
(2020) 08 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition No. 922 Of 2018

Thangjam Surchandra Singh	Vs	APPELLANT
State Of Manipur		RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21

Citation : (2020) 08 MAN CK 0003

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : Jotindra Luwang, N. Kapilchandra Singh, M. Rarry, A. Romenkumar

Final Decision : Dismissed

Judgement

[1] This writ petition has been filed by the petitioners to quash the order dated 11.4.2018 passed by the second respondent and to direct the official respondents to rectify the date of entry into Government service and the date of appointment to the post as 14.12.1998 in place of 02.12.2013 in respect of petitioner no.1; as 30.01.1999 in place of 02.12.2013 in respect of petitioner no.2 and 10.3.2000 in place of 02.12.2013 in respect of petitioner no.3 appeared in the combined inter se seniority list.

[2] The case of the petitioners is that they were initially appointed as Civil Supply Inspectors on ad hoc basis in the Directorate of Consumer Affairs, Food & Public Distribution, Manipur on 14.12.1998, 30.01.1999 and 10.03.2000 respectively and their services were extended from time to time upto 01.12.2013 without any break on satisfaction of their services. As such the petitioners are still continuing in their respective service till the regularization without any break.

[3] During the extension of ad hoc service, petitioner nos.1 and 2 approached this Court by filing W.P.(C) No.34 of 2000 and by an order dated 01.02.2000, the said writ petition was disposed of by directing the respondents to extend their services and to pay their salary for the period they have served till the post are

filled up on regular basis. It was also directed that the post held by them on ad hoc basis shall be filled up on regular basis as soon as Assembly elections are over and lifting of ban.

[4] Similarly, petitioner no.3 has filed in W.P.(C) No.614 of 2001 and by the interim order dated 19.4.2001, this Court directed the respondents not to oust the petitioner no.3 from his service until further orders and finally, recording the statements of the respondents that the post held by petitioner no.3 was not included in the downsizing, the writ petition was closed on 03.11.2006. The Government has not preferred appeals against the orders dated 01.2.2000 and 19.04.2001 and the same attained finality.

[5] On 03.10.2013, the Deputy Secretary (DP), Government of Manipur issued an Office Memorandum regularizing the services of 288 direct recruit ad hoc employees of various Government Departments and the seniority of such ad hoc appointees should be counted from the date of their regularization. Paragraph 11 of the Office Memorandum clearly states that it shall not be applicable to those cases where appropriate orders had already been passed by Courts for the service protection of the concerned direct recruit ad hoc employees. The said Memorandum also states that it shall not debar the Department to file appeal/application against the order restricting the State Government from terminating their services.

[6] According to the petitioners, on the recommendation of the Special Departmental Promotion Committee and in pursuance of the Memorandum dated 3.10.2013, on 2.12.2013, the services of the petitioners were regularized against the vacant posts as indicated against each with effect from the date of issue of the order. On 18.1.2014, in partial modification of the order dated 2.12.2013, the services of the petitioners were regularized against the vacant posts and pay scale indicated against each of them from the date of their initial appointment.

[7] On 23.02.2018, the Director of CAF&PD has issued an Office Memorandum stating that any suggestion/objection, if any, to the combined tentative inter se seniority list of Civil Supply Inspector/Area Officer/CAF&PD, Manipur should be submitted on or before 8.3.2018. In the tentative inter se seniority list, the name of the petitioners appeared in Serial no.11, 13 and 14 respectively.

[8] It is the case of the petitioners that the date of entry into Government service and date of appointment to the present posts of the petitioners as shown in Serial No.11, 13 and 14 respectively in the combined inter se seniority list are required to be rectified since their ad hoc services were regularized against the vacant posts from the date of their initial appointment i.e., 14.12.1998, 30.01.1999 and 10.03.2000 respectively.

[9] On 07.03.2018/08.03.2018, the petitioners have submitted their objection seeking to rectify the date of entry into Government service and the date of appointment to the present posts as 14.12.1998, 30.01.1999 and 10.03.2000 in the place of 02.12.2013. While that being so, on 11.4.2018, the impugned

combined inter se seniority list of Civil Supply Inspector and Area Officer in respect of Directorate of Consumer Affairs, Food & Public Distribution, Manipur was issued without considering the request of the petitioners where their names have been shown in Serial Nos.9, 11 and 12 respectively. Challenging the impugned final combined inter se seniority list, the petitioners have filed the present writ petition.

[10] Respondent Nos.1 and 2 filed affidavit-in-opposition stating that the petitioners were initially appointed as Civil Supply Inspectors in the then Food and Civil Supply Department on ad hoc basis as stop gap arrangement without proper advertisement and without any recommendation of duly Constituted Departmental Promotion Committee. It is stated that in the earlier writ petitions filed by the petitioners, this Court never directed to regularize the ad hoc services of the petitioners and to give retrospective regularization to them from the date of their initial ad hoc appointment.

[11] According to the respondents 1 and 2, the petitioners have wrongly interpreted the Office Memorandum dated 03.10.2013 and the said Memorandum relates to those direct recruit ad hoc employees whose services had been ordered to be discontinued by the High Court. Since the ad hoc service of the petitioners has never been directed to discontinue by any Court, their ad hoc services are bound by the remaining provisions of the said Memorandum dated 03.10.2013. As such the petitioners are trying to mislead the Court by wrongly interpreting the provisions of the Office Memorandum dated 03.10.2013.

[12] It is also stated in the affidavit-in-opposition that nothing has been mentioned in the order dated 18.01.2014 that the ad hoc services of the petitioners were regularized from the initial date of appointment. However, in the regularization order dated 02.12.2013, it has been clearly mentioned that the effective date of ad hoc services of the petitioners and others shall be from the date of issuing of the regularization order i.e., 02.12.2013. As such, the plea of the petitioners that the date of regularization shall be from the date of initial ad hoc appointment is without any legal basis.

[13] According to the respondents 1 and 2, since the petitioners were only ad hoc appointees, they cannot be treated equally with the regularly appointed private respondents, as unequal cannot be treated equally. The Special Departmental Promotion Committee has considered for regularization of the ad hoc services of the petitioners and others as per the Memorandum dated 03.10.2013 and thereafter, recommended for regularization of their ad hoc services. Moreover, the averment of the petitioners that the order dated 18.01.2014 which was issued to reflect the scales of pay, is the regularization order thereby entitling the petitioners to fix their seniority from the date of their initial appointment is without any legal basis. Since no right accrued to the petitioners to challenge the final combined inter se seniority list dated 11.04.2018, the respondents 1 and 2 prayed for dismissal of the writ petition.

[14] Respondent No.4 filed counter-affidavit stating that the ad hoc appointments of the petitioners as FCS Inspector are de hors the Rules as the ad hoc appointments are in violation of the Constitutional mandates as enshrined in Article 16 of the Constitution of India and as such the appointments were made without proper advertisement and without holding selection. As far as the judicial records are concerned, the judicial records only relate to filling up posts on regular basis along with other eligible candidates and another direction says not to oust the third petitioner. Thus, from the orders it is clear that the appointments of the petitioners are stop gap and fortuitous in nature which are required to be made regular appointment along with other eligible persons. Further, the judicial orders dated 01.02.2000 and 19.04.2001 have nothing to do with the counting of ad hoc period of services for fixing seniority.

[15] It is stated that the Office Memorandum dated 03.10.2013 clearly states that it shall not be applicable to those cases where appropriate orders had already been passed by the Courts for the Service protection of the Concerned direct recruit ad hoc employees. The ad hoc appointment of the petitioners was regularized under Office Memorandum dated 03.10.2013 strictly adhering to the provision of the said Memorandum with effect from the date of regularization i.e., 02.12.2013. Such regularization order is as per the law i.e., Memorandum dated 03.10.2013 which is valid, as nobody has challenged the said Memorandum dated 03.10.2013.

[16] It is also stated that the modified regularization order dated 18.01.2014 was issued to clarify the pay band attached to the post against which the regularization of the ad hoc appointment was made and it is not that the regularization was made from the date of vacant posts. Stating that the inter se seniority between the regularly appointed Area Officers and regularized ad hoc appointees has been validly and legally determined and fixed by the State authority on 11.04.2018 strictly adhering to Clause 6 of the Office Memorandum dated 03.10.2013, the fourth respondent prayed for dismissal of the writ petition.

[17] Assailing the impugned combined inter se seniority list, the learned counsel for the petitioners submitted that on recommendation of the Special Departmental Promotion Committee the ad hoc services of the petitioners were regularized against the vacant posts with effect from the date of issue of the order dated 02.12.2013 issued by the Additional Secretary (CAF&PD), Government of Manipur and that subsequently, the same has been partly modified by an order dated 18.01.2014 by the Additional Secretary (CAF&PD) to the effect that the ad hoc services of the petitioners were regularized against the vacant posts and pay scale from the date of their initial appointment. The learned counsel would submit that on 23.02.2018, a combined tentative inter se seniority list of Civil Supply Inspector/Area Officer was issued by the second respondent and that the petitioners submitted their objection to the combined tentative inter se seniority list, however, without considering the objection of the petitioners, the second respondent published the impugned combined inter se

seniority list of Civil Supply Inspector and Area Officer dated 11.04.2018.

[18] The learned counsel further submitted that non-consideration of the objection of the petitioners is an act violation of principles of natural justice and therefore, the impugned seniority list is defective and not tenable in the eye of law and that the petitioners ought to be regularized from the date of entry into Government. The learned counsel submits that subsequent to the impugned order dated 11.4.2018, the petitioners submitted a joint representation dated 07.09.2018 to the concerned authorities requesting to consider the case for modification/setting aside the order dated 11.4.2018 and also sought rectification of the date of entry into Government service and date of appointment to the post as 14.12.1998, 30.01.1999 and 10.03.2000 respectively in the place of 02.12.2013. Despite receipt of the same, the concerned authority has not passed any order on the joint representation of the petitioners.

[19] The learned counsel next submitted that the petitioners have filed in W.P. (C) Nos.936 of 2017, 403 of 2016 and 402 of 2016 inter alia praying to count the ad hoc period of service rendered by them with effect from the date of their initial appointment till 01.12.2013 as qualifying service for the purpose of pensionary and other retirement benefits in the light of the judgment dated 30.01.2006 passed in W.P.(C) No.1299 of 2005 with its subsequent orders. This Court disposed of the writ petitions by directing the respondents to consider the case of the petitioners as directed in W.P.(C) No.1299 of 2005 with a further direction to the petitioners to file a fresh representation with supporting documents within a period of two months. Since the respondents failed to comply with the directions, the petitioners have filed contempt petitions and the same are pending. Arguing so, the learned counsel for the petitioners submitted that the act of the second respondent in issuing the impugned combined inter se seniority list is arbitrary, mala fide and violative of Articles 14, 16 and 21 of the Constitution of India and therefore, the same is liable to be quashed.

[20] Per contra, the learned Government counsel contended that the request of the petitioners that the date of regularization shall be from the date of initial ad hoc appointment is without any legal basis and that the petitioners are under wrong impression that their ad hoc services have been regularized from the date of their initial appointments. The fact remains that the ad hoc services of the petitioners were regularized only on 02.12.2013 as per the terms and conditions of the Office Memorandum dated 03.10.2013, wherein it has been clearly stated that the seniority of such ad hoc appointments will be counted with effect from the date of their regularization.

[21] The learned Government counsel further submitted that since the petitioners were only ad hoc appointees, they cannot be treated equally with the regularly appointed private respondents and instead of challenging the provision in the Office Memorandum dated 03.10.2013, the petitioners are trying to canvass their cases by wrongly interpreting paragraph 11 of the said Office Memorandum, which cannot be allowed.

[22] The learned Government counsel next submitted that the petitioners are ignorant of the fact that their ad hoc services were regularized vide order dated 02.12.2013 and that the order dated 18.01.2014 was issued only to reflect the scales of pay to be enjoyed by the employees listed therein. As such, the plea of the petitioners that the order dated 18.01.2014 which was issued to reflect the scales of pay is the regularization order thereby entitling the petitioners to fix their seniority from the date of their initial appointment is without any legal basis. Stating that no right is accrued to the petitioners to challenge the impugned combined inter se seniority list, the learned Government counsel prayed for dismissal of the writ petition.

[23] The learned counsel for the private fourth respondent submitted that since the services rendered by the petitioners are not regular service, they cannot seek indulgence of this Court. That apart, their appointments are not legal and valid. According to the learned counsel, the appointments of the petitioners are stop gap in nature. There is no provision in the Office Memorandum dated 03.10.2013 that regularization shall be from the date of initial appointment. On the contrary, Clause 6 of the said Office Memorandum clearly states that seniority shall be counted from the date of regularization and the date of regularization of the petitioners is 02.12.2013. The learned counsel submits that since the inter se seniority between the regularly appointed officers and regularized ad hoc appointees has been validly and legally determined and fixed by the authority on 11.04.2018 strictly adhering to Clause 6 of the Office Memorandum dated 03.10.2013, the petitioners have no right to seek regularization of their ad hoc service from the date of their initial appointment. Therefore, the impugned seniority list does not suffer from any infirmity and prayed for dismissal of the writ petition.

[24] This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[25] The grievance of the petitioners is that their ad hoc services were regularized against the vacant posts from the date of issue of the order dated 02.12.2013 issued by the Additional Secretary (CAF&PD), Government of Manipur and subsequently, in partial modification, the said order dated 02.12.2013 was modified by an order dated 18.01.2014 by the said authority to the effect that the services of the petitioners were regularized against the vacant posts and pay scale from the date of their initial appointment. However, while publishing the impugned combined inter se seniority list dated 11.04.2018, the date of entry into Government service and the date of appointment to the present posts of the petitioners have been mentioned as 02.12.2013 instead of 14.12.1998, 30.01.1999 and 10.03.2000 respectively. Accordingly, by way of the present writ petition, the petitioners pray to rectify their entry into Government service as 14.12.1998, 30.01.1999 and 10.03.2000 respectively instead of 02.12.2013.

[26] The aforesaid grievance of the petitioners has been denied and refuted by

the respondent authorities contending that in the regularization order dated 02.12.2013, it has been clearly mentioned that the effective date of regularization will be from the date of issuing of the said regularization order. It is also the say of the respondent authorities that the averment of the petitioners that the order dated 18.01.2014 is the regularization order thereby entitling them to fix their seniority from the date of their initial appointment is without any legal basis.

[27] Now the point that arises for consideration in this writ petition is whether the date of regularization of the petitioners shall be from the date of initial ad hoc appointment.

[28] Before answering the point for determination, the plea needs to be answered is whether the appointments of the petitioners are not legally valid as alleged by the fourth respondent. Nothing has been produced by the fourth respondent to prove that the ad hoc appointments of the petitioners are not legal. On the other hand, it is the case of the respondent authorities that the petitioners were initially appointed as Civil Supply Inspectors in the then Food and Civil Supply Department, now named as Civil Affairs, Food & Public Distribution Department on ad hoc basis as stop gap arrangement. When the respondent authorities themselves admitted that the petitioners have been appointed on ad hoc basis, the legality of the petitioners appointment on ad hoc basis cannot be gone into in this writ petition, as nobody has challenged their ad hoc appointment before the Court of law. Thus, the plea of the fourth respondent that the appointments of the petitioners are not legal cannot be countenanced. However, the point to be considered is whether the ad hoc services rendered by the petitioners are to be taken into account for fixing their inter se seniority.

[29] It is not in dispute that the initial ad hoc appointments of the petitioners are dated 14.12.1998, 30.01.1999 and 10.03.2000 respectively and their ad hoc services had been extended by the concerned authority from time to time. Thus, the initial appointment and their extension would categorically prove that the petitioners were not initially appointed as regular Civil Supply Inspectors in the CAF&PD Department. Earlier when the petitioners were approached this Court, this Court simply directed that the post held by them on ad hoc basis shall be filled up on regular basis and that their request shall also be considered. Thus, this Court has never directed to regularize the ad hoc services of the petitioners and to give retrospective regularization to them from the date of their initial ad hoc appointment.

[30] The Government took a policy decision to regularize the ad hoc services of 288 direct recruit ad hoc employees of various Government Departments and accordingly, issued the office Memorandum dated 03.10.2013, which is extracted herein under for ready reference:

GOVERNMENT OF MANIPUR

DEPARTMENT OF PERSONNEL & ADMINISTRATIVE

REFORMS

(PERSONNEL DIVISION)

OFFICE MEMORANDUM

Imphal, the 3 October, 2013.

Subject:- Government policy on ad hoc regularization in respect of 288 direct recruit ad hoc employees of various Government Departments/Offices.

No.2/5/2011-Adhoc/DP: The undersigned is directed to state that the matter regarding extension of services and regularization of direct recruit adhoc employees as a one-time measure has been under consideration of the State Government for which purpose an Adhoc Committee was set up by the State Government on 27.12.2010. The said Committee having carefully considered the adhoc appointments in all Departments of the Government of Manipur submitted its Report to the State Government which has been duly examined by the Government. To resolve the problem, it has therefore been decided to fill up, all the posts which have been held by the 288 direct recruit adhoc employees who were appointed against Group A, B, C and D posts in 19 (nineteen) Departments as annexed herewith since the last 15 (fifteen) years and more on regular basis on the written recommendation of the Special Departmental Promotion Committee (DPC) subject to the following conditions:

- i) Clear vacant posts in the grade or equivalent must be available for regularization;
- ii) Persons must be serving on ad hoc basis continuously from 23.03.2006 onwards on the strength of specific Court Orders or on specific orders of the government with the approval of the State Cabinet;
- ii) Duty Certificate certifying that the concerned ad hoc employee is serving continuously till date on the ground mentioned above and duly counter signed by Administrative Secretaries is to be placed before the Special Departmental Promotion Committee;
- iv) In all cases where the ad hoc employee has remained in service on the strength of court orders, the relevant court orders may be furnished before the Special Departmental Promotion Committee;
- v) Regularization shall be with prospective effect and no retrospective effect will be allowed.

2. The cases for regular appointment of ad hoc employees who have fulfilled the above requisite conditions shall be considered by the DPC and appointment shall be made on the recommendation of such DPC consisting of the following:

- i) Administrative Secretary - Chairman concerned

ii) Head of Department - Member concerned

ii) Representative of DP - Member

3. For regularization of ad hoc employees against Group A & B posts, consultation with the Manipur Public Service Commission is exempted and a notification for amendment of the MPSC (Exemption from Consultation) Regulations, 1972 to this effect is being issued separately. Similarly, in the case of regularization against direct recruit quota in respect of Group C & D posts, requisition from the Employment Exchanges is also exempted.

4. The ban on direct recruitment is relaxed insofar as the filling up of the above mentioned posts/vacancies are concerned.

5. While considering regularization of the above mentioned direct recruit adhoc employees, the period of service rendered by them on adhoc basis shall be relaxed for reckoning of his/her upper age limit. The reservation of SC/ST/OBC as per 200 roster point will be relaxed to the extent needed in order to accommodate the regularization of adhoc employees.

6. The seniority of such adhoc appointments that are regularized in pursuance to the above decision will be counted with effect from the date of their regularization.

7. Those adhoc appointees who have been appointed to any post whether Class I, II, III & IV who did not fulfill the qualifications laid down under the relevant recruitment rules at the time of appointment as adhoc basis will be terminated from service forthwith.

8. The process of regularization of such adhoc employees should be completed within three months from the date of issue of this Office Memorandum and no request for further extension of their term of adhoc appointment will be entertained.

9. After regularization of the above mentioned ad hoc employees, it will be deemed that there are no ad hoc employees in the State Government of Manipur except Education(s) Department, which is separately under consideration.

10. The above instructions contained under para 3 and 4 is only for one time arrangement for the purpose of the regularization of such 288 adhoc employees.

11. This O.M. shall not be applicable to those cases where appropriate orders had already been passed by the Courts for discontinuance of the services of the concerned direct recruit ad hoc employees. This shall also not debar the Departments to file appeals/applications or pursue appeals/applications already filed in the Court for setting aside orders passed by the Single Bench of the Hon'ble Guwahati High Court/Manipur High Court restraining the State Government from terminating the services of direct recruit ad hoc employees.

12. All Departments/Offices under the State Government of Manipur are hereby

requested to strictly adhere to the instructions contained in the Office Memorandum.

(YumnamRobita)

Deputy Secretary (DP),

Government of Manipur. "

(emphasis supplied)

[31] Pursuant to the Office Memorandum dated 03.10.2013, Special Departmental Promotion Committee meeting was held on 25.11.2013 and as per the recommendation of the Special DPC, on 02.12.2013, the Additional Secretary (CAF&PD) regularized the services of the ad hoc employees including the petitioners against the vacant posts indicated against each with effect from the date of the order.

[32] On a perusal of the order dated 02.12.2013, this Court finds that the names of the petitioners have been appeared in Serial Nos. 3, 5 and 6 and the said order also contains the name of the vacant posts held on ad hoc and the date of initial appointment against the posts. The initial appointment of the petitioners has been mentioned as 14.12.1998, 30.01.1999 and 10.03.2000 respectively.

[33] In partial modification of the order dated 02.12.2013, the Additional Secretary issued an order dated 18.01.2014 regularizing the ad hoc services of the employees against the vacant posts and pay Scales indicated against each of them. In the order dated 18.01.2014, the petitioners' names have been appeared in Serial Nos.3, 5 and 6. The only modification made in the order dated 18.01.2014 is mentioning of scale of pay and nothing more.

[34] Interpreting these two orders viz., 02.12.2013 and 18.01.2014, the petitioners contend that by way of the order dated 18.01.2014, the ad hoc services of the petitioners were regularized against the vacant posts from the date of their initial appointment.

[35] The learned counsel for the petitioners submitted that keeping in view those eligible employees who had joined service as ad hoc employee, the State Government as a one-time measure had issued the Office Memorandum dated 03.10.2013, however, due to oversight and misunderstanding, the respondent authorities had issued the regularization order dated 02.12.2013 inconsistent with intrinsic spirit of the Office Memorandum dated 03.10.2013. He would submit that being the functionaries of a welfare state and keeping in view Clause 11 read with Clause 6 and 7, the respondent authorities rightly issued the subsequent order dated 18.01.2014 by deleting the word "immediate effect".

[36] For better appreciation, the orders dated 02.12.2013 and 18.01.2014 are extracted herein below:

"GOVERNMENT OF MANIPUR SECRETARIAT: CONSUMER AFFAIRS, FOOD &

PUBLIC DISTRIBUTION DEPARTMENT

ORDERS BY THE GOVERNOR OF MANIPUR

Imphal, the 2nd Dec. 2013.

No.2/1/2005-FCS(3) Pt.: On the recommendation of the Special Departmental Promotion Committee meeting held on 25/11/2013 and in pursuance of Department of Personnel & Administrative Reforms(PD) Office

Memorandum No.2/5/2011-Adhoc/DP dated 3/10/2013, the Governor of Manipur is pleased to regularize the services of the following ad-hoc employees against the vacant posts indicated against each with effect from the date of issue of this order:

Sl. No.

Name of the Candidate

Name of the Vacate Post held on adhoc

till date

Date of initial appointment against the post

1.

N. Jayanta Singh

Assistant Director

13.04.1999

2.

A. Gopendra Sharma

-do-

13.04.1999

3.

Th. Surchandra Singh

Civil Supply Inspector

14.12.1998

4.

N. Biren Singh

-do-

30.01.1999

5.

Sh. Singhajit Singh

-do-

30.01.1999

6.

K. Dhananjay Singh

-do-

10.03.2020

7.

Kh. Leimatombi Devi

Lower Division Clerk

01.07.1999

8.

S. Lenin Singh

-do-

01.07.1999

9.

Ksh. Shyamsundor Singh

-do-

01.07.1999

10.

P. Sukumar Singh

-do-

01.07.1999

11.

O. Kenedy Singh

-do-

01.07.1999

12.

W. Ibomcha Singh

-do-

01.07.1999

13.

Th. Itocha Singh

-do-

01.07.1999

14.

K. Jeevankumar

-do-

01.07.1999

Singh

15.

R.K. Lolit Singh

-do-

01.07.1999

16.

N. Ashakiran Devi

-do-

01.07.1999

17.

L. Machu Singh

-do-

01.07.1999

18.

Th. Ryupachandra Singh

-do-

01.07.1999

19.

W. Ibemcha Devi

-do-

01.07.1999

20.

Kh. Purnimashi Devi

-do-

01.07.1999

21.

Th. Surchandra Sing

-do-

01.07.1999

22.

Sharmila Longjam

-do-

01.07.1999

23.

M. Anisur Rahman

-do-

01.07.1999

(Sd/- xx)

(M. Yaiskul Meitei)

Addl. Secretary (CAF&PD)

Government of Manipur"

[37] The modified order dated 18.01.2014 reads thus:

"GOVERNMENT OF MANIPUR SECRETARIAT: CONSUMER AFFAIRS, FOOD & PUBLIC DISTRIBUTION DEPARTMENT ORDERS BY THE GOVERNOR OF MANIPUR Imphal, the 18th January, 2014

No.2/1/2005-FCS(3) Pt.: In partial modification of Government order of even number dated 2nd December, 2013 regarding regularization of adhoc employees on the recommendation of the Special D.P.C. meeting held on 25/11/2013, the Governor of Manipur is pleased to regularize the adhoc services of the following employees against the vacant posts and pay scales indicated against each of them:-

Sl.

No.

Name of the Candidate

Name of the Vacate Post held on adhoc till date

Date of initial appointment against the post

In the scale of Pay

1.

N. Jayanta Singh

Assistant

13.04.1999

Rs.9300-

Director

34800 +

Grade Pay

Rs.4400

2.

A. Gopendra

-do-

13.04.1999

Rs.9300-

Sharma

34800 +

Grade Pay

Rs.4400

3.

Th. Surchandra Singh

Civil Supply Inspector

14.12.1998

Rs.5200- 20200 +

Grade Pay Rs. 2800

4.

N. Biren Singh

-do-

30.01.1999

-do-

5.

Sh. Singhajit Singh

-do-

30.01.1999

-do-

6.

K. Dhananjay Singh

-do-

10.03.2020

-do-

7.

Kh. Leimatombi Devi

Lower Division Clerk

01.07.1999

Rs.5200- 20200 +

Grade Pay Rs. 1900

8.

S. Lenin Singh

-do-

01.07.1999

-do-

9.

Ksh.

Shyamsundor Singh

-do-

01.07.1999

-do-

10.

P. Sukumar Singh

-do-

01.07.1999

-do-

11.

O. Kenedy Singh

-do-

01.07.1999

-do-

12.

W. Ibomcha Singh

-do-

01.07.1999

-do-

13.

Th. Itocha Singh

-do-

01.07.1999

-do-

14.

K. Jeevankumar Singh

-do-

01.07.1999

-do-

15.

R.K. Lolit Singh

-do-

01.07.1999

-do-

16.

N. Ashakiran Devi

-do-

01.07.1999

-do-

17.

L. Machu Singh

-do-

01.07.1999

-do-

18.

Th. Ryupachandra Singh

-do-

01.07.1999

-do-

19.

W. Ibemcha Devi

-do-

01.07.1999

-do-

20.

Kh. Purnimashi Devi

-do-

01.07.1999

-do-

21.

Th. Surchandra Sing

-do-

01.07.1999

-do-

22.

Sharmila Longjam

-do-

01.07.1999

-do-

23.

M. Anisur Rahman

-do-

01.07.1999

-do-

This is in pursuance of D.P. & A.R. (DP)'s Office

Memorandum No.2/5/2011-Adhoc/DP dated 3rd October, 2013.

By orders & in the name of the Governor

(Sd/- xxx)

(M. Yaiskul Meitei)

Addl. Secretary (CAF&PD)

Government of Manipur"

[38] On a perusal of the order dated 02.12.2013, the Additional Secretary (CAF&PD) stated that "the Governor of Manipur is pleased to regularize the services of the following ad-hoc employees against the vacant posts indicated against each with effect from the date of issue of this order". On a further perusal of the order dated 18.01.2014, the Additional Secretary (CAF&PD) stated that "the Governor of Manipur is pleased to regularize the adhoc services of the following employees against the vacant posts and pay scales indicated against each of them". The only change that has been made in the modified order dated 18.01.2014 is mentioning of scales of pay and there is no deletion of the word "immediate effect" alleged by the petitioners. As stated supra, when the terms and conditions of the Office Memorandum dated 03.10.2013 stipulates that "regularization shall be with prospective effect and no retrospective effect will be allowed", there is no question of regularizing the petitioners from the date of their initial ad hoc appointment.

[39] This Court finds that nothing has been mentioned in the order dated 18.01.2014 to construe that the ad hoc services of the petitioners have been regularized from the initial date of appointment. At the cost of repetition, it is

reiterated that the very purpose of issuing the order dated 18.01.2014 is to indicate the scales of pay to be given to the employees mentioned therein. It is also clear from the orders of the Government that in the original regularization order dated 02.12.2013, it has been mentioned that the effective date of ad hoc services of the petitioners and other employees shall be from the date of issuing of the regularization order dated 02.12.2013.

[40] When the Government took policy decision to regularize the direct recruit ad hoc employees of various Government Departments numbering 288, it has been clearly stated that the seniority of such ad hoc appointments that are regularized in pursuance of the above decision will be counted with effect from the date of their regularization. Clause 1(v) of the Office Memorandum dated 03.10.2013 also clearly states that regularization shall be with prospective effect and no retrospective effect will be allowed.

[41] When the regularization has been given prospective effect, how the petitioners could claim retrospective effect. Thus, the respondent authorities have regularized the services of the petitioners as per the conditions stipulated in the Office Memorandum dated 03.10.2013 and this Court finds no infirmity in the regularization made by the respondent authorities. In the inter se seniority of Civil Supply Inspector/Area Officer of CAF & PD drawn by the respondent authorities, the date of entry to the Government service of the petitioners has been correctly reflected as 02.12.2013. Further, the inter se seniority list has been drawn as per the regularization order dated 02.12.2013 of the CAF & PD Department.

[42] It is to be noted that except the petitioners, other employees who were also regularized under same order dated 02.12.2013 have not questioned either the regularization order dated 02.12.2013 or the modified order dated 18.01.2014. Since the regularization has been done as per the Office Memorandum dated 03.10.2013, the other employees have not made any grievance in the regularization orders dated 02.12.2013 and 18.01.2014 respectively. The petitioners alone are under the wrong impression that their ad hoc services have been regularized from the date of their initial appointments and sought seniority above the regularly appointed private respondents.

[43] From the materials produced, it is clear that the petitioners are trying to fit in their request by wrongly interpreting paragraph 11 of the Office Memorandum dated 03.10.2013 which cannot be allowed for the reason that the Special DPC considered for regularization of the ad hoc services of the petitioners and others as per the Office Memorandum dated 03.10.2013 and thereafter, recommended for regularization of their ad hoc services. This Court also finds that the Special DPC did not recommend for regularization of the ad hoc services of the petitioners and others with effect from the date of their initial ad hoc appointments.

[44] It is settled that the effective date of regularization will be from the date of

issuing order unless there is a clear cut indication in the order itself that the effective date of the order will have retrospective effect. As stated supra, in the policy decision the Government itself stated that regularization shall be with prospective effect and no retrospective effect will be allowed. When that being the policy of the Government and as per the policy when the respondent authorities have regularized the services of the petitioners and other similarly situated employees from the date of the order i.e., 02.12.2013, contrary to the same how the petitioners could claim that their ad hoc services have been regularized from the date of their initial appointments. Such a claim made by the petitioners is without any legal basis and the same ought to be rejected out rightly.

[45] The fact remains that the petitioners have not challenged the regularization orders dated 02.12.2013 and 18.01.2014 respectively. If they are really aggrieved by the regularization order, they ought to have been challenged the same at the appropriate time. Having kept quite for long number of years and when the combined inter se seniority list was published in the year 2018, the petitioners have belatedly approached this Court by wrongly contending that their services were regularized from the date of initial ad hoc appointment. In this writ petition, the petitioners cannot contend that the ad hoc services rendered by them shall be regularized from the date of appointment and accordingly, their seniority shall be counted from the initial appointment.

[46] As stated supra, since paragraph 6 of the Office Memorandum dated 03.10.2013 clearly stipulates that the seniority of the petitioners will be counted with effect from their regularization i.e., 02.12.2013 and since the petitioners are ad hoc employees at the time of regularization, they cannot be treated equally with the regularly appointed private respondents for the purpose of claiming promotion, if any, by placing them above the regularly appointed private respondents.

[47] Placing reliance upon the decision of the Hon'ble Supreme Court in the case of Rudra Kumar Sain v. Union of India, reported in (2008) 8 SCC 25, the learned counsel for the petitioners submitted that the initial appointment of the petitioners cannot be held to be stop gap or fortuitous or purely ad hoc.

[48] In Rudra Kumar Sain (supra), the Hon'ble Supreme Court held:

"20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/ stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

[49] The above principles are undisputed. Question of their application has arisen from time to time in different fact situations. Question to be decided in each case was whether the ad hoc appointment was stopgap and fortuitous as against being to an existing vacancy which continued and initial appointment was made after due selection without violating the rules, if any.

[50] It is not in dispute that the petitioners were initially appointed on ad hoc basis and as per the policy of the State Government and on the recommendation of the Special DPC, their ad hoc services were regularized from the date of issuance of the order dated 02.12.2013. The petitioners themselves admitted that they have been initially appointed on ad hoc. Since the case on hand is entirely different, now the petitioners cannot seek applicability of the decision of the Hon'ble Supreme Court in the case of Rudra Kumar Sain (supra).

[51] Drawing attention of this Court to the impugned combined final seniority list dated 11.04.2018, the learned counsel for the petitioners submitted that there are several irregularities in placement of incumbents in the seniority list. The learned counsel has also highlighted the incumbents viz., respondents 3 to 5 (1) N. Nabadwip Singh (Serial No.1) who entered the present post of Civil Supply Officer with effect from 28.01.1999 i.e., later than the first petitioner, who has entered the post with effect from 14.12.1998; (2) L. Ibotombi Singh (Serial No.2) who entered the present post with effect from 17.02.1999 i.e., later than the second petitioner who has entered the post with effect from 30.01.1999 and (3) B. Ngouring Lawrence (Serial No.3), who entered the post of Civil Supply Officer with effect from 31.01.2003 i.e., later than the third petitioner, who has entered the said post with effect from 10.03.2000. According to the learned counsel, the petitioners should be placed at Serial Nos. 1, 3 and 5 instead of Serial Nos.9, 11 and 12 respectively in the impugned seniority list.

[52] The learned counsel for the petitioners further highlighted the names of the respondents 6 to 11 and contend that they have entered the post of Civil Supply Inspectors later than the present petitioners and in fact some of the respondents passed only PUC and HSLC and they do not have requisite qualification. He would submit that if they are appointed to the post of Assistant Director by the method of promotion in the Department, it will be ashamed of the respondent authorities to appoint such persons as Assistant Directors and therefore, the impugned final seniority list dated 11.04.2018 is liable to be altered to that extent.

[53] Countering the arguments of the learned counsel for the petitioners, the learned Government counsel contend that as per the Recruitment Rules for the post of Assistant Director, only Civil Supply Inspector with 5 years regular service in the grade and Area Officer with 6 years regular service in the grade are eligible to be promoted to the post of Assistant Director. Since the ad hoc services of the petitioners were regularized only on 02.12.2013, they are not eligible to be considered for promotion to the post of Assistant Director.

[54] It is not in dispute that the private respondents are regularly appointed

employees of the Department. When the private respondents are regularly appointed employees, their seniority shall be counted from the date of their initial regular appointments. Since the petitioners were initially appointed as Civil Supply Inspectors on ad hoc basis and their ad hoc services were regularized only on 02.12.2013, as per the existing Rule and also settled law, the seniority position of the petitioners are to be placed below the regularly appointed private respondents.

[55] At this juncture, it is to be quoted the decision of the Hon'ble Supreme Court in the case of State of Haryana and others V. Piara Singh and others, reported in AIR 1992 SC 2130 cited by the learned counsel for the fourth respondent that if for any reason, an ad hoc or temporary employee is continuing for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counts to the reservation policy of the State. If and when such person is regularized, he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

[56] In Piara Singh (supra), the Hon'ble Supreme Court held as under:

"25. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to rules and his service record is satisfactory and his and appointment does not run counter to the reservation policy of the State. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularization of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularized he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be....."

[57] In S.S. Bola v. B.D. Sardana, reported in (1997) 8 SCC 522, a Larger Bench of the Hon'ble Supreme Court held that seniority is a facet of interest. The rules prescribe the method of recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority.

[58] In Central Council for Research in Homeopathy v. Bipin Chandra Lakhera and others, reported in 2011 (5) SCALE 124, the Hon'ble Supreme Court held:

"9. It has been held by this Court in Ch. Narayana Rao Vs. Union of India and others, (2010) 10 SCC 247 and State of West Bengal and others Vs. Aghore Nath Dey and others, (1993) 3 SCC 371, that ad hoc service before regularization cannot be counted for seniority.

10. It was contended by the learned counsel for respondent No.1 that some others similarly situate have been given retrospective regularization. This is not correct. No one has been given benefit of ad hoc service for the purpose of seniority. The persons mentioned in the writ petition are those persons who had been selected earlier, whereas respondent No.1 had not been selected. Such persons have been given seniority only from the date of their regular appointment after selection."

[59] In *State of Punjab and another v. Ashwani Kumar and others*, reported in (2008) 12 SCC 572, when the State of Punjab challenged the order of the Division Bench of Punjab and Haryana High Court that the ad hoc services of the respondents were to be counted for the purpose of seniority, the Hon'ble Supreme Court held that seniority of persons appointed on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment. The Hon'ble Supreme Court further held that the respondents initially appointed on ad hoc basis but subsequently regularized and therefore, the ad hoc service not to be counted for seniority and only regular service is to be counted towards seniority.

[60] In the instant case, the petitioners were initially appointed on ad hoc basis and subsequently as per the policy of the Government, they have been regularized only with effect from 02.12.2013. Thus, for the purpose of fixing the seniority, the regularization date taken by the respondent authorities is perfectly correct.

[61] No employee has a right to particular position in the seniority list, but all employees have a right to seniority since the same forms the basis of promotion [See (2014) 5 SCC 101, *Panchraj Tiwari v. Madhya Pradesh State Electricity Board and others*].

[62] The learned counsel for the petitioners argued that the Government has every right to correct or amend seniority of the employees in the cadre and that the seniority of an employee is required to be determined in a cadre on the basis of relevant principles enunciated either in the statutory rules or in the absence of any rule by administrative instructions, which remain operative in the field. He would submit that in the instant case, by virtue of regularization order dated 18.01.2014, the petitioners are entitled to receive/fix their seniority from the date of their initial appointment.

[63] As stated supra, the petitioners' ad hoc services were regularized from the date of issuance of the regularization order i.e., 02.12.2013. That apart, the modified regularization order dated 18.01.2014 was issued only to reflect the scales of pay and thus the effective date of regularization of the petitioners and other employees is 02.12.2013. Therefore, the petitioners have no right to claim their seniority above the private respondents, who were admittedly appointed on regular basis. Further, no right is accrued to the petitioners to challenge the final seniority list of the Civil Supply Inspector and Area Officer dated 11.04.2018 of

the CAF&PD Department and thus, there is no illegality in issuing the impugned combined inter se seniority list.

[64] For the foregoing discussions, this Court is of the view that no valid grounds have been made out to interfere with the impugned combined inter se seniority list dated 11.04.2018 published by the second respondent and the violation of Articles 14, 16 and 21 of the Constitution of India alleged by the petitioners is not attracted in the instant case. Since the effective date of regularization of the petitioners has been clearly mentioned as 02.12.2013 in the regularization order, the petitioners have no right to claim seniority from the date of their initial ad hoc appointment. Thus, the writ petition fails.

[65] Since the Department had taken steps for filling up the vacant posts of Assistant Director by promotion in the Directorate of Consumer Affairs Food and Public Distribution by holding Departmental Promotion Committee through the Manipur Public Service Commission on the basis of the impugned seniority list, the petitioners have filed Miscellaneous Case [W.P.(C)] No.384 of 2018 for impleadment of the Manipur Public Service Commission as respondent No.12 in the writ petition. Since the Manipur Public Service Commission is not involved in determining the seniority of the petitioners and the private respondents, there is no need to implead the said authority as party respondent in the writ petition. Moreover, this Court held that there is no illegality in the impugned inter se seniority list drawn by the second respondent. In such view of the matter, M.C. [WP(C)] No.384 of 2018 is liable to be dismissed and accordingly, the same is dismissed.

[66] In the result, the writ petition is dismissed. No costs. Consequently, M.C. [W.P. (C)] Nos.301 and 311 of 2018 are closed.