
(2015) 10 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (C) No. 900 of 2013

Y. Amumacha Singh	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (2015) 10 MAN CK 0004

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

Bench : Single Bench

Advocate : Rarry, Advocate, for the Appellant; R.S. Reisang, Senior Govt. Advocate and Sobhana, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. Rarry, learned counsel for the petitioner as well as Mr. R.S. Reisang, learned senior Govt. Advocate for the Manipur Public Service Commission and Ms. Sobhana, learned Government Advocate for the State respondents. None appears for the private respondents.

2. The only issue raised in this writ petition is whether the Manipur Public Service Commission (MPSC) while making recommendation in respect of various categories of post i.e. General (unreserved), Scheduled Castes and Scheduled Tribes could change the reservation pattern contrary to the reservation of post intimated by the State Government to the MPSC. In this case, the State Government sent up the proposal to the Manipur Public Service Commission for promotion to the post of Manipur Forest Service Grade-II (Assistant Conservator of Forests) vide letter dated 19.9.2013 written by the Deputy Secretary (DP), Government of Manipur addressed to the MPSC enclosing all the necessary documents including the requisite MPSC Form No. 6 duly filled in, Note for DPC, Integrity Certificates/Vigilance Clearance Certificates, Seniority Lists and other relevant documents. In the said MPSC Form No. 6, the State Government have indicated the number of year wise vacancies vis-?-vis various categories viz.

General (unreserved), Scheduled Caste and Scheduled Tribe. In the said proforma, the government had earmarked one post for Scheduled Caste candidate. Pursuant to the aforesaid process initiated by the State Government, the Manipur Public Service Commission constituted a DPC which held its meeting on 31.10.2013. As regards the one post reserved for the Scheduled Caste to be considered at the time of promotion to MFS Grade-II(ACF), the DPC, however, did not agree with the reservation of one post for the Scheduled Caste and the DPC, after considering, observed that there cannot be any reserved post for the Scheduled Caste as mentioned in Para No. 7 of the said proceeding of the DPC held on 31.10.2013. Accordingly, no recommendation was made in favour of any Scheduled Caste candidate though the State Government had specifically reserved one post for the Scheduled Caste and had also sent up the list of eligible candidates belonging to the Scheduled Caste candidates including the present writ petitioner.

3. Pursuant to the said recommendation of the MPSC, the State Government issued the appointment order being No. 3/3/2013-M For S/DP dated 2nd December, 2013 by which 10 persons were recommended. The aforesaid appointment order clearly shows that no promotion has been made against the reserved post of Scheduled Caste as proposed by the State Government earlier for the reasons mentioned above. It is being challenged in this writ petition by the present petitioner who belongs to Scheduled Caste community contending that it was beyond the power and jurisdiction of the Manipur Public Service Commission to change the reservation of posts as fixed by the State Government and intimated to the Manipur Public Service Commission at the time of initiation of the promotion process. Mr. Rarry, learned counsel for the petitioner submits that it is very clear from the MPSC Form 6 that the Government had specifically earmarked one post reserved for the Scheduled Caste category to be filled up from amongst the eligible Scheduled Caste candidates by drawing attention to Annexure-VIII which contains the 200 PP Based Roster for promotion for MFS Grade-II Officers as on July, 2013. According to Mr. Rarry, learned counsel for the petitioner, the Government after having applied their mind as regards the reservation of posts and after necessary calculation, it kept one post reserved for the Scheduled Caste category to be filled up from amongst the eligible Scheduled Caste candidates. However, the Departmental Promotion Committee constituted by the Manipur Public Service Commission, while considering the promotion, did not agree with such allocation of one reserved post for the Scheduled Caste and accordingly, did not recommend any Scheduled Caste candidate for promotion to that post reserved for Scheduled Caste by the State Government. On the contrary, the Manipur Public Service Commission recommended to fill up all the posts, except two reserved for Scheduled Tribes, from the amongst the general candidates. Mr. Rarry submits that such course of action taken by the Manipur Public Service Commission is not permissible under the law in view of the fact that the duty of the Manipur Public Service Commission is, merely, to advise the State Government as regards the appointment but cannot take a decision on

their own as to the reservation of posts for various categories without any reference or consultation with the State Government. In the present case, there was no consultation on the part of the Manipur Public Service Commission as regards the reservation of one post for the Scheduled Caste category. Even if the Manipur Public Service Commission was of the view that the said reservation of one post for the Scheduled Caste candidate had been erroneously provided by the State Government, the Manipur Public Service Commission had no authority to alter the same by de-reserving the same and filling up the post by unreserved candidate. It has been submitted that the only valid course of action to be taken by the MPSC would have been to refer the matter back to the State Government for re-examining the said issue and thereafter, make necessary recommendation after getting the approval of the State Government. However, the Manipur Public Service Commission, without resorting to such procedure, on its own, changed the reservation of posts by not considering reservation of one post for the Scheduled Caste candidates without any reference to the State Government, which is not permissible. Mr. Rarry, learned counsel for the petitioner by relying on sub-clause (3) of Article 320 of the Constitution of India, which clearly mentioned that as regards the issue of reservation, has submitted that the matter relating to reservation of posts is clearly within the domain of the State Government in which the Manipur Public Service Commission has no role to play.

4. Mr. R.S. Reisang, learned senior counsel appearing for the Manipur Public Service Commission contends that what the Manipur Public Service Commission had done was in accordance with the reservation policy of the State Government. It has been submitted by Mr. R.S. Reisang, learned senior counsel that the DPC which held its meeting on 31.10.2013 had considered the proposal in depth and did not accept the reservation of one post for Scheduled Caste within the 200 point based roster as the cadre strength of MFS Grade-II is 25 (twenty-five) and the reservation for Scheduled Caste is 2% of the posts. Accordingly, there could not have been any reservation for the Scheduled Caste as per the 200 point based roster adopted by the State Government and it has been submitted that the Manipur Public Service Commission was merely rectifying a mistake committed by the State Government in calculation of the roster points by taking into consideration the cadre strength of the MFS Grade-II and as such, since it was a correction of a mistake committed by the State Government, the recommendation made by the Manipur Public Service Commission cannot be faulted with.

The State Government have also filed an affidavit in which similar plea has been taken.

5. Heard the learned counsel for the parties.

6. As mentioned above, the only issue is whether the reservation of post for the SC category which had been proposed by the State Government could have been altered or varied by the Manipur Public Service Commission without reference to the State Government. Though it has been contended by the Manipur Public

Service Commission that what the Manipur Public Service Commission had done was to correct a mistake committed by the State Government in reserving one post for the SC category, this Court is of the view that rules do not provide for making any such alteration or correction by the MPSC. As to whether a post is to be filled up by reserved category or not is to be decided by the concerned State Government and not by the MPSC and if there be any mistake in the calculation made by the State Government, the Manipur Public Service Commission, at best, could bring to the notice of the State Government for necessary rectification but the Manipur Public Service Commission did not have any jurisdiction or authority to vary or alter any such proposal for reservation made by the State Government. If the Manipur Public Service Commission was of the view that the State Government had not correctly proposed the extent of reservation for various categories, it could certainly advise the State Government to make necessary correction and it is for the State Government to make to make necessary correction of any mistake in calculating the number of posts for reservation for various categories. This Court is of the view that since the Manipur Public Service Commission did not have any authority or power under the relevant rules and regulations to vary the number of posts to be reserved for various categories, the recommendation made by the Manipur Public Service Commission by changing the reservation proposed by the State Government cannot be sustained.

Accordingly, this Court is of the view that the proceeding of the DPC held on 31.10.2013 is vitiated and it requires to be reviewed. As this Court has held that the recommendation made by the Manipur Public Service Commission is vitiated, the consequential effect will be that the promotion order dated 2nd December, 2013 based on the said recommendation of the MPSC also cannot be sustained. However, in spite of coming to the aforesaid conclusion, this Court would not like to disturb the promotion already made by the impugned order dated 2nd December, 2013 on the basis of the recommendation made by the Manipur Public Service Commission on 30.10.2013 and the promotees may be allowed to continue in their respective posts till a review DPC is held, however on temporary basis. However, their appointments shall be subject to the review DPC which the Manipur Public Service Commission is directed to hold after getting necessary clarification from the State Government as regards the number of post to be reserved for Scheduled Caste candidates. The Manipur Public Service Commission and State respondents are directed to do the needful after examining the matter as directed above and hold the review DPC within a period of three months from today. In the event, the Government does not change its stand as regards the reservation of one post for the Scheduled Caste category as proposed by the State Government as per their initial proposal furnished to the Manipur Public Service Commission on 19.9.2013, the Manipur Public Service Commission would do the needful for making recommendation at the earliest.

With the above observations and directions, the writ petition stands allowed.