

(2000) 06 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (C) No. 288 of 1999

Zingsuokim Zate

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Constitution of India, 1950 — Article 315

Citation : (2003) 3 GLR 417

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

Bench : Single Bench

Advocate : B.P. Sahu, for the Appellant; Kh. Niomaichand Singh, Addl. GA and Asok Potsangbam, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ petition the writ petitioner Smti. Zinguskim Zate made a prayer for quashing the impugned order dated 19th January, 1999 appointing the respondent Nos. 3 and 4 to the post of Head Clerk and Accountant on promotion respectively as in Annexure - A/6 and A7 to the writ petition under the respondents Department coupled with a prayer for a direction to the respondents to pay/release the arreare pay and allowances to the petitioner for the post of U.D.C. for the period from 1.12.1987 to 30.5.1992 with interest thereon by contending inter alia, that the petitioner is a member of Scheduled Tribe community of the State of Manipur ; and that being the position, the petitioner is entitled for her appointment on promotion either to the post of Head Clerk or Accountant by virtue of the related Government office memorandum dated 1.1.1992 whereby it was stated that the office memorandum-dated 29th April, 1975 and 25th April, 1989 issued by the Department of Personnel and Administrative Reforms and the Department of Personnel and Training, Government of India regarding reservation for Scheduled Tribe and Scheduled Caste in service and ban on dereservation in direct recruitment shall be adopted by the Government of Manipur with immediate effect but, the respondent/

authority concerned appointed the respondent Nos. 3 and 4 to the post(s) of Head Clerk and Accountant respectively though the petitioner is quite eligible for promotion either to the post of Head Clerk or to the post of Accountant as one of the said posts falls under reservation quota of the Scheduled Tribe in pursuance of the 100 points roster and, as such, the action of the State-respondents concerned is not only violative of Article 315 of the Constitution but also violative of the directive principles of the State policy which though not enforceable in the court of law but not less important.

2. Mr. B.P. Sahu, learned counsel supporting the case of the petitioner argued that one Shri M. Nipamacha Singh who was serving as U.D.C. was appointed on promotion to the post of Head Clerk on temporary basis vide, office order no. 226 dated 17.4.1979 as in Annexure - A/11 to the rejoinder affidavit and similarly, another incumbent namely Shri N. Sarat Singh who was serving as U.D.C. was appointed on promotion to the post of Head Clerk on temporary basis vide, office order No. 118, dated 16.12.1985 as in Annexure - A/12 to the rejoinder affidavit and, the Chief Town Planner, Govt. of Manipur also appointed the respondent No. 3 on promotion to the post of Head Clerk under the impugned order of 19.1.1999 and likewise in the year 1981 on Shri No. Ibohanbi Singh was also given appointment to the post of Accountant vide, order dated 25th June, 1981 and subsequently, the respondent No. 4 was also given appointment on promotion under the impugned order of 19th January, 1999 as in Annexure - A/7 to the writ petition and, as such, there has been 3 (three) vacancies for the post of Head Clerk in the Department of Town Planning, Govt. of Manipur but no appointment in respect of Schedule Tribes candidates has so far been made till date and likewise, so far there has been 2(two) vacancies for the post of Accountant in the Department of Town Planning, Govt. of Manipur but no appointment in respect of Schedule Tribes candidates has so far been made to the said post till date, which is violative of the 100 points roster formulated by the Government of Manipur and the provisions of law laid down under Article 16(4A) of the Constitution. It is also argued by the learned counsel for the petitioner that as per proceedings of the said DPC and subsequent recommendation, the respondent Nos. 3 and 4 have been given appointment on promotion to the posts of Head Clerk and Accountant which are not tenable in the eye of law and, as such, the same are liable to be quashed and review DPC deserves to be conveyed/ held to enable the authority concerned to appoint suitable candidates in pursuance to the reservation policy,

3. The case of the petitioner is resisted by the State-respondents as well as by the private respondents by filing counter affidavits. Mr. Kh. Nimaichand Singh, learned Additional Govt. Advocate at the very outset submitted that the allegation and submission so far made by the writ petitioner is not correct and the same is misleading inasmuch as the posts of Head Clerk and Accountant are single posts under the Town Planning Department. Supporting this submission, the learned Additional Govt. Advocate has drawn my attention to paragraph 3 of the affidavit in opposition of the respondent Nos. 1 and 2 and

submitted that there were/are no 3 (three) vacant posts of Head Clerk and/or 2 (two) posts of Accountant. The single lone post of Head Clerk and another single lone post of Accountant have different duties and separate recruitment rules as seen in the documents marked as Annexure - A/5 to the writ petition and Annexure - D/3 to the affidavit in opposition of the respondent Nos. 1 and 2 and that appointment in the single lone post, there shall be no question of reservation as the reservation is not applicable in the case of lone post and, apart from that, the DPC concerned had considered the case of the petitioner as well as the respondent Nos. 3 and 4 for appointment to the said 2 (two) lone posts and the DPC after considering all the A.C.Rs, seniority position and suitability, recommended the private respondent No. 3 for appointment to the post of Head Clerk and private respondent No. 4 for appointment to the post of Accountant and on the recommendation of the said DPC these 2 respondents 3 and 4 have been given appointment to the posts of Head Clerk and Accountant respectively under the impugned orders and, as such, there is no question of violation of 100 points roster adopted by the Government of Manipur and also the Article 16(4A) and Article 315 of the Constitution of India. It is also argued by the learned Additional Govt. Advocate that as the petitioner while working as L.D.C. during the period from 1.12.1987 to 30.5.1992, she enjoyed and she was paid the pay scale of L.D.C. and, as such, she is not entitled to get the arrear pay and allowances for the post of U.D.C. for the said period.

4. Mr. Asok Patsangbam, learned senior counsel appearing for the private respondent Nos. 3 and 4 also endorsed the submission so far made by the learned Additional Govt. Advocate and submitted that as the post of Head Clerk and Accountant are selection posts governed by the different recruitment rules, all the incumbents who are within the zone of consideration irrespective of being general S.T., S.C. etc. have been considered on the basis of merit and cases of all eligible candidates have been examined by the DPC concerned and appointment of the respondents 3 and 4 have been made on the basis of merit-cum-seniority and in accordance with the related recruitment rules and the same do not suffer from any infirmity and, as such, no interference of it is called for.

5. Now this court is to see and examine as to whether the writ petitioner has enforceable legal right in the instant case or not and whether the action of the respondents concerned is violative of the related 100 points roster (reservation policy) and Article 16(4A) and Article 315 of the Constitution of India while passing the impugned orders of appointment as in Annexures A/6 and A/7 to the writ petition or not.

6. At the very outset, it is pertinent to highlight the fact that the Organisational Chart of Town Planning Department, Government of Manipur so far given by the respondent Nos. 3 and 4 to their counter affidavit is not disputed by the parties which is also very important and relevant and, accordingly, the same is quoted below :

"Organisational Chart of Town Planning Department, Government of Manipur

"Organisational chart of Town planning Department, Government of Manipur | | Chief Town planner (one post) _____ | | | Associate Planner Executive Engineer Associate Town (one post) (one post) Planner (Two post) | | Administrative wing Technical wing _| _____ | | Head clerk Accountant (one post) (one post)"

7. A bare perusal of this Chart shows that the posts of Head Clerk and Accountant are single posts and this being the position, the reservation policy and the applicability of it as seen in the related government office memorandum marked as Annexures A/2, A/3 and A/4 did not arise in the present case for the following reasons :

(I) In the appointment pertaining to single promotional post, the application of roster for the purpose of promotion is not permissible and until there is plurality of posts in a cadre like Head Clerk or Accountant in the instant case, the question of reservation will not arise. The law is well settled by the Apex Court and a reference can be made to a decision of the Apex Court rendered in wherein the Apex Court held thus :

"In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

There is no difficulty in appreciating that there is need for reservation for the members of the Scheduled Castes and Scheduled Tribes and other backward classes and such reservation is not confined to the initial appointment in a cadre but also to the appointment in promotional post. It cannot, however, be lost sight of that in the anxiety for such reservation for the backward classes, a situation should not be brought by which the chance of appointment is completely taken away so far as the members of other segments of the society are concerned by making such single post cent per cent reserved for the reserved categories to the

exclusion of other members of the community even where such members is senior in services and is otherwise more meritorious.

Articles 14, 15 and 16 including Articles 16(4), 16(4A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes. Such view has been indicated in the Constitution Bench decisions of this Court in *M.R. Balaji and Others Vs. State of Mysore*, *T. Devadasan Vs. The Union of India (UOI) and Another*, and *Sabharwal's case* AIR 1965 SCW 1371. Even in *Indra Sawhney's case* 1992 SCW 3682 the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of citizens. The special provision under Article 15(4) must, therefore, strike a balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this Court in *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.*, It has been indicated in *Indra Sawhney's case* (supra) that Clause (4) of Article 16 is not in the nature of an exception to Clauses (1) and (2) of Article 16 but an instance of classification permitted by Clause (1). It has also been indicated in the said decision that Clause (4) of Article 16 does not cover the entire field covered by Clauses (1) and (2) of Article 16. In *Indra Sawhney's case*, this Court has also indicated that in the interests of the backward classes of citizens, the State cannot reserve all majority of them. The doctrine of equality of opportunity of Clause (1) of Article 16 is to be reconciled in favour of backward classes under Clause (4) of Article 16 in such a manner that the latter while serving the cause of backward classes shall not unreasonably encroach upon the field of equality."

This principle of law is followed by the Apex Court in a subsequent case and decision rendered in *S.R. Murthy Vs. State of Karnataka and Others*,

8. In view of the above position and the law settled by the Apex Court on the above legal issue, the submission of Mr. B.P. Sahu, learned counsel appearing for the writ petitioner that one post shall be reserved atleast for Scheduled Tribes candidates holds a little water. I have also perused the related DPC proceedings for selection and appointment to the posts of Head Clerk and Accountant. A bare perusal of its established the fact that the DPC examined the A.C.Rs of the petitioner and that of the respondents Nos. 3 and 4 for the purpose of such appointment and the DPC recommended the case of the 3rd and 4th respondents on merit-cum-seniority basis and also related documents including comparative statement of the A.C. Rs of the UDCs of the Town Planning Department for the year 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 in respect of the petitioner and that of the respondents 3 and 4 and also their seniority position. In my consideration view, the DPC concerned has dealt with the matter

exhaustively and examined the same prons and cons and made the recommendation of the respondents 3 and 4 for such appointment and on the basis of such recommendation, the respondent Nos. 3 and 4 have been given appointment to the posts of Head Clerk and Accountant under the related impugned appointment orders as in Annexures A/6 and A/7 to the writ petition. From the available materials on record it has also been revealed that the writ petitioner was not working as UDC during the period from 1.12.1987 to 30.5.1992 but she was working as L.D.C. during the said period and, accordingly, the petitioner is not entitled to the pay scale of U.D.C. for the said period.

9. For the reasons, observations and discussions made above, I am of the view that there is no infirmity in the impugned appointment orders as in Annexures A/6 and A/7 to the writ petition and that the petitioner is not entitled for her arrear salary for the post of U.D.C. during the period from 1.12.1987 to 30.5.1992 and that the petitioner has no enforceable legal right in the instant case.

In the result, the writ petition is devoid of merit and, accordingly, it is dismissed but no order as to costs.