

(2015) 03 MAN CK 0011
In the Manipur High Court
Case No : Writ Appeal No. 26 of 2007

State of Manipur and Others	Vs	APPELLANT
Aribam Laxmirani Devi and Others		RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Haryana Civil Services (Executive Branch) and Allied Services and other Services common/combined Examination Act, 2002 — Section 4

Citation : (2015) 03 MAN CK 0011

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J.; Kh. Nobin Singh, J.

Bench : Division Bench

Advocate : Y. Ayang, G.A., for the Appellant; N. Ibotombi, assisted by A. Rommel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Laxmi Kanta Mohapatra, C.J.—State has preferred this appeal against the judgment and order of the learned Single Judge dated 24.2.2006 in Civil Rule No. 875 of 1997. The respondent No. 1 was the petitioner in the writ petition and the respondent No. 2 was respondent No. 4 in the writ petition.

2. In response to a Notification dated 25.4.1997 issued by the Employment Officer, Imphal calling for applications from eligible candidates for appointment to one post of Junior Lecturer(Sitar) in the State Music College, Imphal, both the respondents submitted their respective applications for appointment to the said post. The DPC was convened on 30.5.1997 to select a candidate for appointment to the said post and recommended for appointment of the present respondent No. 2 to the post of Junior Lecturer (Sitar) in the Government Music College, Imphal. Challenging such selection of the present respondent No. 2, the respondent No. 1 filed the writ application.

3. In the writ petition, though the present respondent No. 1 had challenged selection of the present respondent No. 2 on several grounds- such as absence of an expert in the Committee, recommendation of the present respondent No. 2

having been made on extraneous consideration etc., the learned Single Judge, on perusal of the relevant records, found that non maintenance of records, work sheet etc. for consideration of relative merit of the candidates by the DPC held on 30.5.1997, is a compelling factor for interference in the selection proceeding. However, having rendered such a finding the learned Single Judge did not interfere with the selection of the present respondent No. 2 for appointment to the post of Junior Lecturer (Sitar) on the ground that such appointment had been offered to her in the year, 1997 and during pendency of the writ petition, by order dt. 28.11.2005 she had also been promoted to the post of Senior Lecturer (Sitar). However, considering the recommendation of the DPC to keep the respondent No. 1 in the panel for appointment to the probable vacant post of Junior Lecturer (Sitar), the learned Single Judge directed that consequent upon promotion of the present respondent No. 2 to the post of Senior Lecturer (Sitar), the vacancy created by her in the post of Junior Lecturer (Sitar) be filled up by appointing the present respondent No. 1.

4. Challenging the said order of the learned Single Judge, this appeal has been filed solely on the ground that the vacancy created due to promotion of the present respondent No. 2 to the post of Senior Lecturer (Sitar), could only be filled up by way of fresh recruitment and the learned Single Judge could not have directed for appointing present respondent No. 1 against the said post merely because she had also been recommended in 1997 to be kept in wait list.

5. Mr. Y. Ayang, learned counsel appearing on behalf of the appellants submitted that normally a wait list is kept alive for a period of one year and by the time writ petition was disposed of in 2006, almost 9(nine) years had elapsed from the date the DPC recommended to keep the present respondent No. 1 in the wait list. Therefore, the learned Single Judge could not have directed to fill up the said post of Junior Lecturer (Sitar) by appointing the present respondent No. 1. It was further submitted that there was an amendment to the Rules in the recruitment to the post of Junior Lecturer (Sitar) prior to availability of the vacancy on promotion of the present respondent No. 2 to the post of Senior Lecturer (Sitar). Under the amended Rules, the present respondent No. 1 was not qualified to be appointed to the said post and therefore the direction of the learned Single Judge to appoint the present respondent No. 1 is not in accordance with law.

6. Mr. N. Ibotombi, learned senior counsel appearing for the respondent No. 1 submitted that the appointment of the present respondent No. 1 would be governed by the Rules that were in existence at the time of selection and she would not be governed by the amended rules. It was also contended that the DPC, having recommended to keep the respondent No. 1 in wait list for appointment against a probable vacancy in the post of Junior Lecturer (Sitar), the learned Single Judge committed no mistake in directing to offer appointment to the present respondent No. 1 against the vacant post of Junior Lecturer(Sitar).

7. Undisputedly, both the respondents had applied for appointment to the post of Junior Lecturer (Sitar) in the Government Music College, Imphal in pursuance of

the Notification dt. 25.4.1997 issued by the Office of the Employment Officer, Imphal and both of them were also qualified for being appointed to the said post. The DPC which was constituted to conduct the selection held its meeting on 30.5.1997 and recommended the present respondent No. 2 to be appointed against the sole vacancy in the post of Junior Lecturer (Sitar). However, the DPC also recommended that the writ petitioner be kept in the panel for appointment against the probable vacant post of Junior Lecturer (Sitar). The Rules relating to the Recruitment which were in existence at the time of such recruitment does not show anywhere that the panel for appointment against future vacancy would remain valid for one year. The learned State Counsel, even on being questioned by the Court, could not show that the panel prepared by the DPC could only remain valid for a period of one year. The amendment to the Recruitment Rules only relates to the qualifications required for appointment to the post of Junior Lecturer (Sitar). Though a vacancy was available in the post of Junior Lecturer (Sitar) consequent upon promotion of the present respondent No. 2 to the post of Senior Lecturer (Sitar), after the amendment was brought into force, the first selection having been conducted in the year, 1997, the case of the present respondent No. 1 will be governed by the then existing Rules and not by the amended Rules. Since prior to amendment the present respondent No. 1 had satisfied all the criteria relating to educational qualifications, she was considered and recommended to be kept in the panel for appointment against future vacancy. Therefore, in relation to the second ground of challenge, we find no substance to interfere with the impugned judgment.

8. So far as the first ground of challenge is concerned, the learned counsel for the State could not produce any Rule or Office Memorandum prescribing that a select panel shall remain valid for period of one year from the date of its publication. By the time writ petition was heard by the learned Single Judge, the vacancy that had occurred in the post of Junior Lecturer(Sitar) consequent upon promotion of the present respondent No. 2 to the post of Senior Lecturer(Sitar) had not been filled up, though an advertisement had been issued calling for applications to fill up the said post. It is not that the learned Single Judge was not aware of this fact while delivering the judgment. Being aware of the said fact, the learned Single Judge, in the impugned judgment, had done substantive justice by directing the State authorities to appoint the present respondent No. 1 against vacant post of Junior Lecturer (Sitar) instead of going in for fresh recruitment. This order has been passed in absence of any rule or Office Memorandum prescribing that a select panel shall remain valid for a period of one year. As a matter of fact, this issue had never been argued by the learned counsel appearing for the State appellants before the learned Single Judge.

9. The learned State counsel placed reliance on the judgment of the Apex Court in the case of Jaswant Singh Lamba Vs. Haryana Agricultural University and Others, . In the said reported case the question was as to whether a selected candidate has any enforceable right to appointment when the State takes a decision BONA FIDE not to make appointment on the ground that the cadre

strength had been inflated without justification. While deciding the said issue, the Apex Court considered Section 4 of Haryana Civil Service(Executive Branch) and Allied Services and Other Services Common/Combined Examination Act, 2002 and came to a conclusion that u/s 4 of the said Act, no appointment could be made beyond the number of posts advertised or against the posts which were advertised. Referring to the above decision, it was contended by the learned State counsel that in 1997 only one post had been advertised and the same was filled up by appointing the present respondent No. 2 and no further post was available to be filled up. The decision cited is distinguishable on facts. In the reported decision Section 4 of the 2002 Act prohibited appointment beyond the number of posts advertised and in the present case the question involved is different. The question involved in the case is as to whether a candidate from the select panel kept in the wait list could be considered for appointment in absence of any Rule or Office Memorandum prescribing the panel to remain valid for any particular period. We, therefore, are of the view that the above decision has no application to the fact of the present case.

10. Having found that the learned Single Judge has rendered substantive justice by directing the State authorities to offer an appointment to the present respondent No. 1 against the post of Junior Lecturer (Sitar) and the said order, impugned before us, having been passed in 2006, we find no justification to interfere with the said order after lapse of so many years specially in absence of any interim order directing stay of operation of the impugned judgment.

11. Consequently, the appeal fails and is dismissed.