
(2015) 02 MAN CK 0011

In the Manipur High Court

Case No : Writ Petition (C) Nos. 879 and 1093 of 2006 and 150 of 2008

Waikhom Gojendro Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Citation : (2015) 2 GLT 56

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : M. Hemchandra, for the Appellant; R.S. Reisang, Sr. Govt. Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kh. Nobin Singh, J.—Heard Shri M. Hemchandra, learned counsel appearing for the petitioner and Shri R.S. Reisang, learned Sr. Government Advocate appearing for the respondents.

2. The parties are common in all these writ petitions and since issues involved therein are interconnected arising out of the same fact, the same are being disposed of by a common judgment and order.

W.P. (C) No. 879 of 2006:

3. The present writ petition has been filed by the petitioner praying for quashing the order dated 24-07-2006 issued by the Director, Rural Development and Panchayati Raj, the Respondent No. 2 directing the petitioner to look after the work of Section Officer Grade-II.

3.1 According to the petitioner, on the recommendation of a DPC held on 04-03-1987 which was approved by the State Government vide letter dated 21-01-1988, the petitioner was initially appointed as Road Mohorir vide order dated 21-03-1988 issued by the respondent No. 2. After working for about a decade as Road Mohorir and on the recommendation of a DPC held on

30-10-1999, the petitioner was appointed on promotion as Section Officer Grade-II (Civil) vide order dated 04-11-1999 issued by the respondent No. 2 and from the day the petitioner was appointed as Section Officer Grade-II (Civil), the petitioner was transferred and posted at various far flung areas. Since the petitioner has put in more than 7 (seven) years as Section Officer Grade-II (Civil), he became eligible for promotion to the post of Section Officer Grade-I.

3.2 To the shock and surprise of the petitioner, the respondent No. 2 issued an order dated 24-07-2006 to the effect that the petitioner would look after the work of Section Officer in his grade pay with immediate effect until further order. Being aggrieved, the petitioner challenged the validity and correctness of the order dated 24-07-2006 by filing the present writ petition.

3.3 The said writ petition is contested by the respondents by filing an affidavit-in-opposition wherein it is stated that the petitioner was appointed as Section Officer Grade-II against the deputation vacancy arising out of the deputation of Shri S. Sarat Singh, Section Officer to the DRDA and through bonafide mistake, the method of appointment as to officiate Section Officer Grade-II was not made and therefore, the respondents issued a Corrigendum dated 05-11-1999 stating therein that the petitioner was to officiate as Section Officer Grade-II and should be reverted to his substantive post as and when Shri S. Sarat Singh was repatriated to his parent Department. It is further stated that the petitioner was never appointed as Section Officer Grade-II on regular basis and therefore the R.R. for Section Officer Grade-I would not be applicable to him. To rebut the averments made in the counter, the petitioner filed a Rejoinder wherein it is stated that the Corrigendum dated 05-11-1999 was doubtful and questionable as it was issued back dated by the respondent No. 2. It is further stated that the said Corrigendum was produced at that stage only to mislead the court and issuance of the said Corrigendum was not recorded in the Service Book of the petitioner. The petitioner has been serving as Section Officer Grade-II without any interruption by drawing the salary of Section Officer Grade-II despite the alleged Corrigendum dated 05-11-1999, as is evident from the payment of pay and allowances to the petitioner. It is further stated that the issuance of the said Corrigendum dated 05-11-1999 was not made known to the petitioner at all and it was produced only when the order dated 24-07-2006 came to be challenged by the petitioner. Even assuming for the sake of agreement but not admitting that the petitioner was appointed on officiating basis against the deputation vacancy, the petitioner ought not to have been allowed to draw the pay and allowances of Section Officer Grade-II from 04-11-1999 and moreover, when the order dated 03-05-2003 was allegedly issued, it did not say anything about the petitioner being reverted as Road Mohorir. The petitioner filed an additional affidavit also stating that the fact that the said Corrigendum dated 05-11-1999 is a back dated order produced by the respondent No. 2 from his own pocket, can be very clearly seen from the perusal of the Corrigendum itself which is the document typed in computer because around the year 1999 leave alone the Rural Development and Panchayati Raj, Manipur, none of the Departments under

the Government of Manipur was computerized and the Corrigendum dated 05-11-1999 could not have been issued in the year 1999. The petitioner came to know of the existence of the Corrigendum dated 05-11-1999 only when the same was annexed in their counter affidavit filed on behalf of the respondents.

W.P. (C) NO. 1093 of 2006:

4. This writ petition has been filed by the petitioner for rectification/correction of the designation of the petitioner as Section Officer Grade-II instead of Road Mohorir in the All Manipur Government Employees List (MGEL).

4.1 According to the petitioner, from the day he was appointed on promotion to the post of Section Officer Grade-II vide order dated 04-11-1999, the petitioner has been serving as Section Officer Grade-II. The petitioner was posted as Section Officer Grade-II in various places in the State as is evident from the Government orders dated 29-12-1999, 19-04-2002, 01-07-2002, 20-02-2004, 29-10-2004, 16-02-2006 and 06-04-2006. But to the shock and surprise of the petitioner, the respondent No. 2 issued an order dated 24-07-2006 to the effect that the petitioner would look after the work of Section Officer in his grade pay with immediate effect until further order. Being aggrieved by the said order dated 24-07-2006, the petitioner filed a writ petition being W.P. (C) No. 879 of 2006 challenging the validity and correctness of the said order dated 24-07-2006 wherein the Hon''ble Gauhati High Court, Imphal Bench was pleased to pass an interim order dated 14-09-2006 directing that the said order dated 24-07-2006 be not given effect to till the Monday next which was followed by an order dated 18-09-2006 of the Hon''ble Gauhati High Court, Imphal Bench directing that the interim order dated 14-09-2006 be continued until further order. Since the said interim order dated 18-09-2006 has not been vacated/modified, the same is still in operation.

4.2 It is also the case of the petitioner that even though the said order dated 24-07-2006 having been stayed, the respondents, subsequent to the issuance of the said order dated 24-07-2006, issued a list of employees in the Department of Rural Development and Panchayati Raj, Manipur wherein the name of the petitioner appeared at Sl. No. 19 showing his designation as Road Mohorir which is erroneous and contrary to the Government Order dated 04-11-1999 issued by the respondent No. 2. Hence, the instant writ petition has been filed by the petitioner.

To contest the said writ petition, It appears, the respondents have not yet filed an affidavit-in-opposition.

W.P. (C) NO. 150 of 2008:

5. This writ petition has been filed by the petitioner challenging the legality of the corrigendum dated 05-11-1999 issued by the respondent No. 2.

5.1 According to the petitioner, while he was serving as Section Officer Grade-II and to the shock and surprise of the petitioner, the respondent No. 2 issued an

order dated 24-07-2006 to the effect that the petitioner would look after the work of Section Officer in his grade pay with immediate effect until further order. Being aggrieved by the said order dated 24-07-2006, the petitioner filed a writ petition being W.P. (C) No. 879 of 2006 challenging the validity and correctness of the said order dated 24-07-2006. In the affidavit-in-opposition filed on behalf of the respondents, a copy of the corrigendum dated 05-11-1999 was filed along with it. The veracity and genuineness of the said Corrigendum dated 05-11-1999 was doubtful and questionable as it was issued back dated and was produced at that stage to mislead the Hon''ble Court. The issuance of the said Corrigendum dated 05-11-1999 was not recorded in the service book of the petitioner and the petitioner has been enjoying the pay and allowance of the Section Officer Grade-II. Moreover, the existence of the said Corrigendum dated 05-11-1999 was not made known to the petitioner before the same came to be filed along with the affidavit-in-opposition in the year 2006. Hence, the writ petition has been filed by the petitioner for quashing the said Corrigendum dated 05-11-1999.

5.2 In the affidavit-in-opposition filed on behalf of the respondents, a similar stand taken in the W.P. (C) No. 879 of 2006 has been taken by the respondents contending inter-alia that the petitioner was never appointed as Section Officer Grade-II on regular basis; that the method of appointment was clarified by the said Corrigendum dated 05-11-1999; that after Shri P. Sarat Singh being repatriated to his parent Department as Section Officer, there was no vacancy for accommodating the petitioner and accordingly, the petitioner was reverted to his substantive post vide order dated 01-04-2006 and was allowed to look after the work of Section Officer, Thoubal C.D. Block. There was no illegality in issuing the said Corrigendum dated 05-11-1999 which was challenged by the petitioner after a lapse of more than nine years and therefore, the writ petition was not maintainable.

6. Having heard the learned counsels for the parties and in view of the stand taken by the respondents that through bonafide mistake, the method of appointment as to officiate Section Officer Grade-II was not made in the order dated 04-11-1999 and the respondents issued a Corrigendum dated 05-11-1999 stating therein that the petitioner was to officiate as Section Officer Grade-II and should be reverted to his substantive post as and when Shri S. Sarat Singh was repatriated to his parent Department, it has become necessary and appropriate for this court to examine first as to whether the said Corrigendum dated 05-11-1999 was really issued on the next day of issuing the order dated 04-11-1999 or not for the reason that any decision given on the said question will have a bearing while deciding the other issues involved in the other two writ petitions. It is vehemently submitted by the counsel for the petitioner that the veracity and genuineness of the said Corrigendum dated 05-11-1999 was doubtful and questionable as it was issued back dated; that the issuance of the said Corrigendum dated 05-11-1999 was not recorded in the service book of the petitioner; that the existence of the said Corrigendum dated 05-11-1999 was not made known to the petitioner and that Corrigendum itself is typed in computer

when none of the Departments under the Government of Manipur was computerized. It is therefore submitted by the counsel for the petitioner that the said Corrigendum dated 05-11-1999 is liable to be quashed and set aside. There is force in the submission of the learned counsel for the petitioner for the reason that the above averments made by the petitioner have not been specifically rebutted in their affidavit filed on behalf of the respondents except stating that the petitioner was appointed as Section Officer Grade-II against the deputation vacancy and the mistake creped in the order dated 04-11-1999 was rectified by issuing the said corrigendum which are not relevant for deciding the above question. The said Corrigendum dated 05-11-1999 does not indicate anything as to how the respondents and in particular, the then Director, Rural Development and Panchayati Raj came to know about the alleged mistake in the previous night. No document is placed on record by the respondents to show that the petitioner was served with a copy of the said Corrigendum and many transfer orders relied upon by the petitioner, referred to above, do not indicate that the petitioner was being transferred to officiate as Section Officer Grade-II. Even after Sri P. Sarat Singh being repatriated to his parent Department vide order dated 03-05-2003, the petitioner was not reverted to his substantive post as Road Mohorir in spite of the Corrigendum being allegedly issued way back on 05-11-1999. Moreover, this court has perused the original file bearing No. 1/48/77-RD/V containing Note Sheets of 11 (eleven) pages from page 1 to 11 and its correspondence/documents from page 1 to 71 wherein neither a copy of the order dated 04-11-1999 appointing the petitioner on promotion as Section Officer Grade-II nor a copy of the said Corrigendum dated 5-11-1999 is found. Only a copy of the order dated 04-11-1999 by which the officiating appointment of three Road Mohorir as Section Officer Grade-II namely (a) Kh. Girani Singh; (b) N. Indraj Singh and (c) K. Poireicha Meitei was regularized on the basis of the recommendation of the same DPC held on 30-10-1999, is available in the said File and this order seems to be in line with the administrative approval granted only in respect of three persons as reflected in Note No. 28 of the File. From the perusal of the Note Sheets and the proceedings of the DPC held on 30-10-1999 together, even the validity of the order dated 04-11-1999 being issued appointing the petitioner on promotion as Section Officer Grade-II is also not free from doubt and there is a probability of interpolation by adding the name of the petitioner, later on, in the proceedings of the DPC held on 30-10-1999. Otherwise, the name of the petitioner could have been included in the order dated 04-11-1999 appointing three other persons as Section Officer Grade-II on the basis of the same recommendation of the DPC held on 30-11-1999 as mentioned above so that the requirement of issuing a separate order appointing the petitioner on promotion as Section Officer Grade-II on the same day would not have arisen. Be that as it may, this court is not concerned with the validity of the order dated 04-11-1999 but with that of the Corrigendum dated 05-11-1999. In the said Note Sheets of 7 pages, nothing is mentioned about the requirement of issuing such a Corrigendum on the next day itself i.e., 05-11-1999. It thus appears that the order dated 04-11-1999 appointing the petitioner on promotion

as Section Officer Grade-II and the Corrigendum dated 05-11-1999 thereof, if really issued, might have been issued by the then Director of Rural Development and Panchayati Raj, on his own, without the same being reflected in the File. In other words, the order dated 04-11-1999 and the Corrigendum dated 05-11-1999 might have been issued by the then Director without any authority.

7. The above inference is relevant from another point of view. In W.P. (C) No. 1145 of 2006, Md. Talat Muhammad and Anr. v. State of Manipur and ors the Hon'ble Gauhati High Court while quashing the orders dated 02-11-2006 and 01-04-2006 issued by the then Director, Rural Development and Panchayati Raj, Shri Y. Neta Singh vide its judgment and order dated 19-03-2010 found that Shri Y. Neta Singh had filed false affidavit for which an exemplary cost of Rs. 25000/- was imposed on him. It may be noted that the order dated 01-04-2006, referred to above, is the same order by which the petitioner is alleged to have been reverted. In the appeal being W.A. No. 65 of 2010 preferred by the State Government, it has been contended that the order dated 04-11-1999 by which both the respondents therein were regularized in service, is a fake order issued by the then Director in collusion with the said respondents and that the DPC held on 30-10-1999 had not recommended names of the respondents for regularisation as Road Mohorir nor had the Government at any point of time approved such regularization. The further ground taken in the appeal is that the respondent No. 1 was never recommended by the DPC and his name was fraudulently inserted by erasing someone else's name. Since there is no material to show that the respondents therein committed fraud by inserting the name of the respondent No. 1 in the recommendation of the DPC and the said grounds have been taken for the first time in the appeal, the judgment and order dated 19-03-2010 was not interfered by this court on 23-01-2015. From the materials on record and also from the perusal of the original File as aforesaid, it can be inferred that the said Corrigendum dated 05-11-1999 would not have been issued on the next day of issuing the order dated 04-11-1999 and it might have in all probability been issued back dated and hence, the same is liable to be quashed and set aside.

8. As has been found and held in the preceding para that the said Corrigendum dated 05-11-1999 might have been issued back dated and is liable to be quashed, the order dated 24-07-2006 which is impugned in the writ petition being W.P. (C) No. 150 of 2008 will be rendered contrary to the order dated 04-11-1999 which clearly states that the petitioner is appointed on promotion as Section Officer Grade-II. It does not talk anything about the petitioner being appointed against the deputation vacancy. This order dated 24-07-2006 can not be given effect to as long as the order dated 04-11-1999 is in operation and is not cancelled. In other words, the petitioner who has been appointed on promotion as Section Officer Grade-II, cannot be allowed to look after the said post on officiating basis. From the perusal of the order dated 24-07-2006 itself, it cannot be said to have superseded the order dated 04-11-1999. Moreover, the order dated 24-07-2006 has never been given effect to on account of interim

orders dated 14-09-2006 and 18-09-2006 passed by this court in W.P. (C) No. 879 of 2006 staying the operation thereof until further orders. Hence, the order dated 24-07-2006 is also liable to be quashed.

However, from the perusal of the proceedings of the DPC held on 30-10-1999, it is evident that the recommendation of the said DPC was only for appointment of Section Officers Grade-II (Civil) on promotion against the existing deputation vacancies. Therefore, the order dated 04-11-1999 appears to be not in conformity with the recommendation of the DPC held on 30-10-1999. It may probably be for this reason that the respondents have taken a stand that the petitioner was not appointed on promotion as Section Officer Grade-II on regular basis. It may be relevant to mention here that in W.P. (C) No. 378 of 2011, Shri Kh. Girani Singh and ors v. State of Manipur and ors. wherein the three petitioners namely (a) Kh. Girani Singh; (b) N. Indraj singh and (c) K. Poireicha Meitei whose officiating appointment as Section Officer Grade-II was regularized vide Government Order dated 04-11-1999 on the basis of the same recommendation of the DPC held on 30-10-1999, challenged the validity of the order dated 29-07-2011 by which the petitioners therein were reverted to the lower posts. The respondents took a similar stand which is being taken in the present case that since the petitioner's promotion allegedly on regular basis vide order dated 04-11-1999 being not in accordance with the recommendation of the DPC held on 30-10-1999, they had no right to be appointed on promotion on regular basis and that the recalling of the said order dated 04-11-1999 and reverting them back to their substantive post of Road Mohorir, cannot be faulted with. This court, after perusal of the proceedings of the DPC held on 30-10-1999, held that any promotion made on the basis of the recommendation of the said DPC held on 30-10-1999 ought to be against the deputation vacancies and by very nature of vacancy, the promotion could not be on regular basis. From the said judgment and order dated 15-04-2014, it is thus clear that while issuing the said order dated 04-11-1999 appointing the petitioner on promotion as Section Officer Grade-II, the non mentioning of the fact that the petitioner was appointed on promotion against the deputation vacancy, is an error creped in the record and such error can be rectified in accordance with law after due notice being given to the incumbent of being heard. It is open to the respondents to take appropriate decision to rectify the said error/mistake in accordance with law.

9. The grievance for which the writ petition being W.P. (C) No. 1093 of 2006 has been filed, is that the respondents, subsequent to the issuance of the said order dated 24-07-2006, issued a list of employees in the Department of Rural Development and Panchayati Raj wherein the name of the petitioner is shown with the designation as Raod Mohorir which is absolutely false and erroneous. Therefore, in this petition, the petitioner has prayed for a direction to the respondents to rectify/correct the designation of the petitioner as Section Officer Grade-II in the list of Government employees. It is not in dispute that the name of an employee shall be included in the list of Government employees of the Department in which the employee has been appointed on regular basis or

against sanctioned post. According to the respondents, since the petitioner was ordered to look after the work of Section Officer Grade-II in his grade pay with immediate effect until further order, his name was included in the list of employees showing his designation as Road Mohorir which is his substantive post. Having the order dated 24-07-2006 been held to be liable to be quashed, the question whether the petitioner's name will be shown in the list of employees as Section Officer Grade-II or as Road Mohorir will depend upon any decision being taken by the respondents in the light of the above observations. In other words, if the respondents take a decision to modify the order dated 04-11-1999 in conformity with the recommendation of the DPC held on 30-10-1999 in accordance with law, the name of the petitioner will have to be shown in the list of employees as Road Mohorir and in case the respondents feel that they will allow the order dated 04-11-1999 to remain in operation without the same being modified/cancelled, the petitioner's name will have to be shown in the list of employees with the designation as Section Officer Grade-II. In the absence of any such decision being taken by the respondents, it is not appropriate and proper for passing any order by this court at this stage.

10. In the result, the Corrigendum dated 05-11-1999 and the order dated 24-07-2006 issued by the then Director, Rural Development and Panchayati Raj are quashed and set aside. In view of the aforesaid peculiar facts and circumstances and with the observations mentioned above, the W.P. (C) No. 879 of 2006 and W.P. (C) No. 150 of 2008 are allowed and the W.P. (C) No. 1093 of 2006 stands disposed of.