

(2014) 09 MAN CK 0012

In the Manipur High Court

Case No : Writ Petition(C) No. 207 of 2014

R. Ningthoujao

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 09 MAN CK 0012

Hon'ble Judges : Laxmi Kanta Mohapatra, J

Bench : Single Bench

Advocate : M. Devananda Singh, Advocate for the Appellant; Manomala, GA, Shyam Sharma and Y. Nirmolchand, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Laxmi Kanta Mohapatra, J.—Petitioner in this writ application prays for a direction to the respondents to consider him for promotion to the post of Assistant Engineer (IFCD) Manipur under Scheduled Tribe quota of degree holders with reference to the Recruitment Rules of 2013.

2. The case of the petitioner is that he is a Scheduled Tribe and has obtained a degree in Civil Engineering. He was initially appointed as Section Officer Grade-I on 6.12.1999 in IFCD, Manipur after being selected for appointment to the said post. According to the petitioner, he was eligible for promotion to the post of Assistant Engineer w.e.f. 6.12.2002. However, after serving for 10 years as Section Officer Grade-I in the IFCD, he was kept in-charge of the post of Assistant Engineer against an existing vacancy by order dated 29.5.2009.

When the petitioner was continuing as such, the Department of Personnel & Administrative Reforms published a Notification laying down recruitment rules for Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of works in PWD, IFCD & PHED under Art. 309 of the Constitution of India in supersession of all the previous rules. The said rules were published in the Gazette on 3.9.2013. With

reference to the said rules, further case of the petitioner is that reservation of SC & ST in promotion quota shall be against overall vacancy and not with reference to sub quota. Out of the number vacancies, 60% are required to be filled up by way of promotion and rest 40% by way of direct recruitment. Out of 60% promotion quota, 50% thereof shall be by selection from officers holding degree/AMIE in Civil/Mech. Engineering or its equivalent from a recognized University. If sufficient number of officers holding degree/AMIE or its equivalent are not available for promotion, the remaining vacancies for that sub quota may be filled up by persons possessing diploma in Civil/Mech. Engineering. The rest 50% out of 60% promotion quota have to be filled up by selection from diploma holders in Civil/Mechanical Engineers after doing a minimum 3 years course from a recognized Institution. For several years, the promotional posts were not filled up and after publication of the final seniority list of Section Officer Grade-I (Degree holders) on 25.1.2014, steps were taken for holding DPC to fill up 27 vacancies in the cadre of Assistant Engineer/ASW/EA (Civil/Mechanical) for promotion in the Department of Irrigation & Flood Control. The petitioner, having been placed at serial No. 55 in the final seniority list of Section Officer Grade-I (degree holders), the extended zone of consideration for ST candidates would be 5 times the number of vacancies. Therefore, taking into consideration of the overall vacancies available to be filled up, i.e. 27, the petitioner comes within the zone of consideration and accordingly a prayer has been made to consider his case for promotion to the post of Assistant Engineer.

3. A counter affidavit has been filed by the respondent No. 3, i.e. Manipur Public Service Commission with reference to Office Memorandum dated 29.4.1999 issued by the Govt. of Manipur in the Department of Personnel & Administrative Reforms. It is contended in the counter affidavit that after calculation of the vacancies the DPC is to determine the actual number of vacancies that arose for each of the previous years immediately preceding and the actual number of regular vacancy proposed to be filled up in the current year separately. Thereafter, the DPC in respect of each of the year, shall consider those officers who would be within the field of choice with regard to the vacancy of each year starting with the earliest year onwards and thereafter prepare a select list by placing the select list of the earlier year above the one for the next year and so on. It is further stated in the counter affidavit of the respondent No. 3 that following the above guidelines for promotion to the 27 vacancies was considered by the DPC year-wise and in none of the years the petitioner could come even within the extended zone of consideration and accordingly his case could not be considered for promotion.

4. A counter affidavit has also been filed by the respondent No. 1, Commissioner/Secretary (IFCD), Govt. of Manipur wherein a similar stand has been taken as that of the respondent No. 3.

5. Shri Shyam Sharma, learned counsel appearing for the respondent No. 3 produced copy of the DPC proceeding held on 12.2.2014. From the said

proceeding, it appears that there were 4 vacancies in 2007-08, 3 vacancies in 2008-09, 2 vacancies in 2009-10, 11 vacancies in 2010-11, 4 vacancies in 2011-12 and 3 vacancies in 2012-13. Though the Recruitment Rules of 2013 provide that reservation of SC and ST in promotion quota shall be with reference to overall vacancies and not with reference to sub quota, the guidelines prescribed under the Office Memorandum dt. 29.4.1989 provides that consideration shall be made by the DPC year-wise. The relevant guidelines for the purpose of this case are quoted below:

"5.3.2. There shall be no separate assessment for reserved category candidates and bench-mark prescribed for the un-reserved category shall apply.

Preparation of year-wise panels by DPC where they have not met for a number of years.

5.4.1 Where for reasons beyond control, the DPC could not be held in a year (or years), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:-

(a) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(b) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(c) Prepare a "Select List" by placing the select list of the earlier year above the one for the next year and so on."

6. From the above guidelines, it is clear that within the sub quota officers have to be considered year-wise for the previous year. On perusal of the DPC proceeding, I find that there were 4(four) vacancies in 2007-08 out of which one was reserved for SC degree holder and 1(one) for ST diploma holder. The petitioner did not come within the extended zone of consideration for that year. Similarly for the rest of the years, the DPC has considered the number of posts available for the reserved category for the degree holders as well as for diploma holders, but in none of the years, petitioner could not come even within the extended zone of consideration. Since the Govt. of Manipur has issued Office Memorandum laying down guidelines for DPC for consideration of officers for promotion to higher posts, it was adopted by the DPC in its meeting held on 12.2.14. The petitioner having not come within the extended zone of consideration for none of the years starting from 2007-08 to 2012-2013, his claim for consideration of his case for promotion to the post of Assistant Engineer cannot be allowed. Even if over all vacancies are taken into consideration, number of vacancies accumulated from the previous years so far as officers belonging to ST category comes to eight. Still then the petitioner does not come within the extended zone of consideration. Accordingly, writ petition, being devoid of merit, is dismissed.