

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No.1015 of 2016

Shri Ningthoujam Chandikumar Singh, aged about 49 years old, s/o of N. Kamles Singh of Lairikyengbam Leikai Mayai Leirak, P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur.

.... Petitioner

- Versus -

1. The State of Manipur through the Commissioner/Secretary (Cooperation), Government of Manipur, Secretariat, Imphal-795001
2. The Registrar, Cooperative Societies, Government of Manipur, Lamphelpat.

.... Respondents

B E F O R E

HON'BLE MR.JUSTICE MV MURALIDARAN

For the Petitioner	::	Mr. N. Bipin, Advocate
For the Respondents	::	Mr. Lenin Hijam, Addl. AG.
Date of hearing &		
Reserved for Order	::	24.09.2019.
Date of Delivery of		
Judgment & order	::	24.10.2019.

JUDGMENT & ORDER
(CAV)

[1] This writ petition has been filed by the petitioner seeking a Writ of Certiorari calling for the records in relation to the impugned order dated 12.09.2016 passed by the second respondent and consequently, direct the respondents to consider the case of the petitioner for appointment to the post of Inspector of Co-operative Societies in the Co-operative Department under the sports meritorious scheme without further delay in view of the direction given in W.P. (C) Nos.19 of 2007 and 632 of 2013 by relaxing the age and also having regard to the continuous process of appointment on direct recruitment against available vacancies.

[2] The case of the petitioner is that he is a graduate degree holder in Economics and is an outstanding National player in the discipline of Hockey. He had participated in many National championships organized by different states in the country, representing the State of Manipur as a player as well as coach of State of Manipur. The petitioner had earlier approached this Court by filing W.P. (C) Nos.19 of 2007 and 632 of 2016 praying inter alia for considering his case for appointment to the post of Inspector of Co-

operative Societies in the Co-operative Department under sports quota. The said writ petitions were disposed of by directing the respondents to consider the case of the petitioner for appointment to the post of Inspector of Co-operative Societies under sports quota. However, the respondents have not considered the case of the petitioner and issued the impugned order dated 12.09.2017 stating that he cannot be considered for appointment to the post of Inspector of co-operative societies. Challenging the same, the petitioner has filed the present writ Petition.

[3] Resisting the writ petition, the respondents filed affidavit-in-opposition stating that the process of adjustment of Inspectors of Co-operative Societies, who were holding the supernumerary post to the vacant original posts of Inspector of Co-operative Societies, is not related with direct recruitment. It is part of the process of streamlining MGEL of the Department and no direct recruitment can be made unless ban on direct recruitment is lifted. It is stated that the department has no mala fide intention while issuing the speaking order stating that the petitioner cannot be considered for appointment to the post of Inspector Co-operative Societies. The HSLC Examination Certificate of the petitioner shows date of birth of the petitioner as 19.02.1967. On 18.08.2016, that is the month prior

to the issuing of speaking order and notification of advertising the posts, the petitioner was aged 49 years and 6 months.

[4] It is further stated in the affidavit-in-opposition that the Memorandum clearly says "there shall be relaxation in upper age limit upto a maximum of 5 years in the case of General categories, 10 years in the case of those belonging to Schedule Castes and Schedule Tribes and 8 years in the case of OBCs for the purpose of appointment of meritorious sports persons". Therefore, total of 38 years i.e., the normal upper age limit and relaxation of 5 years in the case of General categories of meritorious sports persons comes to 43 years. Even if the petitioner is considered as OBC candidate, the total would be 38 years i.e., the normal upper age limit and relaxation of 8 years in the case of OBC categories of meritorious sports persons comes to 46 years. Hence, issuance of the impugned order should not be taken as discriminatory as it was based on valid reason. Therefore, the respondents prayed for dismissal of the writ petition.

[5] The learned counsel for the petitioner submitted that in terms of Office Memorandum dated 17.10.1998, 5% of the posts reserved for sports person under various Government Departments, are to be filled by direct recruitment. He would submit that the petitioner had

been repeatedly approaching the authorities for appointment under the sports quota, however, the same has not been considered by the respondent authorities, which necessitated him filing two writ petitions earlier.

[6] The learned counsel further submitted that despite orders passed by this Court in the earlier writ petitions to consider the case of the petitioner, by the impugned order, the second respondent has not considered the claim of the petitioner, hence, the petitioner has approached this court by filing the present writ Petition.

[7] The learned counsel further submitted that as many as 142 clear vacancies to the post of Inspector of Co-operative Societies against direct recruitment have been filled, since the ban on making direct recruitment was lifted. The co-operative Department on the one side is denying consideration for appointment of the petitioner under sports quota on the ground that the petitioner has crossed the age limit for appointment to the said Post.

[8] Per contra, the learned Government Advocate submitted that there shall be relaxation in upper age limit up to a maximum of 5 years in the case of General categories, 10 years in the case of those belonging to SC/ST and 8 years in the case of OBCs for the purpose of appointment of meritorious sports persons. He would

submit that even if the petitioner is considered as OBC candidate, the total would be 38 years i.e., the normal upper age limit and relaxation of 8 years in the case of OBC categories of meritorious sports years comes to 46 years. Since the petitioner was aged 49 years, he cannot be considered for appointment to the post of Inspector of co-operative Societies and therefore, there is no infirmity in the impugned order.

[9] I have considered the submissions made by learned counsel appearing on either side and also perused the materials available on record.

[10] The grievance of the petitioner is that he should be given appointment to the post of Inspector of Co-operative Societies under sports quota. On the other hand, it is the say of the respondent authorities that there is no privilege for appointment as requested by the petitioner since he was over aged.

[11] Admittedly, this is the third round of litigation. Earlier, the petitioner approached this Court by filing W.P.(C) No.19 of **2007** wherein the petitioner has sought a direction for implementation of the order dated 12.09.2003 passed in W.P.(C)

No.984 of 2002 on the file of Gauhati High Court for considering

the appointment of the petitioner against the available vacancy under sports quota in terms of the Office Memorandum dated 17.10.1998.

[12] By an order dated 16.05 .2013, this court disposed of W.P.(C) No.19 of 2007 by observing as under:

"Heard learned counsel for the parties. As evident from the petition, the claim of the petitioner is simple, that is, the petitioner is claiming for appointment under the sports quota in terms of the Office Memorandum dated 17.10.1998 which provides for reservation for sports persons in the Government departments up to the extend of 5% of the total posts. If that is the relief claimed by the petitioner, there will not be any difficulty on the part of the state respondents to consider the case of the petitioner along with other eligible candidates, if he is found eligible under the Rules and also under the aforesaid Office Memorandum dated 17.10.1998 providing for appointment under posts reserved for sports persons as and when such appointment is sought to be made. Therefore, this Court is of the view that the present writ petition can be disposed of with a direction to the State authorities to consider the claim of the petitioner for appointment under the sports quota available under the Co-operative department or any other department along with other eligible candidates in accordance with Rule as and when such appointments are sought to be made. It is also made clear that if there be any vacancy available under the sports quota in terms of the Office

Memorandum dated 17.10.1998, such vacancy to the extend upto 5% of the posts cannot be adjusted by any other person not belonging to the category of sports person as has been sought to be done as reflected in the letter dated 25.9.2012 written by the Registrar, Co-operative Societies, Manipur.

With the above observation and direction, writ petition stands disposed of."

[13] Pursuant to the order passed in W.P.(C) No.19 2007, the Under Secretary (Cooperation), Government Manipur, vide order dated 10.6.2013, has stated as under:

"The Department has been maintaining that there was no direct recruitment happening for some time for Inspectors under Cooperation Department' and in view of the ban on direct recruitment by the Government, the department is unable to make direct recruitment for Inspectors. However, the Department's position is that as and when there is a lift of the ban of direct recruitment and should Department undertake recruitment, the Department would consider the case of the petitioner under sports quota, through open and direct recruitment as Per RR's.

With the above and in compliance with the Hon'ble High Court order passed on 16th May, 2013 under Writ Petition (C) No.19 of 2007, the matter of Shri N.Chandikumar Singh is hereby disposed off"

[14] It appears that when similarly situated persons were given adjustment/absorption to the post of Inspector of co- operative societies, the petitioner has filed W.P. (C) No. 632 of 2013 before this court seeking direction for adjustment/absorption, as has been done in the case of similarly situated persons as per the orders dated 16.07.2012 and 05.03.2013 respectively.

[15] By an order dated 28.06.2016, this Court, disposed of the said writ petition observing as under:

"This Court is of the view that if the petitioner is really a sports person as contemplated under the relevant rules for consideration for appointment under the meritorious sports persons quota and if the persons absorbed/adjusted under orders dated 16.07.2012 and 05.03.2013 are also similarly situated as the petitioner, the petitioner would be entitled to similar treatment.

Accordingly, the present petition is disposed with the direction to the authorities to consider the case of the petitioner for adjustment/absorption provided he is a similarly situated with those persons who were absorbed/adjusted against vacancies to the posts of Inspectors vide orders dated 16.07.2012 and 05.03.2013 against the sportsman quota or otherwise in any vacancy available.

As regards the ban in the direct recruitment, it has been stated by the petitioner that the same has been lifted which has been disputed by Ms. Sobhana, learned G.A, for the state respondents. Accordingly, the aforesaid direction would be subject to lifting of ban for appointment under the department.

With the above observation and direction, petition stands disposed of."

[16] It is the case of the respondents that the petitioner could not be treated similarly with the absorbed/adjusted Inspector of Co-operative Societies under the orders dated 16.07.2012 and 5.3.2013 as he was not in the same situation holding the supernumerary post of Inspector of Co-operative Societies like that of the absorbed/adjusted Inspector of Co-operative Societies, as Supernumerary post of Inspector was created for the Inspector of Co-operative Societies appointed on the regular basis in the Department under the direction of the Hon'ble Court and also as the post shall be abolished as and when the incumbents are absorbed/adjusted to the regular vacancies due to retirement, promotion, expiry etc.

[17] On the other hand, it is the say of the petitioner that by an order dated 16.7.2012, the other Inspector of ,co-operative Societies

who were holding the supernumerary posts were adjusted against the vacancies occurring in the post of Inspector of co-operative societies and apart from that some other vacancies available were also filled up by way of re-adjustment/re-absorption and one of which could have been filled up under the sports quota by considering the case of the petitioner by the respondent authorities.

[18] It is pertinent to point out that while disposing of W.P.(C) No.632 of 2013, this court issued positive direction to the respondent authorities to consider the case of the petitioner for adjustment/absorption, provided he is a similarly situated with those persons who were absorbed/adjusted against vacancies to the posts of Inspectors vide orders dated 16.07.2012 and 05.03.2013 respectively. In the present case, the respondent authorities have failed to prove that the petitioner is not a similarly situated person.

[19] In the impugned order, the second respondent stated that the petitioner cannot be considered for appointment for the post of Inspector of Co-operative Societies as he crossed the upper age limit even if he belongs to the category of OBC and therefore, there is no privilege for appointment even though ban on direct recruitment was lifted.

[20] During the course of arguments, the learned counsel for the petitioner has produced the order dated 03.12.2016 issued by the second respondent. On a perusal of the same, it is seen that as many as 142 clear vacancies have been appointed to the post of Inspector of Co-operative Societies against direct recruitment since the ban on making direct recruitment was lifted by the State Government. However, the respondent authorities are denying consideration for appointment of the petitioner under sports quota on the ground that he has crossed the age limit for appointment to the post of Inspector of Co-operative Societies.

[21] In the present writ petition, the petitioner prayed, inter alia, for considering his case for appointment to the post of Inspector of co-operative societies in view of availability of vacancies in the Co-operative Department under the sports quota as per the directions issued by this court in W.P.(C) Nos.19 of 2007 and 632 of 2013 by relaxing the age, if necessary. It is to be noted that the direction issued by this Court in W.P.(C) No.632 of 2013 has not been challenged by the respondent authorities and the said order dated 28.06.2016 attained finality.

[22] By placing reliance upon the order dated 04.03.2019 issued by the Directorate of Youth Affairs and Sports, Government of

Manipur, the learned counsel for the petitioner submitted that one Ningthoujam Rita Devi, who is similarly situated sports person has been given appointment in the Department of Youth Affairs and sports even after crossing the upper age limit i.e., in the year 2016, she attained the age of 52 years.

[23] On a perusal of the additional affidavit and additional typed set of papers filed by the petitioner, it is seen that Ningthoujam Rita Devi has filed W.P.(C) No.49 of 2014 before this court seeking direction on the respondents therein to implement the Court, order dated 13.3.2006 passed in W.P.(C) No.267 of 2003 and dispose of her representation dated 30.12.2013. In the said writ petition, the petitioner Ningthoujam Rita Devi claimed that she is a sports person and had applied for appointment/recruitment to the post of Physical Educational Teacher in the Directorate of Youth Affairs and sports, Manipur. By an order dated 24.01.2014, this Court, disposed of the said writ petition directing the respondent authorities therein to consider the representation dated 30.12.2013 submitted by Ningthoujam Rita Devi as expeditiously as possible, preferably within a period of two months. Since the order dated 13.03.2006 passed in W.P.(C) No.49 of 2014 has not been complied with, the petitioner Ningthoujam Rita Devi has filed contempt case (C) No .64 of 2016 before this court during April 2016.

[24] On a Perusal of the order dated 04.03.2019, it is seen that Ningthoujam Rita Devi person who is similarly situated sports person was given appointment and posted at DYASO, Imphal west, after crossing the upper age limit and now she was aged about 52 years. The order dated 04.03.2019 cited supra, has not been denied by the respondents and also nothing has been produced by the respondents to show that the said order is not applicable to the case of the petitioner. This court is of the view that the benefit given in the case of Ningthoujam Rita Devi can be extended to the case of the petitioner as the petitioner herein is also a meritorious sports person, which fact was also admitted by the respondent authorities.

[25] Since the petitioner is similarly situated as those persons who were absorbed/adjusted against vacancies to the post of Inspectors vide orders dated 16.07.2012 and 05.03 .2013 respectively against the sportsman quota and in view of the direction passed by this court in W.P.(C) No.632 of 2013, the claim of the petitioner has to be considered by the respondent authorities positively by appointing him to the post of Inspector Co-operative Societies.

[26] This court is of the view that the failure on the part of the respondent authorities to consider the case of the Petitioner for his appointment against the sports meritorious Quota under the garb of

age bar by issuing the impugned order dated 12.09.2016 is arbitrary and not in accordance with the direction issued by this court in W.P.(C) Nos.19 of 2007 and 632 of 2013 respectively. The respondent authorities ought to have consider the petitioner as candidate of sports meritorious person on a par with the other candidates in the matter of consideration for appointment to the post of Inspector of co-operative Societies when the respondent authorities have been freely processing of direct recruitment to the post of Inspector of co- Operative Societies against the available vacancies.

[27] Considering the over all aspects of the given facts and circumstances of the case and also in the interest of justice, this Court holds that the petitioner has established his case/claim and thus, he is entitled to get appointed to the post of Inspector of Co-operative Societies on direct recruitment under the sports meritorious quota.

[28] In the result,

(i) The writ petition is allowed.

(ii) The impugned order dated 12.09.2016 passed by the second respondent is set aside.

(iii) The respondent authorities are directed to consider the case of the petitioner and appoint him to the post of Inspector of Co-operative Societies in the available vacancy in the Co-operative Department under sports meritorious quota as per the directions given by this Court in W.P.(C) No.19 of 2007 dated 16.05.2013 and W.P.(C) No.632 of 2016 dated 28.06.2016 and also in view of the order dated 04.03.2019 passed in the case of Ningthoujam Rita Devi, which decisions apply on all fours to the case on hand.

(iv) The said exercise is directed to be completed by the respondent authorities as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

(v) No costs.

JUDGE

FR/NFR

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