dated 20.12.99 on the above subject and to say that if reserved candidates (ST/SC) are not available at the moment, the vacancies may be carried forward and the vacant posts may be filled up by the General Candidates. Action may be taken up accordingly.

Sd/- (M. Joy Singh) Deputy Secretary (Home), Government of Manipur. 4. As per the direction of the Home Department, Government of Manipur under letter dated 13.1.2000, the Director, Fire Services, Manipur took up necessary steps for carrying forward the four reserved vacancies to subsequent three recruitment years by de- reserving the said reserved vacancies for filling up by the General candidates. Accordingly, the Director, Fire Services, Government of Manipur proceeded the recruitment test by holding interview of the said 17 (seventeen) successful candidates including the present writ Petitioners on 12.6.2000 for appointment to the said eleven vacancies in the post of Fireman/Driver of Manipur Fire Services, Government of Manipur. Thereafter, the Director, Fire Services, Manipur also issued a notification being No. 1/1/ESTT./98-FS/ Dated 14.6.2000 for notifying that driving test of candidates who had been interviewed on 12.6.2000 for appointment to the post of Fireman/Driver of the Fire Services, Manipur will be held on 21.6.2000 at 10.30 AM at Fire Service Head Quarters, Imphal, as per schedule, driving test was held in respect of all the qualified candidates including the present Petitioners. After completion of the DPC proceeding held from 12th to 22nd June, 2000 for appointment/recruitment of

Fireman/Drivers, the said DPC had recommended eleven candidates from the general category for appointment to the said eleven vacancies which include four reserved vacancies. After completing the said DPC proceeding for recruitment to eleven vacancies in the posts of Fireman/Driver, the Director, Fire Services, Manipur under his letter being No. 1/1/ESTT/98-FS dated 30.6.2000 sent the proceeding of the DPC to the Officer On Special Duty, Home, Government of Manipur for necessary perusal and further order so as to enable the Director, Fire Services, Manipur to issue appointment orders. A copy of the DPC meeting held from 12th to 22nd June, 2000 for recruitment to the said eleven posts in the post of Fireman/Driver are available in the record of this writ petition. In para 8 of the said DPC proceeding it has been mentioned very clearly that:

All the 56 candidates who qualified for PET for the post of Fireman Driver participated in PET but only 17 candidates qualified in the test. No ST/SC candidate qualified in the PET. Accordingly a reference was made to the Commissioner (Home). Government of Manipur for re- advertisement of the 4 vacancies of Fireman Driver reserved for ST. However. Home Department directed vide their letter No. 12/1 (33V99 H dt. 13.1.2000 that "if reserved candidate (ST/ SC) are not available at the moment, the vacancies may be carried forward and the vacant posts may be filled up by the General Candidates.

5. The Home Department, Government of Manipur, who had turned down the request of the Director, Fire Services, Government of Manipur for re- advertisement for the said four reserved vacancies in the post of Fireman/Driver and directed to proceed for carrying forward the said four vacancies in the subsequent requirement years for filling up the said reserved vacancies by the General Candidates, again wrote a letter being No. 12/1/ (33)/99-H/7567 dated 2.2.2002 to the Director, Fires Services, Government of Manipur for withdrawing/ cancelling the earlier letter of Home Department being: (1) No. 12/1 /(33)/99-H/7520 dated 31.1.2002 and (2) No. 12/1 (33)/99-H/7521 dated 31.1.2002, conveying therein the approval of DPC proceeding for recruitment of Fireman and Fireman/Driver held from 12th-22nd June, 2000 and 17th October, 2001 immediately. Later on, the Home Department under letter of the Joint Secretary, Home, Government of Manipur being No. 12/I(33)/99-H dated 18.2.2002 informed the Director, Fire Services, Manipur that DPC recommendation for appointment of eleven Fireman/Driver will be restricted to appointment of the first 7 (seven) Fireman/Drivers and approval is therefore given only for 7 (seven) fireman drivers, for the reason that recommendation of four general candidates against the four reserved vacancies for ST is in contravention of the Rules and instructions of the Government of India which clearly states that vacancies should be carried forward for three recruitment years for filling up ST candidates. The present Petitioners (4 in Nos.) appear their names at SI. Nos. 8,9,10 and 11 respectively in the list of the recommended candidates for appointment to the said eleven vacancies in the post of Fireman/Drivers and as such, if recommendations of eleven candidates for the post of Fireman/ Driver are to be restricted to the appointment of first 7 Fireman/Drivers, the writ Petitioners are

not going to be appointed to the said 4 (four) deserved vacancies. Being aggrieved by the decision of the Home Department restricting the appointing the appointment to first 7 Fireman/Drivers out of 11 candidates recommended by the said DPC held from 12- 22 June, 2000, Petitioners filed the present writ petition.

6. Respondents also filed their affidavit- in-opposition. The only ground taken by the Respondents in their affidavit-in-opposition are that according to the office memorandum dated 25.4.1989 of the Government of India, Department of Personnel and Training. New Delhi adopted by the Government of Manipur under the office memorandum dated 1.9.92 there is a complete ban on de-reservation in direct recruitment to the vacancies and also certain procedures are prescribed for de-reservation of the reserved vacancies. According to the said office memorandum dated 1.9.92, the said four reserved vacancies in the post of Fireman/Drivers cannot be filled up by the general candidates. The relevant portion of the office memorandum dated 25.4.1989 are quoted hereunder:

No. 36012/6/88-Estt(SCT) Government of India Department of Personnel & Training New Dethi, the 25thApril, 1989 OFFICE MEMORANDUM Subject: Ban on deservation in direct recruit ment to vacancies under the Govern ment.

The existing orders and instructions with regard to reservation for Scheduled Castes and Scheduled Tribes in post/services under the government have been reviewed. In order to protect to protect the interest of SC/ST communities and to ensure that posts reserved for them are filled up only by such candidates, it has now been decided that where sufficient number of candidates belonging to SC/ST are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies shall not be filled by candidates not belonging to these communities. In other words, there will be a ban on dereservation. This will come into effect from 1.4.1989 in respect of all direct recruitment to be made, to fill up vacancies in Group "A", "B" "C" & "D" It is further clarified that this ban will apply to the vacancies which arises after 1.4.1989 but also to the vacancies reserved for SC/ST communities of earlier years which have not yet been filled up by other community candidates whether such vacancies have been dereserved or not.

2. Hereafter, in all cases of direct recruitment to fill up vacancies in posts/ services in Group "A". "B". "C" & "D" if sufficient number of suitable SC/ST candidates are not available to fill up vacancies reserved for them in the first attempt of recruitment, then a second attempt shall be made foT recruiting suitable candidates belonging to the concerned category in the same recruitment year or as early as possible before the next recruitment to fill up these vacancies. If the required number of SC/ST candidates are not even then available, the vacancies which could not be filled up shall remain unfilled until the next recruitment year. These vacancies will be treated as "Bcklog" vacancies.

7. As stated above, the Home Department, Government of Manipur had turned down the request of the Director, Fire Services, Manipur to re-advertise the said

four reserved vacancies in the post of Fireman/ Driver in pursuance of the para-2 of the office memorandum dated 25.4.89 in the same recruitment year as early as possible and directed the Director, Fire Services, Manipur to carry forward the said four reserved vacancies in the next three subsequent years for filling up by the general candidates under the said letter of the Home Department, Government of Manipur dated 13.1.2000. Such being the situation, the Home Department, Government of Manipur is barred from accepting the part of the DPC proceeding held on 12-22 June, 2000 for appointment to the 11 vacancies in the post of Fireman/Driver to the extent of only first seven candidates and by not accepting the part of the list of selected candidates which consists of 11 candidates including the present Petitioners on the ground that DPC cannot recommend general candidates against the four reserved candidates.

8. The Legislature of Manipur State Assembly had enacted an Act called "The Manipur Reservation of Vacancies in the Post and Services (For Scheduled Castes & Scheduled Tribes) Act, 1976". According to Section 7 of the said Act of 1976, if in my recruitment year, number of candidates either from SC & ST is less than the number of vacancies reserved for them even if exchange of reservation between the SC/ST, the remaining vacancies maybe filled up by general categories after dereserving the vacancies. Section 7 of Act of 76 reads as follows:

7. If, in any recruitment year, the number of candidates either from Scheduled Castes or Scheduled Tribes is less than the number of vacancies reserved for them even after exchange of reservation between the Scheduled Castes and Scheduled Tribes, the remaining vacancies may be filled up by general candidates after dereserving the vacancies in the prescribed manner, but the vacancies so dereserved may be carried forward to subsequent three years of recruitment.

Provided that such carry forward should also be permitted in respect of vacancies so dereserved in proceeding three years prior to enforcement of this Act.

Provided further that in the years following the recruitment years the normal reserved vacancies together with the vacancies carried forward shall not exceed fifty percent of the total number of vacancies of the year in which recruitment is made and the excess over fifty per cent of reserved vacancies shall be carried forward to subsequent years of recruitment.

9. Para-8.2 of Chapter 8 of Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services, deal with advertisement of reserved vacancies for the posts filled up by direct recruitment through examination and it read as follows:

8.2. Advertisement of reserved vacancies for posts filled by direct recruitment through examination.

Where direct recruitment is made through examination for reserved as well as

unreserved vacancies, a single advertisement would be issued for such examination but the number of the vacancies reserved for Scheduled Castes and Scheduled Tribes would be specified clearly in it and in case the required number of Scheduled Castes or Scheduled Tribes candidates are not available even by applying relaxed standards for the vacancy/vacancies reserved for them, the remaining vacancy/vacancies could be filled by general candidates after dereservation of such vacancy/vacancies subject to the reservations being carried forward as required.

10. 10. Para 10.1 of Chapter 10 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services deals with the procedure for dereservation and it reads as follows:

10.1. A vacancy reserved for Scheduled Castes or Scheduled Tribes may be filled up by general candidates in case of non-availability of suitable Scheduled Castes or Scheduled Tribes candidates by dereserving it in accordance with the prescribed procedure. In case of direct recruitment, prior approval of the Department of Personnel & reserved for Scheduled Caste or Scheduled Tribe which is included in the roster for permanent appointment and temporary appointment likely to become permanent or to continue indefinitely. Reserved vacancies included in the roster for purely temporary appointments, which have no change whatever of becoming permanent or continuing indefinitely can, however, be dereserved by the Ministries themselves after ensuring that the steps prescribed in paras 8.1 to 8.4 have been duly taken to secure suitable Scheduled Castes and Scheduled Tribes candidates and that such candidates are not available.

11. From the above portion of the Brochure, it is clear that decision insofar as the vacancies in the temporary posts are concerned respective Ministry themselves can take decision for dereservation. In the case in hand, as stated above, the eleven posts of Fireman/Drivers are temporary and appointment will be temporary only, and as such, the Home Department is the competent authority for taking decision for dereservation of the four reserved vacancies by carrying forward the vacancies so dereserved to the subsequent three recruitment years under the said letter of Home Department, Government of Manipur dated 13.1.2000 to the Director, Fire Services, Manipur. In the present case, it is admitted by the State Respondents that the Home Department/Home Ministry, Government of Manipur is the competent authority to take decision for dereservation of the said 4 (four) vacancies in the temporary posts of Fireman/Driver.

12. As discussed above, the reserved vacancies could be dereserved and after dereserving the vacancies, general candidates can fill up the dereserved vacancies. But the vacancy so dereserved shall be carried forward to the subsequent three years of recruitment. It is now well settled that the office memorandum like the said office memorandum dated 25.4.89 is only a guideline and it is also equally well settled that an effort should be made to give effect to

all parts of the office memorandum and unless absolutely necessary, no part therein shall be rendered surplusage or redundant. Therefore, the Home Department, Government of Manipur cannot give effect to only a part of the office memorandum dated 25.4.89 by accepting and approving a part of the DPC proceeding held from 12-22 June, 2000 for recruitment of eleven vacancies in the post of Fireman/Drivers inasmuch as if the Home Department really wanted to follow strictly the guidelines provided in the office memorandum dated 25.4.89, they should have taken up steps in compliance with para-2 of the office memorandum whereunder second attempt shall be made for recruiting suitable candidates belonging to the reserved category in the same recruitment year before the next recruitment year to fill up the said four reserved vacancies in the post of Firemen/Driver. In the present case the Home Department had even turned down the request of the Director, Fire Services, Manipur to make second attempt for recruiting suitable candidates belonging to the reserved category in the same recruitment year to the said four reserved vacancies for the post of Fireman/Driver and after such refusal the Home Department cannot turn around and said that recommendation of the general candidates for the said four reserved vacancies cannot be accepted.

13. We may recall the decision of the Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, that "it is not and cannot be the intention of the Legislature that what has given by one hand should be taken away by the another hand". We may recall the decision of the Apex Court in Dr. Sadhna Devi and others Vs. State of U.P. and others, that if the seat reserved for SC/ST/OBC candidate cannot be filled up on account of failure of the candidates belonging to those category to obtain minimum qualifying marks, then such seats should be made available to the candidates belonging to general category. In that case, seats for Post Graduate studies in medical science reserved for SC/ST/OBC candidates cannot be filled up because of the failure of the candidates belonging to that category to obtain minimum qualifying marks. In the present case in hand also, as stated above, the candidates belonging to the ST category failed to qualify for the said four reserved vacancies in the post of Fireman/Driver. No doubt, as held by the Apex Court in M. Venkatwarlu v. Govt, of A.P: (1996) 5 SCC 176; it is the constitutional obligation of the concerned authority to fill up the backlog reserved vacancies by the candidate belonging to those categories. In compliance of the constitutional obligation, in the present case also, as directed by the Home Department, the Direct. Fire Services. Manipur is carrying forward the said four reserved vacancies in the next three subsequent recruitment years for the purpose of filling up the vacancies so dereserved by the candidates belonging to those reserved categories.

14. The Apex Court in Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, held that the concerned Government has no absolute discretion in the matter of approval of the select list sent by the PSC (Public Service Commission) and the concerned Government cannot pick up and choose or approve a part of it and reject the other part. The last part of para of the SCC

in *Asha Kaul (Ms.) and Anr. v. State of Jammu and Kashmir and Ors.* (supra) reads as follows:

... But if the Government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (thirteen out of twenty names), they cannot put forward any ground for not approving the remaining list. Indeed, when it approved the list to the extent of thirteen, it ought to have approved the entire list of twenty or to have disapproved the entire list of twenty. The objections the Government have pertain to the very process of selection i.e., to the entire list, and not individually to any of the remaining seven candidates.

15. The Apex Court reiterated the same principle in *Santosh Kumar and Others Vs. G.R. Chawla and Others*, and held that; the State should either to accept the list of the candidates recommended by the Public Service Commission in toto or place the matter before the Legislative Assembly by not accepting the whole and further policy of pick and choose is not permissible. The relevant portion of para-12 of the SCC in *Santosh Kumar and Ors. v. G.R. Chawla and Ors.* (supra) reads as follows:

12. The recommendations of PSC are only advisory in nature. Hence it was open for the Government either to accept the recommendation or decline to accept the same but if it has chosen not to accept the recommendation of the Commission the matter should have been placed before the Legislative Assembly, but in the instant case it was not done. Instead of accepting the merit list in toto, the State Government regularized the services of certain promotees and tried to allow the promotees to steal a march over the direct recruits when inter se seniority ought to have been determined serially in the merit list of the Public Service Commission. The State Government cannot adopt a policy of pick and choose out of the merit list recommended by the PSC.

16. In the case in hand, the Petitioners filed the present writ petition during the validity period of the panel prepared by the said Selection Committee for recruitment to the said eleven vacancies to the post of Fireman/ Driver. The Apex Court in *State of U.P. Vs. Ram Sawrup Saroj*, held that claim of the candidates included in the panel, cannot be defeated because currency of panel expired during pendency of the litigation when the candidates had staked his claim during the currency of the panel. Further, the Apex Court in *Vijay Kumar Sharma and Others Vs. Chairman, School Service Commission and Others*, held that while the vacancies are existing, denial of appointment to the selected candidates and allowing the panel to lapse are unjustified. No doubt, the mere inclusion in the select list does not confer upon the candidate any indefeasible right to appointment but it is also equally well settled that the appointing authority cannot arbitrarily refuse to appoint the selected candidate when the vacancy is available and also the Government intended to fill up the said vacancies. In the case in hand, admittedly, vacancies in the post of Fireman!

Driver are available and Director, Fire Services, Manipur is very much keen to fill up the said vacancies by the candidates recommended by the said duly constituted DPC held from 12-22 June, 2000. The purpose of power in the High Court under Articles 226 and 227 of the Constitution of India is to advance justice not to thwart it. Even when justice is the by-product of erroneous interpretation of law, High Court ought not to wipe out such injustice in the name of correcting error of law *Roshan Deen Vs. Preeti Lal*, The Apex Court in *Air India Statutory Corporation v. United Labour Union and Ors.* reported in 1997 (2) Supreme 165 held that arm of the Court is long enough to reach injustice.

17. For the reasons discussed above, Respondents are directed to take up the case of the Petitioners (4 in Nos.), whose merit positions are 8, 9, 10 and 11 respectively in the eleven candidates recommended by the said DPC in its meeting held from 12th-22nd June 2000, for appointment to the posts of Fireman/Drivers if otherwise not disqualified, within a period of three months from the date of receipt of this judgment and order.

Taking into the entire facts and circumstances of the present case, parties have to bear their own costs.