

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.A. No. 67 of 2018

- 1. The State of Manipur**, represented by the Commissioner (Education-S), Government of Manipur.
- 2. The Director of Education (S)**, Government of Manipur.

... Appellants

-Versus-

- 1. Mrs. Ngachong Kipgen**, aged about 60 years, W/o Lunsat Kipgen, resident of Keithelmanbi, P.O. Kalapahar, P.S. & District: Kangpokpi, Manipur, Pin – 795120.

***... Principal Respondent/
Writ Petitioner***

- 2. The Manipur Public Service Commission** through its Secretary, Imphal, Manipur, North AOC, Imphal West – 795001.

... Proforma Respondents

AND

IN WRIT PETITION (C) NO. 71 OF 2018

Mrs. Ngachong Kipgen, aged about 60 years, W/o Lunsat Kipgen, resident of Keithelmanbi, P.O. Kalapahar, P.S. & District: Kangpokpi, Manipur.

... Petitioner

- Versus -

- 1. The State of Manipur** through the Principal Secretary (Education/S), Government of Manipur, Imphal, Manipur.
- 2. The Director of Education (S)**, Government of Manipur, Imphal, Manipur.
- 3. The Manipur Public Service Commission** through the Secretary, Imphal, Manipur.

... Respondents

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Appellant/ Respondent :: Shri N. Kumarjit, AG asstd. by
Shri P. Tamphamani, Jr. GA

For the Respondent/ Petitioner :: Shri Kh. Tarunkumar, Advocate

Date of Order :: **28-02-2019**

O R D E R

Kh. Nobin Singh, J.

[1] Heard Shri N. Kumarjit Singh, learned Advocate General, Manipur assisted by Shri P. Tamphamani, Junior Govt. Advocate for the respondents and Shri Kh. Tarunkumar, learned Advocate for the principal respondent.

[2] The above appeal is directed against the order dated 08-06-2018 passed by the learned Single Judge by which it has been directed that the principal respondent be deemed to be promoted w.e.f 30-09-2017 when she retired from service and her retirement benefits be calculated from the day when other persons recommended along with her, were promoted on the recommendation of the DPC.

[3.1] Facts, in short, are that while serving as a Deputy Director, Education (S), the petitioner was eligible for promotion to the higher post of Joint Director/ ZEO in the Department of Education (S), Manipur. The DPC for promotion to the higher post of Joint Director/ ZEO was initiated on 22-07-2017 by calling the ACRs of the eligible candidates including the petitioner. Although DPC was to be held on 26-09-2017, it was not held

on that day for the reasons not known to her and it was held only on 16-11-2017 after the principal respondent retired from service on 30-09-2017 on attaining the age of superannuation. The DPC which was held on 30-09-2017, had duly recommended the petitioner for promotion to the higher post of Joint Director/ ZEO. However, the recommendation of the DPC was not given effect to, so far as the petitioner is concerned.

[3.2] Being aggrieved by the inaction on the part of the State respondents, a writ petition being WP(C) No.71 of 2018 was filed by the petitioner claiming the benefits of the recommendation of the DPC, to which no counter was filed on behalf of the State respondents. While disposing of the writ petition, the learned Single Judge vide its order dated 08-06-2018 held that the petitioner was eligible for promotion to the higher post and had the DPC been held in time, she could have got the benefit of promotion. It was further held that the delay on the part of the authorities in convening the DPC could not be at the cost of the petitioner and that it is well settled that the right to be considered for promotion is a fundamental right, which cannot be deprived of, though the right to be promoted is not a fundamental right.

[3.3] This Court's order dated 08-06-2018 was challenged by the appellants/ State respondents on the inert-alia grounds that before completion of the DPC, the petitioner had already retired from service; that in terms of the OM dated 15-05-2014, since the promotion will have to be prospective, she is not to be promoted to the higher post after retirement

and that if the order of the learned Single Judge is allowed, it will open a flood gate to all.

[4] On 28-02-2019 when the matter was listed for consideration, the learned Advocate General, Manipur vehemently submitted that in case the order of the learned Single Judge is to be complied with and implemented, it will open a floodgate with the result that many employees may come forward to claim such benefits. On the other hand, combating the contentions of the learned Advocate General, Shri Kh. Tarunkumar, the learned counsel appearing for the principal respondent submitted that even after the petitioner having retired from service, she was considered by the DPC which recommended her for promotion and that if the benefit of promotion was not to be given to her, there was no need of her being recommended for promotion.

[5] Before adverting to the rival contentions, this court deems it appropriate to examine the decisions rendered by the Hon'ble Supreme Court on the similar issue. The first decision is the one rendered in **P.N Premachandran Vs. State of Kerala & ors., (2004) 1 SCC 245** wherein the private respondents were promoted from the date on which they were temporarily promoted. A writ petition filed by the appellant questioning it, was dismissed and when the appeal came up before the Hon'ble Supreme Court, it held:

“7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could

question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for not fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.”

In Coal India Ltd & ors. Vs. Saroj Kumar Mishra, (2007) 9 SCC

625, the Hon'ble Supreme Court held:

“19. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because there is possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties.(See Zee Telefilms Ltd. V. Union of India and Guruvayoor Devaswom Managing Committee v. C.K. Rajan.”

[6] It is not in dispute that the petitioner was eligible for promotion to the higher post of Joint Director/ ZEO in the Education Department. The DPC was to be held prior to her retirement but was not held for the reason best known to the State respondents. It may be noted that even after her

[6]

retirement, she was considered by the DPC for promotion and was, in fact, recommended for promotion. There is no reason as to why she was considered for promotion, if the benefit of promotion was not to be given to her. The learned Single Judge is right when it held that the delay on the part of the authorities in convening the DPC could not be at the cost of the petitioner and that it is well settled that the right to be considered for promotion is a fundamental right, which cannot be deprived of, though the right to be promoted is not a fundamental right. Therefore, in terms of the law laid down by the Hon'ble Supreme Court in the aforesaid cases, the contention of the learned Advocate General that a floodgate will be opened, if the order passed by the learned Single Judge is complied with, has no merit at all and is not acceptable to this court. Having heard the learned counsels appearing for the parties, this Court finds no infirmity in the order of the learned Single Judge and the appeal being devoid of any merit, is liable to be dismissed by this Court.

[7] In view of the above, the instant writ appeal is dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

FR/ NFR

Devananda