
(2016) 03 MAN CK 0003
In the Manipur High Court
Case No : W.P.(C) No. 705 of 2014

Thokchom Autumn Meitei

APPELLANT

Vs

The Manipur Public Service Commission and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16

Citation : (2016) 03 MAN CK 0003

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : B.P. Sahu, Sr. Adv. and Hungyo Zhinkai, Advocate, for the Appellant; Th. Ibohal, A.G., O. Ratankumar, Advocate, R.S. Reishang, Sr. G.A. and Shyam Sharma, G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

N. Kotiswar Singh, J.—1. Heard Mr. B.P. Sahu, learned Senior counsel assisted by Mr. Hungyo Zhinkai, learned counsel for the petitioner. Also heard Mr. Th. Ibohal Singh, learned Advocate General assisted by Mr. O. Rantankumar, Advocate and Mr. R.S. Reishang, learned Senior Govt. Advocate assisted by Mr. Shyam Sharma, Govt. Advocate for the Manipur Public Service Commission (MPSC).

2. There was an advertisement issued on 27.8.2013 by the Manipur Public Service Commission (MPSC) for recruitment to 13 posts of Manipur Forest Service (MFS) Grade-II (Assistant Conservator of Forest) against direct recruitment quota. Of the aforesaid 13 advertised posts, 7 were unreserved, 4 were reserved for ST and 2 for OBC (Meitei).

3. The recruitment process consisted of a written test which was held by the MPSC from 24th February to 7th March, 2014. The interview/personality test and physical standard test as well as walking test as required under the rules were held in June, 2014.

On completion of the aforesaid recruitment process, the MPSC recommended 12

(twelve) candidates for appointment to the posts of MFS Grade-II (Assistant Conservator of Forest) for the 13 (thirteen) advertised posts.

While making recommendation of 12 (twelve) candidates, the MPSC also forwarded the consolidated merit list of the 36 candidates who were found eligible including all those who were found "unfit" in the physical test. On the basis of the aforesaid consolidated merit list, after ignoring those candidates who were found unfit in the physical test, the MPSC prepared a separate select list consisting of 7 (seven) candidates for filling up the 7 (seven) unreserved vacancies, another select list consisting of 3 (three) candidates for the 4 (four) advertised posts of STs and a third list as regards the 2 posts reserved for OBC (Meitei). MPSC also prepared a waiting list consisting of 1 candidate belonging to General Category.

The final result of the 39 (thirty nine) candidates is reproduced herein below:

The merit lists recommended by the MPSC for various categories of posts/ vacancies are reproduced herein below.

By combining these select lists, the MPSC notified through a Press Note on 13.06.2014 the consolidated merit list consisting of 12 candidates.

4. In the said consolidated merit list published by the MPSC on 13.06.2014, the name of one Hasby Haokip who belongs to ST category finds place at serial No. 6 on the strength of her own merit against the 7 (seven) posts advertised for the Unreserved/General category.

5. The petitioner's case is that the said Hasby Haokip declined to join the MFS Grade II (Assistant Conservator of Forest), causing a vacancy under the unreserved category, which ought to be filled up from amongst the remaining candidates on the basis of merit, irrespective of the category of the candidate, by pushing up the candidates who are below Hasby Haokip in order of merit. If that is done, the next person below Hasby Haokip in merit i.e., Laishram Gitla would be pushed up to occupy the vacancy caused due to Hasby Haokip. The slot at Sl. No. 7 earlier occupied by Laishram Gitla, which would become vacant, would be occupied by pushing up the candidate immediately below, i.e., Elangbam Nirmala Chanu who belongs to OBC(M) category, and who was recommended for appointment against the OBC(M) quota, thereby, all the 7 (seven) posts under the Unreserved category would be filled up/exhausted. In that event, one vacancy would arise under the category of OBC(M). The first slot in the 2 (two) vacancies reserved for OBC(M), which was earlier occupied by Elangbam Nirmala Chanu would now be held by the next recommendee, Rebika Soibam Chanu. Thus, once Elangbam Nirmala Chanu and Rebika Soibam Chanu are pushed up, on the strength of their merit, one vacancy would occur in the category of OBC(M), which can be filled up by the next most meritorious candidates belonging to OBC (M) after Rebika Soibam Chanu.

6. It is the case of the petitioner that the petitioner is the most meritorious

candidate in the category of OBC after Rebika Soibam Chanu. In the final result of 39 candidates, the petitioner's name is found at serial No. 15. In the said list, though there was one candidate namely Sarungbam Kison Singh, OBC (M), who had scored higher marks than the petitioner, as well as Elangbam Nirmala Chanu and Rebika Soibam Chanu, since he was found "unfit" in the physical fitness test, he cannot be considered for appointment. Thus after striking off the candidature of the OBC (M) candidate who was found physically "unfit", the petitioner would be the next most meritorious OBC candidate who deserves to be recommended against one of the 2 posts reserved for OBC(M) after pushing up E. Nirmala Chanu and Rebika Soibam Chanu as mentioned above.

7. Accordingly, the petitioner filed this writ petition for an appropriate direction to the respondent authorities to appoint the petitioner to the post of MFS Grade-II (Assistant Conservator of Forest) by accommodating the petitioner against one of the vacancies reserved for OBC (M), which would accrue on adjustment of OBC(M) candidates.

This Court while issuing notice on 12.07.2014, observed that the issue whether the vacancy in the Unreserved Category caused due to non acceptance of offer of appointment by Hasby Haokip could be filled up by a candidate belonging to a General or OBC (M) candidate needs to be examined and directed the State Govt. not to fill the said vacancy, if the Govt. had not yet taken any decision in this regard. It has been informed by the Counsel for the parties at the time of hearing that the said vacancy has remained unfilled till now.

8. The State Govt. as well as MPSC contested the petition by filing their affidavits-in-opposition. In the affidavit dated 3rd February, 2015 filed by the State (respondent No. 2) it has been stated that the vacancy caused due to non acceptance of offer by Hasby Haokip will be treated as unreserved and the said vacancy will be filled up by Mr. M. Wungrin Lansing (ST) who has scored more marks than the remaining candidates including the petitioner. This stand of the State respondent has been opposed to by the petitioner by filing a rejoinder affidavit on 12th February, 2015 by contending that the said M. Wungrin Lansing (ST) was earlier declared "unfit" in the physical test conducted by the MPSC like many others belonging to the general/OBC categories. Thus, even if he had secured more marks, he cannot be considered for filling up the said vacancy under the unreserved category.

This aspect has been sought to be clarified by the State Govt. in their additional affidavit-in-opposition filed on 17th March, 2015 by stating that as one of the advertised posts reserved for the ST candidates had remained vacant, due to non availability of fit candidate, the State Govt. took a policy decision, for relaxation of physical/walking test in respect of ST candidates only for filling up that one vacancy under ST category by adopting a Regulation issued by the Ministry of Environment and Forest under No. 17011/03/200-IFS-II Appendix III, (Vide Rule 17), dated 10.2.2001, in which it has been provided that in case a candidate who has been called for appearing in the walking test after declaration of the result of

the written part of the examination, either fails to complete the walking test within the prescribed time limit or fails to appear in the test, will be given another opportunity to appear in the walking test after he is selected for the Indian Forest Service on the basis of final results of the examination. Thus, the matter was placed before the State Cabinet for consideration which was approved by the Cabinet in its meeting held on 18-7-2016.

It may be apposite to reproduce the relevant portions of the Cabinet Memorandum as follows:

"CABINET MEMORANDUM

Subject: One time relaxation in Physics/Walking test in respect of the Manipur Forest Service Grade II (Assistant Conservator of Forest) Examination, 2013 conducted by Manipur Public Service Commission 2013 for filling up of 1 (one) vacant post of ST Category.

This is regarding a proposal for giving one time relaxation in the physical/walking test of the recently conducted Manipur Forest Service Grade-II (Assistant Conservator of Forest) Examination 2013 by the Manipur Public Service Commission. The examination was conducted for filling 13 (thirteen) vacancies....

.....

2. But in the recommended list of candidates received from MPSC vide letter No. 7/5/2013-MPSC(DR) dated 24th June 2013 against 4(four) vacancies for Scheduled Tribe only 3 (three) are recommended as the remaining ST candidates failed to clear the physical/walking test.....

.....

3. In view of 1(one) post of Scheduled Tribe being vacant, one time relaxation may be given to Manipur Forest Service Grade II (Assistant Conservator of Forest) Examination Rules, 2013 and a physical/walking test may be conducted again as provided under the above mentioned Regulations Relating to Physical Examination of Candidates issued by the Ministry of Environment and Forests Vide Rule 17 to the ST candidates who have otherwise qualified on the basis of the Examination, It may be pertinent to mention here that the said examination is conducted after a gap of more than 25 years and it may be difficult to conduct another examination only for 1 (one) vacancy on view of the resources involved in the conduct of examinations.

4.....

5..... "

9. Accordingly, the State Govt. requested the MPSC for re-conducting the physical test for ST candidates who were earlier declared physically unfit. After the MPSC conducted the re-test regarding physical fitness, one M. Wungrin Lansing (ST) and Limlenlal Mate (ST) were found fit. Since M. Wungrin Lansing

(ST) was found to have scored higher marks than the petitioner and was next to Laishram Gitla, the last in the original merit list prepared by the MPSC for the unreserved category, he was recommended by the MPSC to fill up the vacant post caused by Hasby Haokip under the general category. As regards the vacant post under the ST category, the MPSC recommended Limlenlal Mate (ST) for appointment to that vacancy for ST category.

10. Mr. B.P Sahu, learned senior counsel for the petitioner has submitted that the vacancy caused by non acceptance of offer of appointment by Hasby Haokip should be filled up by pushing up the candidates in order of merit in terms of the original final list prepared by the MPSC on 13.6.2014 (Annexure-A/3) after ruling out the unfit candidates. The Ld. Senior Counsel contends that M. Wungrin Lansing (ST) who was earlier found unfit in physical test cannot be considered for appointment under the unreserved category.

11. Mr. B.P Sahu, learned senior counsel for the petitioner also has submitted that the relaxation granted by the authorities in holding the retest as regards the physical fitness on the basis of the Regulation dated 10th February, 2001 issued by the Ministry of Environment and Forest is not permissible. He submits that the said Regulation was issued as a one time measure in respect of an examination conducted by the UPSC in the year 2001 for the purpose of filling up vacancies in the Indian Forest Service. However, there is no such provision for relaxation under the Manipur Forest Rules, 1986 which govern the recruitment to these posts. It has been, therefore, submitted that invoking the 10th February 2001 Regulation issued by the Ministry of Forest, Govt. of India to hold retest in respect of the physical test for appointment to Manipur Forest Service is impermissible, and as such, the said vacancy arising due to non acceptance of offer by Hasby Haokip cannot be filled up by a candidate who was found earlier unsuccessful, though may be later on found "fit" after the illegal retest.

12. It has been also submitted by Mr. B.P Sahu that the said relaxation was not extended to other candidates belonging to other categories, hence it is discriminatory and arbitrary. He submits that it is on record that there are other more meritorious candidates than the said M. Wungrin Lansing (ST) under the unreserved and OBC(M) categories, yet no decision was taken by the authorities to hold a retest regarding the physical fitness of these candidates belonging to other categories also. In that view of the matter, Mr. B.P Sahu, Ld. Senior Counsel submits that if the original merit list prepared by the MPSC on 13-6-2014 (Annexure-A/3) is adopted and applied by pushing up the candidates in order of merit against available vacancies, the petitioner can be adjusted against the vacancy arising under the OBC(M) category.

13. In this regard, Mr. B.P Sahu, Ld. Senior Counsel has relied on the decision of the Hon'ble Supreme Court in *Bedanga Talukdar v. Saifudaullah Khan and Ors.*, , (2011) 12 SCC 85. It has been submitted that the selection process has to be strictly in accordance with the terms and conditions mentioned in the advertisement and power of relaxation, if any, must also be mentioned in the

advertisement. In absence of such provision for relaxing the rules and publication, any relaxation would be contrary to the mandate of equality under Articles 14 and 16 of the Constitution as held in para 29 thereof. Mr. B.P Sahu, Ld. Senior Counsel also relied on the decision of the Hon"ble Supreme Court in Brij Mohan Lal v. Union of India & Ors., , (2012)6 SCC 502 to press home his contentions. Accordingly, it has been submitted that the policy decision taken by the Govt. for granting one time relaxation to the ST candidates is arbitrary and discriminatory and ought to be interfered with by this Court.

14. In response, the Learned AG has submitted that even though 4(four) posts were reserved for the ST candidates, the MPSC recommended only 3(three), thus, rendering one post vacant. Accordingly, the State Govt., considering the fact that the said recruitment/examination was conducted after a gap of more than 25 years and it may be difficult to conduct another examination only to fill up one vacancy, and in view of the enormous resources involved in conducting the examination, took a policy decision to give one time relaxation to the ST candidates to fill up the one vacancy occurring against the ST quota by adopting the Regulation dated 10-2-2001 issued by the Ministry of Environment and Forests as mentioned above. It has been submitted that the said decision was taken before Hasby Haokip expressed her inability to accept the offer. Therefore, no such decision for relaxation was taken in respect of the unreserved vacancy. Learned AG states that Hasby Haokip submitted an application on 22.7.2014 expressing her inability to join the IFS, which was after the Cabinet took the aforesaid decision on 18.7.2014. She declined to join the MFS Grade-II post as she had been already selected and appointed to MPS Grade-II.

15. Learned AG submits that since the said Hasby Haokip had declined to accept the offer of appointment to the post of MFS Grade-II, the Govt. was contemplating filling up the vacancy under the unreserved category by the candidate in the waiting list, i.e, Th. Sonia Devi. However, after re-conducting the walking test by the MPSC on 1.9.2014 in respect of ST candidates, two ST candidates, namely, i) M. Wungrin Lansing, Roll No. 0506 ii) Limlenlal Mate, Roll No. 977 were found to be qualified in the walking test and the said M. Wungrin Lansing was placed high in the merit list immediately after Laishram Gitla. Accordingly, the MPSC revised the earlier recommendation made on 13-6-2014 and forwarded the revised selected merit list of candidates for the 7(seven) Unreserved vacancies, 4 reserved vacancies for the STs and 2 (two) for the OBC(M) on 1.9.2014. In the said revised recommendation, the name of M. Wungrin Lansing finds place amongst the candidates for the 7 (seven) unreserved posts and Limlenlal Mate under the ST category. The said revised merit lists are reproduced herein below.

16. That on the basis of the aforesaid revised consolidated merit list, the State Government issued the appointment order on 14.10.2014 by appointing 11 (eleven) persons to Manipur Forest Service Grade II (Assistant Conservator of Forests) posts.

The names of these 11 (eleven) appointees are given below.

17. It has been submitted by learned AG that as far as the one time relaxation for the ST candidates is concerned, the petitioner does not have any locus standi to challenge the same as the petitioner does not belong to ST category and as the said relaxation was made for filling the lone vacancy against ST quota. It has been also submitted that even if there is no specific provision under the recruitment rules for relaxation, the appointing authority had an inherent power to relax any provision of the recruitment rules to meet with any contingency. It was also submitted that as regards the vacancy occurring in the unreserved category, since there are many meritorious candidates above the petitioner, including the said M. Wungrin Lansing, the petitioner cannot have any grievance. It has been also submitted that there is one Th. Sonia Devi who is placed in the waiting list and who belongs to the general category and who had scored higher marks than the present petitioner. The said Th. Sonia Devi, could, therefore, at best be appointed against the unreserved vacancy. Hence, the petitioner cannot be adjusted against the unreserved/general category caused by non acceptance of offer of appointment by Hasby Haokip.

18. Learned AG contended that in any event, the petitioner has not impleaded either M. Wungrin Lansing (ST) or any other candidate belonging to the ST category who were given one time relaxation, though they are all necessary parties. Learned AG also submits that since Th. Sonia Devi is placed in the wait list, no order can be passed which adversely affects her right or interest, hence she is also a necessary party. It is, therefore, contended that non- impleadment of the aforesaid persons who are necessary parties, would render the writ petition liable to be dismissed, as it a fatal defect. In this connection Learned AG has relied on the decision of the Hon''ble Supreme Court in Prabodh Verma & Ors. v. State of U.P & Ors. , (1984) 4 SCC 251.

19. Learned AG submits that the writ petitioner has also not challenged the revised recommendation lists of MPSC in this writ petition and since the name of the petitioner is not found in any of the recommended lists, he has no right to be appointed against any vacancy as only those persons whose names are recommended for appointment would have the right to appointment. Therefore, since the name of the petitioner is neither included in the revised recommended lists nor the petitioner had challenged the revised recommended lists of the MPSC, no relief can be granted to the petitioner.

20. Mr. R.S Reisang, learned Senior Counsel for the MPSC has by and large endorsed the view of the learned AG. Further, he submits that the petitioner cannot challenge the policy decision taken by the State authorities in relaxing the rules by granting one time relaxation in respect of ST candidates, unless such policy decision is patently illegal and malafide which according to the Ld. Senior Counsel, the petitioner has failed to establish. In this regard, Mr. R.S. Reishang, Ld. Senior Govt. Advocate has relied on a number of decisions of the Hon''ble Supreme Court in Gol Gaijairung & Ors v. State of Manipur & Ors, , 2006(3) GLT

236 (DB); Transport and Dock workers union & Ors. v. Mumbai Port Trust, , (2011) 2 SCC 575; State of Orissa & Anr. v. Radhe Shyam Meher & Ors., , (1995) 1 SCC 652.

21. Further relying on the decision of the Hon'ble Supreme Court in Chattar Singh v. State of Rajasthan , AIR 1997 SC 303. Mr. R. S Reisang, learned senior counsel for the MPSC also submitted that special treatment can be given to the SC/ST category which may be dissimilar to the treatment given to the OBC and such dissimilar treatment does not amount to discrimination. Therefore, no grievances can be made for giving one time relaxation to the ST candidates for filling up the one vacant post of ST in the present case.

22. Mr. R.S. Reishang, Id. Senior Counsel has submitted that MPSC submitted revised recommendation lists in terms of the marks obtained by the candidates after the retest in walking was held for the ST candidates. After the retest M. Wungrin Lansing (ST) was found to be fit and also found to have scored higher marks than many other candidates including the present petitioner and, hence, his name was included in the merit list for the unreserved category by virtue of his mark.

23. Heard learned counsel for the parties and also considered the materials on record including the records produced by the Ld. Advocate General.

24. From the records, it is clearly evident that initially there was an advertisement for recruitment to 13 post of MFS Grade-II out of which 4(four) were reserved for the Scheduled Tribe candidates, 2(two) for the OBC(Meitei) candidates and the remaining 7 (seven) under Unreserved category. Pursuant to the aforesaid advertisement, the MPSC conducted the necessary written test and viva-voce and others tests required under the rules. One of the tests involved was physical/walking test as provided under the rules. It seems some of the candidates though had done well in the written and viva-voce, could not clear the physical/walking test. Accordingly, on the basis of the marks obtained and who were found "fit" in the physical test, the MPSC recommended 7 (seven) candidates under the unreserved category in order of merit and 2(two) for OBC (Meitei). However, in respect of Scheduled Tribe category, though four posts were advertised, only 3(three) were found suitable and "fit", hence only 3 (three) names were recommended by the MPSC in order of merit.

25. It seems the Government, considering the fact that, one reserved post for Scheduled Tribe would remain vacant due to unavailability of fit candidate and considering the fact that this recruitment process had taken place after more than about 25 years and the huge logistics were involved in the recruitment process, decided to give another opportunity to the Scheduled Tribe candidates to take part in the physical test/walking test by adopting the instructions issued by the Govt. of India to fill up the lone vacancy under the ST category. Accordingly, after taking a decision to that effect, the State authorities requested the MPSC to make recommendation for filling up the remaining one vacancy

under Scheduled Tribe category by giving opportunity to the Scheduled Tribe candidates who had failed in the physical/walking test to appear again. The MPSC acted upon such request of the State Government and held the re-test of the physical/walking test in respect of the Scheduled Tribe candidates only. In the process, the MPSC found two Scheduled Tribe candidates to have passed the physical test/walking test and recommended one of the successful Scheduled Tribe candidates, namely, M. Wungrin Lansing for appointment under the unreserved category in view of the marks obtained by him and other ST candidate, namely, Limlanlal Mate for appointment against the remaining one vacancy occurring against the Scheduled Tribe category. The MPSC accordingly, sent the revised recommended lists for appointment against the unreserved posts and other posts reserved for Scheduled Tribe and OBC(M).

26. Therefore, this Court has to examine as to whether there was any irregularity or illegality in the aforesaid process of retest in walking and preparation of the revised recommendation lists. If the aforesaid process is found to be irregular or not permissible in law, this Court has to consider what relief the petitioner could be granted.

27. The reason for holding a retest in walking and submitting a fresh recommendation arose due to earlier recommendation of only 3(three) candidates against the 4(four) advertised posts reserved for Scheduled Tribes which the authorities wished to fill up. Since all the remaining Scheduled Tribe candidates were found unfit as they failed in physical/walking test, the only option left to the authorities was to either re-advertise the said lone vacant post of MFS or initiate a fresh recruitment process. The authorities, in their wisdom, considered that since the recruitment process is a cumbersome one being undertaken after about 25 years, and rather than opting for a fresh recruitment process, decided to give another opportunity to those Scheduled Tribe candidates who were earlier declared unfit in the physical/walking, test to appear again in the physical test. This option, which the authorities had resorted to by adopting the regulation issued by the Ministry of Environment and Forest, Govt. of India by giving relaxation to the ST candidates, however, has been vehemently assailed by the petitioner contending that the authorities could not relax any provision of the recruitment rules unless the same is provided under the rules and advertised.

28. Hence, the problem started after the manner in which MPSC as well as the State authorities while relaxing the rules for the Scheduled Tribe candidates, sought to fill up the vacancy against the unreserved category which had occurred due to non-acceptance of offer of appointment by Hasby Haokip. As mentioned above, the MPSC prepared a revised recommended list not only in respect of the 4 posts meant for the Scheduled Tribes, but also for one vacancy under the Unreserved category which arose due to non-acceptance of offer of appointment by Hasby Haokip. If the MPSC and the appointing authority had confined their exercise only for filling up the lone vacancy under the ST category, there would

have been no scope for the petitioner to challenge the same.

29. The State Government had taken the decision to offer another opportunity to appear in the physical test/walking test only to the ST candidates for filling up all the 4(four) posts reserved for ST. If the State Government also had offered the same opportunity to the OBC(M) and general candidates who were earlier declared "unfit" for considering filling up the vacancy arising under the unreserved category, as was done for filling up the vacancy reserved for the Scheduled Tribe candidates, the question of any arbitrariness or discrimination would not have arisen, and the vacant post under the unreserved category could have been also filled up on the basis of merit after the retest. Though the candidates under the unreserved category or OBC(M) were not offered any such relaxation or opportunity to re-appear in the physical test/walking test, the vacancy which had occurred under the unreserved category is sought to be filled up by a candidate belonging to a Scheduled Tribe candidate who was given an opportunity of reappearing in the physical/walking test to the exclusion of other candidates. This, in the opinion of this Court, would amount to not providing a level playing field to the different categories of candidates and is thus, clearly discriminatory. If a candidate belonging to Scheduled Tribe category, who had been given an opportunity to re-appear in the physical/walking test is sought to be included in the merit list for the unreserved category, other candidates from the general or OBC(M) categories, who were earlier found unfit must be also given the same opportunity, so as to give equal opportunity to them for considering their claim for inclusion in the merit list for the unreserved post which, however, has not been done in the present case. Therefore, this Court holds that as the other candidates belonging to the other categories and who were earlier found "unfit" were not given the same opportunity as given to the candidates belonging to the ST category to reappear in the walking test, considering filling up the vacancy in the unreserved category by a candidate who was given a second opportunity in reappearing in physical/walking test, would be a illegal as violative of Articles 14 and 16 of the Constitution.

30. As regards the contention of the petitioner that the relaxation granted to the Scheduled Tribe candidates is illegal, this Court takes the view as follows.

"(i) So long as the relaxation is confined only for the purpose of filling up the vacancy under the ST category, the petitioner can have no grievance. This Court is of the view that since the relaxation was invoked only for the purpose of filling up the lone vacant post under the Scheduled Tribe category, and since the petitioner does not belong to Scheduled Tribe category, he cannot have any right to be considered for appointment to a reserved post for ST. hence, he cannot have any locus to challenge the said procedure.

Accordingly, this issue whether such a relaxation is permissible under the rules or not need not be examined and is kept open.

(ii) Only when the relaxation is extended to other categories, the need may arise

to examine the validity of such relaxation. But, in the present case, the relaxation has not been extended to other categories of candidates. Because of this differential and preferential treatment, the benefit of relaxation given only to the ST candidates, cannot be applied for considering appointment to the unreserved categories. Since, this Court has held that such relaxation cannot be applied for considering appointment to an unreserved vacancy, it may not be necessary to examine the legality of this relaxation given to the ST candidates.

(iii) Assuming that the relaxation granted in favour of the Scheduled Tribe candidates for re-appearing in the physical test/walking test is permissible, unless the same opportunity is given to the other candidates belonging to unreserved and OBC(M) category, the vacancy in the unreserved category cannot be filled up by a candidate belonging to Scheduled Tribe category, who has been given the said relaxation. Every candidate irrespective of the category he belongs to, has a right to be considered for appointment to an unreserved vacancy on the basis of one's own merit. Hence, if some failed ST candidates are given the relaxation, all others who are similarly situated, must be also given the same opportunity for considering filling up vacancies under the unreserved category. To that extent, the contention of the petitioner that there has been discrimination and arbitrariness finds force and is upheld, without even examining the legality of relaxation of recruitment rules.

(iv) The case of M. Wungrin Lansing belonging to ST category and who was given relaxation cannot be considered at all for appointment against general/unreserved category post when other candidates belonging to unreserved/OBC category were not given such benefit of relaxation. However, if the said M. Wungrin Lansing is adjusted against any post reserved for Scheduled Tribe category, the petitioner cannot have any grievance."

31. In such a scenario, the issue which requires to be settled is how to fill up the vacancy under the unreserved category which had arisen due to non-acceptance of offer of appointment by Hasby Haokip. As mentioned above, Hasby Haokip had already informed the authorities on 22.7.2014 about her inability to join the MFS Grade-II post as she had been already appointed to Manipur Police Service Grade-II. Thus, under normal circumstances such vacancy under the unreserved category, ought to have been filled up by a candidate who is placed in the Waiting List i.e. Thokchom Sonia Devi. That was, however, not done by the appointing authority. On the other hand, rather than acting on the original recommendation made by the MPSC and the Waiting List, the Government again asked the MPSC to hold a retest of the walking test for the ST candidates and make a recommendation accordingly. While doing so, the MPSC made a fresh recommendation in respect of unreserved candidates also, though no such request was made by the State authorities, by including the name of M. Wungrin Lansing who belongs to ST category, after the MPSC found him to be fit after the second round of physical/walking test. The State had requested the MPSC to hold a re-test of physical test only in respect of ST candidates to fill up the remaining

lone vacancy under the ST category. This Court has already held that inclusion of M. Wungrin Lansing (ST) for appointment to the unreserved vacancy is impermissible as other candidates under the unreserved category and OBC(M) candidates who were earlier found unfit, were not given similar opportunity. It may be also mentioned that when Hasby Haokip declined to accept the offer of appointment, the authorities had not yet issued any appointment order in respect of the posts advertised, including those reserved for the OBC(M). Had these posts including for the OBC(M) been filled up on the basis of the original recommendation of the MPSC dated 13.06.2014, the issue of pushing up candidates on the basis of merit against the vacancy in the unreserved category might not have arisen. The State Government issued the appointment order only on 14.10.2014 on the basis of the revised recommendation lists of the MPSC, that too against 11 posts out of 13 advertised posts. It is to be noted that before the appointment orders were issued on 14.10.2014, the MPSC made its revised recommendation on 01.9.2014. The MPSC while making the fresh recommendation list on 01.9.2014 included the name of M. Wungrin Lansing, though he belongs to Scheduled Tribe category and was given a second opportunity to appear in the written test, in the list of 7 candidates recommended for appointment against 7 unreserved posts. However, the MPSC also did not make any change as regards the recommendation for the OBC(M) quota and retained the earlier two persons, namely, Elangbam Nirmala Devi and Rebika Chanu. It may be noted that one Sarugnbam Kison Singh who belongs to OBC(M) who had scored higher marks than Elangbam Nirmala Devi and Rebika Soibam Chanu had not been considered for appointment to the vacancy reserved for the OBC(M) as he failed in the physical test. Since the State Government did not take any decision for grant of one time relaxation in respect of any other categories of candidates other than Scheduled Tribe candidates, 7(seven) posts under the unreserved category ought to have been filled up on the basis of the merit without taking into consideration the candidates who were declared unfit at the initial recruitment process including those who were subsequently found "fit" after the retest. In that event, the name M. Wungrin Lansing is to be struck off, as he cannot be included as one of the candidates against the unreserved vacancies and in his place, Elangbam Nirmala Chanu who belongs to OBC(M) who is the most meritorious candidate ought to have been included in the recommended list for unreserved category. Consequently, the person with the highest mark amongst the OBC(M) candidates ought to be included against one of the 2(two) vacancies under the OBC(M) category vacated by Elangbam Nirmala Chanu. Thus, the petitioner who belongs to the category of OBC(M) and who is next in order of merit in the said category after Rebika Soibam Chanu, ought to be included as one of the candidates to fill up the vacancy under the OBC(M) category. It has to be noted that though the said Th. Sonia Devi, was placed in the Waiting List and had scored more marks than the present petitioner, but scored less marks than Elangbam Nirmala Chanu, OBC(M), hence, Th. Sonia Devi cannot be given precedence over Elangbam Nirmala Chanu. Therefore, Elangbam Nirmala Chanu who belongs to OBC(M) category, by virtue

of merit, and not Th. Sonia Devi, is to be adjusted against the vacancy under the unreserved category which arose due to non-acceptance of offer of appointment by Hasby Haokip.

32. As mentioned above, the matter could have been otherwise, if the two candidates under the OBC(M) category i.e. Elangbam Nirmala Chanu and Rebika Soibam Chanu had been already appointed under their respective quota of OBC(M) before the vacancy under the unreserved category arose due to non-joining of Hasby Haokip. If the vacancies under the OBC(M) had been already filled up by these two recommended candidates before the revised list of recommendation was prepared and forwarded by the MPSC to the State Government, there would have been no scope for the petitioner to be considered for appointment under the OBC(M) category. In that event, the vacancy caused by non joining of Hasby Haokip could have been filled up by the candidate in the waiting list, viz. Th.Sonia Devi. Since the vacancy under the unreserved category due to non-joining of Hasby Haokip occurred prior to the appointment of Elangbam Nirmala Chanu and Rebika Chanu against OBC(M) category and the MPSC was still redrawing the merit list and Government had not yet acted on the original recommendation of the MPSC, the vacancy which occurred against unreserved vacancy due to non-joining of Hasby Haokip is to be accommodated by adjusting the most meritorious and qualified candidate after Hasby Haokip, who happens to be Laishram Gitla. Consequently, the slot vacated by Laishram Gitla would be filled by the next candidate in order of merit, i.e., Elangbam Nirmala Chanu by pushing her up. That would have resulted in creating a vacancy under the OBC(M) category, which would have to be filled up by Rebika Soibam Chanu, OBC(M). The resultant vacant slot created due to pushing up of Rebika Soibam Chanu under the OBC (M) category is then to be filled by the most meritorious candidate under the OBC category from the merit list. In that event, the petitioner being the most meritorious candidate after Rebika Soibam Chanu would have to be considered for appointment against the vacancy under the OBC(M) category.

33. This Court also would like to deal with the other issues raised by the learned Advocate General of the State as well as the learned Senior G.A. Mr. R.S. Reishang for the Manipur Public Service Commission.

They had contended that the petitioner has no locus standi to challenge the relaxation granted in favour of the ST candidate as the petitioner does not belong to ST category. This objection though valid, however, cannot come in the way of the petitioner in the peculiar facts of the case. The State Cabinet took the decision to grant one time relaxation for the ST candidates to fill up one vacancy under the ST category existing at the time of initial recommendation made by the MPSC. Therefore, if granting of relaxation was confined only to fill up the vacancy reserved for ST, obviously the petitioner could not have any grievance, inasmuch as he does not belong to ST category but belongs to OBC(M) category and he cannot be considered at all for appointment against the vacancy reserved

for ST. However, what the MPSC and the State authorities were proceeding to do is that by granting relaxation to ST candidates, they were also seeking to fill up vacancy under the unreserved category which had occurred due to non acceptance of offer by one Hasby Haokip by recommending the name of M.Wungrin Lansing (ST). This Court has already held that this vacancy under the unreserved category which had arisen on account of Hasby Haokip declining to accept, has to be filled up on the basis of merit. If the candidates belonging to ST category are given relaxation and are to be considered for appointment against the said vacancy against the unreserved category, similar relaxation ought to have been granted to all the other candidates of all categories so as to offer them equal opportunity to be considered for appointment under the unreserved vacancy, as all the categories of candidates are entitled to be considered for appointment under the unreserved category. Since, in the present case, the authorities have not granted the benefit of relaxation to other categories of candidates who had not passed the physical test, other than the ST categories, this Court has held that there has been denial of equal opportunity in the matter relating to public employment as guaranteed under Article 16 of the Constitution of India. As relaxation had not been granted to the remaining categories of candidates and they have not availed this relaxation, the merit of such candidate based on relaxed condition cannot be placed at par with the merit of other candidates who had not given relaxation as far as the unreserved vacancies is concerned. Therefore, the petitioner has every right to challenge the relaxation of rules if it is applied for considering filling up of vacancies under unreserved category.

34. This Court holds that even if the objection of the respondents that the petitioner has no locus standi to challenge the relaxation granted in favour of the ST category is upheld, yet the respondents cannot overcome the Constitutional hurdle in considering only such beneficiaries belonging to ST category for appointment against the unreserved category, to the exclusion of other categories of candidates. To that extent the petitioner's objection has to be upheld.

35. The other objection of the respondents is that the petition suffers from a fatal defect due to non impleadment of necessary parties and hence liable to be dismissed.

As regards this objection it may be noted that the Manipur Public Service Commission never published the recommendation/merit list in which the names of M. Wungrin Lansing or Th. Sonia Devi find place. The only merit list which was published by the MPSC was on 13th June, 2014 in which the names of either of the aforesaid persons do not find place. It may be also noted that after the revised select lists were prepared by the MPSC consequent upon holding of the retest in physical/walking test in respect of ST candidates, neither the MPSC nor the State Respondents published such lists. The authorities also did not make any appointment against any category of the posts in terms of the earlier

recommendation made by the MPSC. After the revised recommendation was made by the MPSC, the appointing authority issued the appointment order only on 14.10.2014, appointing 11 persons, without including the said M. Wungring Lansing and Limlenlal Mate, that too during the pendency of this writ petition. There is no mention in the said appointment order dated 14.10.2014 about the modified merit list recommended by the MPSC in which the names of these two persons find place. Therefore, when the names of these two persons were not notified as recommendees in the revised selected list or in the waiting list, the petitioner could not have known about their recommendation for appointment and hence, the petitioner cannot be faulted with for not impleading them as party respondents in the writ petition. Their names have cropped up only after the respondents filed their affidavits-in-opposition to show the process of a fresh recommendation by the MPSC subsequent to the relaxation granted in favour of ST categories. Till their names are made public, they do not have any vested right for consideration/appointment. Their rights, if any, would be inchoate. Therefore, non impleadment of the aforesaid two persons cannot be said to be fatal as far as the petitioner is concerned.

Further, Th. Sonia Devi who was under unreserved category and placed in the waiting list could be considered for appointment only against unreserved category. In the present petition, the petitioner is claiming for appointment under the vacancy reserved for OBC(M) and as such there is no clash of interest between Th. Sonia Devi and the petitioner. Hence, Th. Sonia Devi need not be impleaded as respondent by in this writ petition

Accordingly, this plea of the respondents is rejected.

36. For the reasons discussed above, this Court holds as follows.

"(i) The relaxation granted in favour of the ST candidates by the State authorities was only for the purpose of filling up the lone vacancy under the ST category, in which event, as the petitioner does not belong to ST category, he does not have any locus standi to challenge the same.

(ii) Since the re-test was restricted to the ST candidates only for filling up the single vacancy under the ST category, the MPSC was to confine the exercise of retest and recommendation only in respect of the said single vacancy under the ST category.

(iii) Since this relaxation was not extended to other categories of candidates, the vacancy occurring in the unreserved category cannot be filled up by any candidate who had been granted the relaxation to the exclusion of other candidates and such vacancy has to be filled up only from amongst the candidates who have not been granted such a relaxation, but on the basis of the initial merit list prepared by the MPSC.

(iv) The vacancy under the unreserved category occurring, is to be filled up by considering the candidates based on merit, by ignoring those candidates who

were earlier found "unfit", thereby, ignoring also those ST candidates who were given a second opportunity to appear in the retest to the exclusion of other candidates belonging to other categories. Considering such ST candidates who had been given another opportunity to re appear in the physical rest/walking test, for appointment under the unreserved category, would amount to giving undue advantage to such ST candidates, which will violate the mandate of law under Articles 14 and 16 of the Constitution of India, and hence not permissible.

(v) As no appointment had been made in terms of the earlier recommendation of the MPSC, and the State authorities had acted only after the MPSC furnished the revised merit list on 1.9.2014, and since the vacancy in the unreserved category which occurred due to non acceptance of offer of appointment by Hasby Haokip, of which, the MPSC was also aware of, arose before the MPSC made the revised recommendations on 01.09.2014, the MPSC had to make the recommendation for filling up the said vacancy under the unreserved category, from amongst the candidates on merit by excluding M. Wungrin Lansing (ST) who had availed the relaxation and also by excluding all the candidates who were found "unfit". Thus after excluding M. Wungrin Lansing (ST), the candidate who is the next most meritorious ought to have been included in the merit list for the unreserved vacancy. In that event, Elangbam Nirmala Chanu OBC(M) who was recommended for OBC(Merit Promotion Scheme) post will get the placement in place of M. Wungrin Lansing, thus causing a vacancy in the OBC category which has to be filled up by recommending the name of the petitioner who is the most meritorious amongst the remaining OBC(M) candidates after Rebika Soibam Chanu. Rebika Soibam Chanu and the petitioner are to be recommended for appointment against the 2 (two) posts reserved for the OBC(M) on the basis of merit.

(iv) Since M. Wungrin Lansing belongs to ST category who was a beneficiary of the relaxation granted in favour of the ST category only, his case cannot be considered for appointment to the post under the unreserved category but only against the post reserved for ST category."

37. Accordingly, this Court holds that the petitioner is entitled to be included in the merit list for appointment against one of the 2 (two) reserved vacancies for OBC(M).

38. The Manipur Public Service Commission and the State respondents are accordingly directed to take necessary actions steps as directed above, for appointment of the petitioner against one of the vacancies/posts under the OBC(M) category, within a period of one month from the date of receipt of a certified copy of this order.

39. With the above observations and directions, this writ petition stands allowed to the extent indicated above.