

## Keisam Shantipur Singh and Others Vs State of Manipur and Others

**Court:** Gauhati High Court (Imphal Bench)

**Date of Decision:** May 25, 2000

**Acts Referred:** Public Works Department, Manipur (Section Officer Grade-I (Civil/Mechanical) Recruitment Rules, 1976 & Rule 20

**Citation:** (2000) 2 GLT 537

**Hon'ble Judges:** J.N. Sharma, J

**Bench:** Single Bench

**Advocate:** Ashok Potsangbam, S. Napoleon, N. Promod Chandra Singh, Th. Madhu, Hemchandra, N. Sarat Singh, Kotishwor, M. Rosbi Pibe, S. Jayanta, Ch. Nikel, T. Nirmal Chand and L. Raju, for the Appellant; G.A., N. Promodchandra Singh, Th. Modhu Singh, T. Rajendra Singh, Shyam Singh, A. Potsangbam, S. Napoleon, L. Sarat Sharma, L. Nandakumar Singh and Hemchandra Singh, for the Respondent

### Judgement

J.N. Sarma, J.

All the writ applications raise the common question of law and facts and as such they are taken up for hearing together.

2. I have heard Mr. Ashok Potsangbam, learned Advocate for the Petitioners in Civil Rule No. 734/96, W.P.(C) No. 374/99, W.P.(C) No.

629/1999, Mr. N. Kotishwar Singh, learned Advocate for the Petitioners in W.P.(C) No. 864/99, Mr. S. Jayanta, learned Advocate for the

Petitioners in W.P. (C) No. 236/1999 and Civil Rule No. 512/1996, Mr. N. Promodchandra, learned Advocate for the Petitioner in W.P. (C)

No. 720/99 and Mr. T. Nirmal Chand, learned Advocate for the Petitioners in W.P. (C) No. 1109/99. I have also heard Mr. Nimaichand, learned

GA, Manipur for the official Respondents in all the writ petitions, Mr. N. Promodchand, learned Advocate for the Respondents No. 4 to 13 (in

CR No. 734/96), W.P.(C) No. 374/99 for the private Respondents, Mr. L. Sarat Singh, learned Counsel for the private Respondents in W.P.(C)

No. 864/99 and Mr. L. Nandakumar, learned Advocate for the private Respondents in Civil Rule No. 512/96.

3. In Civil Rule No. 734/96, 512/96 and W.P.(C) No. 374/99 the impugned order is same i.e. dated 19th February, 1996 issued by the Under

Secretary to the Govt. of Manipur. That impugned order is quoted below:

GOVERNMENT OF MANIPUR

SECRETARIAT: P.H.E. DEPARTMENT

ORDER

Imphal,

the 19th February, 1996

No. 3/10/94-PHE : Whereas the following listed 10 Section Officers of the Public Health Engineering Department, Manipur were eligible for

appointment to the post of Section Officer Grade-I as per the existing Recruitment rule of Section Officer of the PHED, Manipur on the date of

their initial adhoc appointment given against each of them:

1. Th. Joy chandra Singh - 14.1.1976

2. S. Lokendra Singh - 18.9.1978

3. Md. Manawar Ali -18.9.1978

4. K. Arjit Singh - 18.9.1978

5. L.K. Somi - 18.9.1978

6. A. Pukeho Mao - 18.9.1978

7. M. Joychandra Singh - 20.9.1978

8. Mr. Borojao Singh - 25.10.1978

9. L. Ibohanbi Singh - 27.10.1978

10. N. Sarat Singh - 27.10.1978

2. Whereas, regular vacancies are available on the date of their initial ad hoc appointment as they had been continuing their ad hoc services without

break/interruption till their, regularisation to the concerned posts of S.Os. on the recommendation of a competent D.P.C. associated with

M.P.S.C.

3. Whereas they were made appointment on ad hoc basis as recommended by a competent selection committee constituted for appointment of

S.Os. on adhoc basis comprising of Chairperson and members.

4. Now, therefore, on careful consideration and examination of all the materials and facts on the matter, it is found that the above listed 10 Section

Officer Grade-I had been appointed on adhoc basis as recommended by a competent Selection Committee on, adhoc basis comprising of

Chairperson and members as eligible under the existing R.R. of the post and have been continuing without break/interruption till their regularisation

to the posts.

Therefore, the order No. 3/10/94-PHE dated 2.6.1995 of this Department is hereby cancelled with immediate effect and Corrigendum ""issued

under No. 15/15/81-PHE dated 11.10.1990"" to delete the words ""they shall not claim seniority"" which appeared in the last sentence of the

Government order No. 7/13/77-PHE dated 13.11.1984 shall remain in force until further order.

By order etc.19.2.96

Sd/- Under Secretary to the

Govt. of Manipur.

4. The brief facts in Civil Rule No. 734 of 1996 are as follows:

On 18.9.78 the private Respondents No. 4, 5, 6, 7, 11 and 12 were appointed as Section Officer for a period of six months. That is Annexure-

A/13 to the writ application. On 26.10.78 the private Respondents No. 8 and 9 were appointed as Section Officer on adhoc basis for a period of

six months. That is Annexure-A/14 to the Civil Rule No. 734/96. It may be stated herein that at that point of time, the appointment to the posts of

section Officer was within the purview of the Manipur Public Service Commission with regard to the said appointments as will be evident from the

rule of 1976 which was holding the field. That rule is known as ""Public Works Department, Manipur (section Officer Grade-I (Civil/Mechanical)

Recruitment Rules, 1976. These posts are to be filled up either by promotion or by direct recruitment and it was provided that 60% by direct

recruitment and 40% by promotion. There is a further note in the rule which points out as follows:

Any period of adhoc appointment prior to the regularisation of the appointment in consultation with the Commission shall not be counted in the

minimum period of service prescribed for promotion.

I am citing this note in order to show that this aspect of the matter shall have some importance for the decision of the case. Subsequent to it, a new

set of rule came into existence in the year 1981 and there also the appointment to the posts of section Officer was by direct recruitment under

MPSC but in 1981 it was taken from the purview of MPSC with effect from 18th April, 1981. On 10.4.80 in pursuance to the requisition sent by

the State of Manipur for appointment to the posts of section Officer by way of direct recruit, MPSC recommended 148 candidates for

appointment to the post of section Officer in order of merit. Following is the position in the merit list of the petitioners.

Petitioners Merit List

No. 1 6

No. 2 27

No. 3 60

No. 4 63

No. 5 66

The private Respondent Nos. 4 to 13 also participated in the recruitment test conducted by the MPSC. However, all of them were not

recommended except Respondents No. 5, 9, 10, 11, 12 and 13. Their position in the merit list is shown below:

#### Respondents MERIT LIST

No. 5 57

No. 9 93

No. 10 33

No. 11 96

No. 12 47

No. 13 112

On 7.6.80 vide Annexure- A/1 the Govt. approved all the 148 recommended candidates and directed the Chief Engineer of PWD, PHED and

IFC to issue necessary appointment orders. On 26.6.80 pursuant to the recommendation of the MPSC and approval given by the Govt. the

petitioners were appointed. On 4.9.80 on the requisition of the Government the MPSC further recommended 20 candidates from the

reserved/wait list vide Annexure-A/3. Their position in the Reserved/Wait list are as follows:

#### Respondents Reserved list

No. 4 9

No. 6 8

No. 7 6

No. 8 15

Respondents No. 4, 6, 7 and 8 were appointed pursuant to the recommendation and approval given by the Govt. from the wait list vide

appointment letters dated 27.11.80, 5.1.81 and 22.1.81. On 13.11.84 vide Annexure-A/5 the Government issued an order giving retrospective

regularisation to the private Respondents No. 4 to 13 from the date of their initial appointment adhoc appointment But it was made clear in the

letter itself that shall be without seniority. On 16.5.90 vide Annexure-A/6 the Govt. published the final seniority list of S.O. Grade-I in the PHED.

The positions reflected in the seniority list are as follows:

#### Petitioners Respondents

No. 1-13 No.4-47

No. 2-14 No. 5-19

No. 3-20 No. 6-46

No. 4-21 No. 7-45

No. 5-22 No. 8-50

No. 9-31

This seniority list was never challenged and still, holds the field. Be that as it may, on 11.10.90 a Corrigendum was issued deleting the words ""they

shall not claim seniority"" which appeared in the last sentence of the Govt. order dated 13.11.84 (Annexure-A/5). On 31.3.94 in pursuance of this

Annexure-A/7 a tentative seniority list of S.O. Grade-I was published placing the Respondents above the Petitioners. On 28.9.94 the petitioners

filed objection to the tentative seniority list dated 31.3.94 vide Annexure-A/8 to the writ application. On 2.6.95 vide Annexure-A/9 pursuant to the

objection filed by many persons and Chief Engineer's letter dated 26.6.90, Government issued an order cancelling the corrigendum dated

11.10.90. That is Annexure-A/9 to the writ application. On 8.6.99 vide Annexure-A/10 the Government issued an order directing the Chief

Engineer to determine the seniority of S.O. Grade-I on the basis of the order dated 2.6.95 on merit basis prepared by the MPSC. On 19.2.96 the

Government issued Anr. order cancelling the order dated 2.6.95 meaning thereby that the persons who were holding adhoc appointment and got

retrospective regularisation shall be entitled to seniority from the date of their adhoc appointment. On 4.2.97 the Government published Anr.

tentative seniority list of S.O. GR-I. On 18.1.99 the Government issued Anr. order giving ad hoc promotion to 11 (eleven) persons including some

of the private Respondents.

5. The fact of WP (C) No. 374/99 are almost same, but the petitioners are different. The positions of the petitioners according to the

recommendation of the MPSC are as follows:

Petitioners Merit List

No. 1 48

No. 2 69

The private Respondents No. 3 to 8 were also participated in the recruitment test conducted by the MPSC. However, they were not

recommended except Respondent No. 3 whose position was 57 in the merit list and the Respondent No. 4 whose position was 93 in the merit list.

The other facts are same.

6. The learned Advocate for the petitioners makes submission that the private Respondents are not entitled to their seniority for the period of

adhoc appointment on two grounds—(i) that this adhoc appointment was dehors the rules (ii) that they have competed along with the petitioners

for direct recruitment and having not been recommended and having been placed in the wait list at a later point of time cannot count their seniority

from the date of their adhoc appointment. On the other hand, the learned Advocate for the Respondents makes the following submission—<sup>1</sup>/<sub>2</sub>(i) that

necessary parties are not before this Court. Altogether 10 persons were given seniority from the date of adhoc appointment, but challenge has

been made only with regard to 6 of them, 4 have been left out, (ii) that there is no infirmity in the impugned order. Adequate reasons have been

furnished/given by the authority in passing the order and as such, this order does not require any interference at the hand of this writ Court, (iii) that

in the meantime, on the basis of the impugned order promotions have been made and as such this writ Court by quashing that order of 1996 now

cannot make things topsy-turvy. Save and except one submission of the learned Advocate i.e. absence of infirmity all Ors. are technical objections

and a technical objection should not defeat justice when injustice is on the face of the record. Even, otherwise also this objection of the learned

Advocate for the Respondents is not factually correct inasmuch as 4 persons who have been left out to whom challenge has not been made, they

were recommended by the MPSC and their positions were above the petitioners and 3 of them belong to SC/ST quota. Further, it will appear that

all these persons have been made parties. Further, the order dated 13.9.99 passed in WP(C) No. 374/99 shows that Mr. N.P.C. Singh appeared

for the Respondents No. 4 to 8 in Civil Rule No. 734/96 and also appeared for the Respondents No. 4, 6, 7, 8 and 9 in WP(C) No. 374/99. Be

that as it may, this technical objection cannot be accepted as I shall demonstrate that injustice stares in the face of it. It is not a case where these

persons who will not be heard will be affected by this order, because their names were recommended by the MPSC and they were placed above

the Petitioners in the merit list as will be seen from the seniority list of 1990. That is Annexure-A/7 in WP(C) No. 374/99 and all these persons

have been promoted to Asstt. Engineer on regular basis sometime in 1990 when this order of 1996 was not holding the field.

7. The learned Advocate for the Respondents in this connection places reliance in Prabodh Verma and Others Vs. State of Uttar Pradesh and

Others, That case is absolutely different on facts. That was a case where the challenge was made to the constitutional validity of two U.P.

Ordinances and in this connection in paragraph 28, the Supreme Court pointed out as follows:

Those who were vitally concerned; namely, the reserve pool teachers, were not made parties, not even by joining some of them in a representative

capacity.

The Supreme Court further pointed out that:

Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool

teachers being made Respondents to that writ petition, or at least some of them being made Respondents in a representative capacity, and had the

petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.

That is not the facts in the present case. Regarding the other case relied on by the learned Advocate for the Respondents is G.P. Doval and Others

Vs. Chief Secretary, Government of U.P. and Others, That was a case with regard to the question of determination of seniority. That case shall be

discussed at a later point of time. The other case relied on by the learned Advocate for the Respondents is The Direct Recruit Class-II Engineering

Officers" Association and others Vs. State of Maharashtra and others, This case does not help the Respondents as it is case which stands

absolutely on different footing. The Corollary (A) and (B) in paragraph 44 are quoted below:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according

to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and

made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly

till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

The learned Advocate for the Respondents wants to rely on corollary (B) read with paragraph 13 of the judgment. That contention cannot be

accepted and this judgment was subsequently discussed in other decision of the Apex Court including in State of W.B. and Others Vs. Aghore

Nath Dey and Others, and accordingly I do not accept this contention. The case of the Respondents shall be covered by Corollary (A) and not by

Corollary (B).

8. The learned Advocate for the petitioners relies on State of Gujarat Vs. C.G. Desai and Others, wherein paragraph 17, the Supreme Court

pointed out as follows:

17. If a person, like any of the Respondents, to avoid the long tortuous wait leaves his position in the "never-ending" queue of temporary/officiating

Deputy Engineers etc., looking for promotion and takes a short cut through the direct channel, to class II Service, he gives up once for all, the

advantages and disadvantages that go with the channel of promotion and accepts all the handicaps and benefits which attach to the group of direct

recruits. He cannot, after his direct recruitment claim the benefit of his pre-selection service and thus have the best of both the worlds. It is well

settled that so long as the classification is reasonable and the persons falling in the same class are treated alike, there can be no question of violation

of the constitutional guarantee of equal treatment.

The next case relied on by the learned Advocate for the petitioner is 1998 (2) GLT 1 (Dipika Devi (Smt) v. Bhaba Kanta Hazarika and Ors.)

where in paragraph 8, the Supreme Court pointed out as follows:

8. Aggrieved thereby Bhaba Kanta Hazarika filed a writ petition which has been allowed accepting his contention merely because he joined the

post a day earlier to Smti. Dipika Devi. We may observe that Rule 20 will not apply to a case where there is direct recruitment to the post and a

select list has been prepared in order of merit. In such a case, if the selected persons join on different dates, their inter se seniority on the basis of

merit shown in the select list, cannot be disturbed unless there is failure by some one to join duty within the time allowed for this purpose. It is

nobody's case that Smti. Dipika Devi did not join her duty within the time allowed for the purpose. For this reason, her higher position in order of

merit in the select list could not be disturbed merely because a person lower to her in order of merit in the select list came to join fortuitously a day

earlier to her." Accordingly, in that case, it was held that if some persons are appointed by some selection, the merit position in the select list shall

hold the field, for determining the seniority.

9. An Office Memorandum of the Union of India which has been adopted by the State of Manipur is available in Swamy's Book which reads as

follows:

Direct Recruits "Notwithstanding the provisions of Para 3 above, the relative seniority of all direct recruits shall be determined by the order of

merit in which they are selected for such appointment, in the recommendations of the UPSC or other selecting authority, persons appointed as a

result of an earlier selection being senior to those appointed as a result of a subsequent selection:

Provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit

indicated at the time of their appointment, seniority would be determined by the order indicated at the time of initial appointment and not according

to the date of confirmation.

Accordingly I hold that the impugned order holding that the private Respondents shall be entitled to seniority from the date of their adhoc

appointment is absolutely arbitrary exercise of power. Accordingly, that order shall stand quashed. The sub-mission of the learned Advocate for

the Respondents that there is no infirmity in the Govt. order also falls throw in view of the fact that these appointments in 1996 were met made in

consultation with the MPSC which was the requirement of the recruitment rules at that point of time. Somebody getting appointment by back door

and thereafter getting absorption through the Public Service Commission cannot claim seniority and other benefits on the basis of those back door

appointments. This will be violative of the rule of law. The learned Counsel for the Respondents in this connection relies on G.P. Doval and Others

Vs. Chief Secretary, Government of U.P. and Others, That was a case where there was an officiating appointment and subsequently that officiating

appointment was confirmed. It was in that connection only i.e. in paragraph 15 the Supreme Court pointed out as follows:

that length of continuous officiation prescribes a valid principle of seniority.

In A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, the Supreme Court pointed out that some screening for appointment cannot

give validity to appointment. The recruitment rules requires it to be done in a different mode and-manner and in that case the Supreme Court in

paragraphs 8 and 12 pointed out as follows:

that it is the merit position of the public service commission which will hold the field in determining the seniority

and the Supreme Court made cautic observation as follows:

We, therefore, do not propose to middle with the service in any manner.

10. That being the position, the Civil Rule Nos. 734/96 and WP(C) No. 374/99 are allowed. The authority is directed to determine the seniority in

accordance with the merit position in the MPSC select list within a period of two months. Till the seniority is determined and decided by the

authority, no regular promotion shall be made. However, if mere is necessity in the service, the adhoc appointment may be given, but that also must

be given by adhering to the seniority position in the seniority list of 1990.

11. WP(C) No. 720/1999 has been filed by one Petitioner to quash the Annexure-A/12. Annexure-A/12 is an order issued by the authority

requesting finalisation of the inter se seniority of S.O. Gr-I on the basis of interim order of this Court passed in Civil Rule No. 374 of 1999. There

is no question to quash that order in view of the decision made earlier. The next prayer is that the ad hoc service of the petitioner may be counted

towards seniority. I have already held that this cannot be done. Accordingly, this writ petition shall stand dismissed.

12. WP(C) No. 864/1999 has been filed by six persons claiming that the degree-holders should get their quota of promotion on the basis of

undisputed final seniority list dated 16.5.90 (Annexure-A/2) and with a further direction not to give adhoc promotion and to make regular

appointment. This writ application shall stand disposed of with a direction that if there is any quota reserved for degree holders for promotion in the

recruitment rules, that may be adhered to. The second prayer has already been taken care. This writ application is disposed of.

13. WP(C) No. 629/99 has been filed by seven persons and the prayer is to quash Annexure-A/9, A/12 and A/13. Annexure-A/9 is an order for

regularisation of certain persons (six in numbers) and their appointments were made regular from a back date. Be that as it may, they cannot claim

seniority on the basis of such regularisation. Annexure-A/12 is the same document dated 15th November, 1997 by which certain words were

deleted. That aspect of the matter has already been considered and that shall stand quashed. Annexure-A/13 has also already been quashed.

Accordingly, this writ application is allowed and the promotion shall be made as indicated above.

14. WP(C) No. 236 of 1999 has been filed by one petitioner and the prayer made in the writ application is to quash Annexure-A/7. That

Annexure-A/7 has already been dealt with. The petitioner shall get his seniority on the basis of merit list prepared by the MPSC.

15. WP(C) No. 1109/1999 has been filed by seven petitioners with a simple prayer that promotion to the post of Asstt. Engineer should be made

on regular basis by adhering to the recruitment rules and the authority should not resort to adhocism. This prayer is fair and reasonable. That

aspect of the matter has already been dealt with. The writ petition is accordingly stands disposed of.

16. Civil Rule No. 512 of 1996 has been filed by the Petitioner to quash the same Annexure-A/8. That Annexure has already been quashed in

other writ petition. So, this Civil Rule also stands allowed.