

KSH. LAKSHAHEB SINGH AND OTHERS.

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v.

STATE OF MANIPUR AND OTHERS

(Civil Appeal No.6783 of 2015 etc.)

SEPTEMBER 02, 2015

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[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

Service law – Appointment – Quota for promotion vis-a-vis direct recruitment – Appellants serving as Section Officers – In terms of the recruitment rules, for the next promotional post of Assistant Engineers, 60% of the posts to be filled up by promotion and 40% by direct recruitment – Financial crunch faced by the State Government, policy decision imposing total ban on appointment under direct recruitment quota – However, issuance of letter by the Department to initiate the process for direct recruitment to the said post – Writ petition by appellants seeking quashing of the letter – Single Judge held that since the Government had lifted the ban on direct recruitment partially in respect of certain posts including the post of Assistant Engineer, the action taken by the Department for filling up the vacancies in the grade of Assistant Engineer against direct recruitment quota cannot be faulted with – In appeal before this Court, case of the appellants that the quota prescribed for promotion and direct recruitment would apply to vacancies and not to posts in the cadre and the Department have not only applied the quota to the cadre strength but also carried forward almost all the vacancies on the erroneous supposition that they are meant for direct recruitment – Held: As fairly submitted by the State that still there are 16 vacancies available against the promotion quota and the appellants come within eight in the seniority list, appellants' case would be considered for pro-

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A *motion against the promotion quota – PWD, IFCD and PHED, Manipur Assistant Engineer (Civil/ Mechanical) /Assistant Surveyor of Works Recruitment Rules, 2009.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No.
B 6783 of 2015.

From the Judgment and Order dated 25.09.2013 of the High Court of Manipur at Imphal in W.P. (C) No. 155 of 2013.

WITH

C C.A. NOS. 6784 and 6785 OF 2015

P. P. Rao, Raj Kumar Mehta, Swarnenadu Chatterjee, Elangbum P.S., Abhishek Upadhyay, Himanshi Andley for the Appellants.

D Jaideep Gupta, S. Guru Krishna Kumar, Thibohal Singh, Biswajit Meitei, Z. H. Isaac Haiding, Ashok Kumar Singh, Pukhrambam Ramesh Kumar, Sumit Kumar Vats, Sneha Iyer for the Respondents.

E The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. Leave granted.

F 2. The appeal arising out of S.L.P.(Civil) No.35459 of 2013 is directed against the Judgment and order dated 25.09.2013 passed by the learned Single Judge of High Court of Manipur, who disposed of the writ petition preferred by the appellants seeking quashing of the letter dated 02.02.2013 issued by the Department of Personnel & Administrative Reforms, Government of Manipur to the Manipur Public Service Commission to initiate the process for direct recruitment to the post of Assistant Engineers in the Public Health Engineering Department, Government of Manipur.

H 3. The facts of the case in brief are that the appellants are

KSH. LAKSHAHEB SINGH AND OTHERS. v. STATE OF 441
MANIPUR [M. Y. EQBAL, J.]

Master Degree/Degree Holders serving in the Public Health Engineering Department as Section Officers Grade-I. The next higher promotional post for them is the post of Assistant Engineer, which is to be filled up in terms of the recruitment rules known as PWD, IFCD and PHED, Manipur Assistant Engineer (Civil/ Mechanical) /Assistant Surveyor of Works Recruitment Rules, 2009 (in short "Rules of 2009"). As per the aforesaid recruitment rules, 60% of the posts of Assistant Engineers are to be filled up by promotion and the remaining 40% by direct recruitment. As regards the 60% promotional quota, 50% of the vacancies thereof are to be filled by Degree Holders Section Officers Grade-I and the remaining 50% by Diploma Holders and others.

4. It has been pleaded that due to certain financial crunch faced by the State Government in the past, the State Government took a policy decision in the year 1999 by which a total ban was imposed on appointment under direct recruitment quota. Thereafter, the State Government, considering the continuing acute financial condition of the State Government, issued an order on 19.03.2001 by which all appointments made on part-time, contract, adhoc, substitute, casual basis, etc. on direct recruitment were to be terminated and various Government Departments were also subjected to downsizing of staffs.

5. Before the High Court, the writ petitioners pleaded that although there were 27 vacancies in the grade of Assistant Engineer in the Public Health Engineering Department most of which were to be filled up by promotion, the office of the Chief Engineer, PHED, Manipur vide his letter dated 29.8.2012 submitted a proposal to the Principal Secretary (PHE), Government of Manipur for filling up 25 of the vacant posts by way of direct recruitment. The writ petitioners contended that till the ban is lifted on direct recruitment, the Department cannot proceed to initiate any action for filling up the vacant posts by

A direct recruitment and as such, the aforesaid action on the part of the authorities to fill up the vacant posts by way of direct recruitment is not permissible. It has also been contended on behalf of the appellants that as per the office memorandum dated 29.4.1999 issued by the Department of Personnel & Administrative Reforms, Personnel Division, Government of Manipur the vacancies are to be filled up on year wise basis and quota for promotion vis-à-vis the direct recruitment is to be worked out on year wise basis. It has been further pleaded that those vacancies which became available prior to the enforcement of the Rules of 2009 for the Assistant Engineers i.e. 29.7.2009 cannot be counted in the determination of number of vacancies for direct recruitment quota. According to them, the number of vacancies for direct recruitment quota under the 2009 Rules should be calculated on the basis of vacancies available after 28.7.2009. However, the authorities have not followed any norm for determination of vacancies to the post of Assistant Engineer which are to be filled up by way of direct recruitment.

E 6. After hearing learned counsel on either side and perusing a copy of the Government order dated 12.8.2013 placed on record by the learned Govt. Advocate appearing for the State, which showed that the Government of Manipur had relaxed the ban on direct recruitment partially in respect of certain services/posts including the post of Assistant Engineer for Power/Works/PHE/IFC departments, learned Single Judge of the High Court disposed of the writ petition observing as under:

G “Since the Government has already taken a decision as evident from the order dated 12.8.2013 for lifting the ban on direct recruitment partially in respect of certain posts including the post of Assistant Engineer for Public Health Engineering Department, the action taken by the Department for filling up the vacancies in the grade of

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KSH. LAKSHAHEB SINGH AND OTHERS. v. STATE OF 443
MANIPUR [M. Y. EQBAL, J.]

Assistant Engineer against direct recruitment quota as mentioned in the impugned letter dated 02.02.2013 cannot be faulted with and accordingly, no writ can be issued to set aside/ quash the impugned letter dated 02.02.2013. However, as regards the actual number of vacancies to the post of Assistant Engineer in the Public Health Engineering Department which may be filled up by direct recruit, it is clarified that the State authorities would re-examine the exact number of vacancies falling under direct recruitment quota before any appointment is made to the post of Assistant Engineer in terms of the recommendation of the Manipur Public Service Commission on direct recruitment quota, so that any vacancy, which otherwise would fall under the promotion quota is not filled up by direct recruitment. Accordingly, if any appointment is made under the direct recruitment quota in excess of the direct recruitment quota as per the relevant recruitment rules, the petitioners, if aggrieved, would be at liberty to approach this Court again."

7. Aggrieved by the decision of the High Court, the three writ petitioners preferred this appeal by special leave. While issuing notice in the matter on 29.11.2013, this Court directed that the result of the selection shall remain pending subject to final decision of the special leave petition. Thereafter, respondents-State moved an interlocutory application being IA No.1/2014 for vacating stay, upon which learned senior counsel on both sides were heard and following order was passed by this Court on 3.7.2014:

"Our order dated 29.11.2013 is modified to the following extent:

- 1) The State shall be free to fill up the vacancies advertised in the direct recruitment quota subject to the condition that three out of such vacancies are left

- A unfilled.
- 2) Appointment against the advertised vacancies, if any, shall remain subject to the ultimate outcome of these proceedings.
- B 3) Appointment orders issued to the selected candidates shall specifically mention that their appointments are subject to the outcome of this petition.
- C Post the petition for final disposal after six weeks. Counter affidavits and rejoinder, if any, be filed in the meantime if not already filed.”

8. Other Section Officers Grade-I also preferred writ petitions before the High Court with a prayer for direction to the respondents to keep posts vacant for the writ-petitioners. Upon this prayer, learned Single Judge of the High Court on 25.7.2014 observed that it would not be appropriate on the part of the High Court to direct that some post be kept unfilled and, therefore, refused to pass any interim order except that any appointment made in pursuance of the advertisement shall be subject to outcome of the writ application.

9. Aggrieved by the decision of the High Court to not grant interim order, aforesaid two groups of Section Officers Grade-I are also before us by way of appeals under Article 136 of the Constitution. We have heard learned counsel appearing for the parties at length.

10. Mr. P.P. Rao, learned counsel appearing for the appellants, made the following submissions:

(I) The statutory Recruitment Rules dated 27.07.2009 and the Rules in force even earlier mandate that 60% of the vacancies shall be filled by promotion and 40% by direct recruitment and not the posts in the cadre. But the Chief

Engineer, the Government and the Public Service Commission have applied the quotas to the 'cadre strength' of Assistant Engineers and not to the vacancies which is contrary to the statutory rules. A

(II) The respondents herein have not only applied the quota to the cadre strength as stated above but also carried forward almost all the vacancies on the erroneous supposition that they are meant for direct recruitment and filled up 22 out of the 27 accumulated vacancies by direct recruitment subject to the outcome of the SLP, keeping three vacancies for the appellants in terms of the interim order. This is a clear violation of not only the statutory rules and administrative instructions but also Articles 14 and 16(1) of the Constitution. B
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(III) According to Mr. Rao, learned Senior Counsel for the appellants, the quota prescribed for promotion and direct recruitment will apply to vacancies and not to posts in the cadre. D

(IV) For the last 30 years, there is not a single promotion given to candidates eligible for promotion as Assistant Engineers. An officer should get at least two promotions in his career as per law declared by this Court. But the respondent-Government has acted most arbitrarily by allowing stagnation of officers eligible for the post of Assistant Engineer for the last 30 years in violation of Articles 14 and 16(1) of the Constitution. E
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(V) The High Court failed to decide the issues arising in the Writ Petitions. The impugned judgment is liable to be set aside. This Court may be pleased to grant special leave, allow the appeals and direct the respondents to fill up the vacancies of 2007, 2009, 2010 and 2012 by promotion with retrospective effect and fill the remaining G
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A vacancies according to the respective quotas i.e. 60%
 by promotion and 40% by direct recruitment.

 11. On the other hand, Mr. Jaideep Gupta, learned senior
 counsel appearing for the respondent-State, firstly drawn our
B attention to the operative portion of the impugned judgment
 and submitted that the appellants raised only one question
 before the High Court which has been decided by the
 impugned judgment.

 12. Mr. Gupta, learned counsel, denied the submissions
C made by Mr. Rao, learned senior counsel appearing for the
 appellants that no promotions have been given to the
 candidates eligible for promotion for the last 30 years. He also
 denied that there is stagnation in the service inasmuch as the
D appellants and other similarly situated persons have been
 granted benefits under the ACP scheme.

 13. In course of arguments, Mr. Gupta, learned senior
 counsel, submits that still there are 16 vacancies available
 against the promotion quota and the appellants come within
E eight in the seniority list. They shall automatically get promotion.
 Having regard to the fair submissions made by Mr. Gupta,
 learned counsel, we do not want to go into the question raised
 by Mr. Rao, learned counsel appearing for the appellants.

F 14. As notice above, Mr. Gupta, learned counsel, very fairly
 submitted that 16 vacancies for promotion against the
 promotion quota are available and in any case the appellants
 shall be considered for promotion. In that view of the matter,
 we are not inclined to interfere with the impugned order passed
G by the High Court. However, we dispose of the appeals holding
 that the appellants' case shall be considered for promotion
 against the promotion quota as they are much above in the
 seniority list. The question of law raised by the appellants shall
 be kept open.

H Nidhi Jain

 Appeals disposed of.