

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP (C) No. 527 of 2023

Shri Athokpam Dolendro Singh, aged about 52 years old,
S/O Late Athokpam Manihar Singh, a resident of
Keishamthong Thangjam Leirak, P.O. & P.S. Imphal,
Imphal West District, Manipur-795001.

...Petitioner

-Versus-

1. The State of Manipur represented by the Principal Secretary/ Commissioner/ Secretary, (Tribal Development and Hills), Government of Manipur, Secretariat Block, P.O & P.S. Imphal, Manipur -795001.
2. The Manipur Tribal Development Corporation Ltd. represented by the Managing Director, Manipur Tribal Development Corporation Ltd. Government of Manipur, Lamphelpat, P.O & P.S. Lamphelpat, Manipur -795004.
3. W. Robby Singh, aged about 51 years old, S/O Late W. Bangshidhor Singh, a resident of Uripok Polem Leikai, P.O. Imphal & P.S. Lamphel, Imphal West District, Manipur-795001.

.....Respondents

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN**

For the Petitioner	::	Mr. HS Paonam, Sr. Adv.,
For the Respondents	::	Mr. M. Rarry, Special Counsel for State Mr. Y. Nirmolchand, Sr. Adv.

Date of Hearing and
reserving Judgment & Order :: 25.08.2023

Date of Judgment & Order :: **31.08.2023**

JUDGMENT AND ORDER
(CAV)

This writ petition has been filed by the petitioner to quash the impugned order dated 26.7.2023 conferring the charge of Chief Engineer to the third respondent in Manipur Tribal Development Corporation Limited, Lamphelpat, and to consider the petitioner for charge of Chief Engineer in Manipur Tribunal Development Corporation Limited, Lamphelpat.

2. Assailing the impugned order, Mr. H.S. Paonam, the learned senior counsel for the petitioner submitted that the petitioner is functioning as Project Director of Manipur Tribal Development Corporation Limited (MTDC) and the petitioner is senior to the third respondent amongst Assistant Engineer (Degree Civil). Earlier, the petitioner challenged the seniority list in W.P.(C) No.327 of 2022 and the said writ petition is pending. The petitioner had also challenged the conferment of charge of Superintending Surveyor of Works to the third respondent by filing W.P.(C) No.330 of 2022, which is also pending.

3. The learned senior counsel further submitted that this Court passed an order dated 2.3.2023 in W.P.(C) No.327 of

2022 for redressing the grievance of the petitioner for conferment of charge of Chief Engineer in MTDC Limited, as he is presently functioning as Project Director. However, the State Government in complete arbitrary exercise of power and without considering the grievance of the petitioner, has issued the impugned order dated 26.7.2023 thereby conferring the charge of the Chief Engineer in MTDC Limited to the third respondent which would result in allowing a junior officer to control a senior officer.

4. The learned senior counsel would submit that an enquiry is pending against the third respondent for payment of mobilization advance security to the tune of Rs.12,66,64,862/- against fake bank guarantee and bank cheque. The State Government instead taking appropriate departmental enquiry against the third respondent has conferred the charge of Chief Engineer by overlooking the fact that the petitioner is holding the higher post of Project Director in MTDC Limited, which is against the norms of service jurisprudence. Thus, a prayer is made to quash the impugned order and to direct the official respondents to consider the case of the petitioner for charge of Chief Engineer of MTDC Limited.

5. Mr. M. Rarry, the learned Special Counsel for State appearing for the respondents 1 and 2 submitted that neither the

petitioner nor the third respondent are eligible as per the Recruitment Rules to be considered for filling up the post of Chief Engineer, MTDC Limited. Hence, the senior most amongst the cadre belonging to the feeder post of the said particular post is appointed to hold the said post on in-charge basis. The substantive regular post held by the petitioner and the third respondent is the post of Assistant Engineer (Degree Civil) as on 31.8.2021 when the seniority list of Assistant Engineer in MTDC was published as on 31.8.2021.

6. The Special Counsel for State would submit that the third respondent's name in the said seniority list of Engineer under the MTDC Limited as on 31.8.2021 is shown at Serial No.1 while the petitioner's name is shown at Serial No.2, and, therefore, the third respondent is senior to the petitioner.

7. The Special Counsel for State urged that in conformity with the terms of the provisions at Clause No.4(ii) of the Office Memorandum dated 3.10.2020, the State appointed the third respondent as Chief Engineer, MTDC Limited on in-charge basis vide the impugned order. Since the impugned order is in conformity with and in compliance of the Office Memorandum dated 3.10.2020, there is no arbitrariness or

illegality in appointing the third respondent as Chief Engineer, MTDC Limited on in-charge basis.

8. Adding further, the Special Counsel for State submitted that the allegation of the petitioner that the third respondent is facing departmental enquiry in terms of the order dated 1.9.2022 passed in W.P.(C) No.506 of 2022 cannot be a basis to override the mandatory provisions of the Office Memorandum dated 3.10.2020. The departmental enquiry against the third respondent has different implication in regard to the service condition of the third respondent. At this stage, when the impugned order dated 26.7.2023 was issued, the relevant condition to be applied is as contained in the Office Memorandum dated 3.10.2020 for giving in-charge appointment and the State has rightly done the same.

9. According to the Special Counsel for State, the petitioner has been designated as Project Director for EMRS Projects taken up by MTDC Limited and the same will be co-terminus with the completion of EMRS projects. Therefore, the designation as Project Director is only for a particular project and cannot be said to be a promotion to a higher post and neither was it an appointment on regular basis for MTDC. Hence, the claim of the petitioner on this ground is totally misconceived.

10. Mr. Y. Nirmolchand, the learned senior counsel for the third respondent submitted that insofar as the departmental enquiry pending against the third respondent as alleged by the petitioner is concerned, the main charge about the fake bank guarantee is not the concern of the third respondent, but relates to the Finance/Account Section. However, it is for the enquiry officer or the disciplinary authority to decide who is responsible for the aforesaid incident. Unless and until the departmental enquiry is completed, a person cannot be considered as unbecoming of a Government servant, violating the conduct rules.

11. The learned senior counsel for the third respondent urged that the third respondent is always senior from the date of initial appointment till the promotion to the post of Assistant Engineer and being senior to the petitioner, the third respondent was conferred the charge of Chief Engineer, which is neither illegal nor improper.

12. The learned senior counsel further submitted that the petitioner is having a pending vigilance case relating to forfeiture of Rs.14.7 crore regarding a project "Construction of 69 bridges in Myanmar" where he was the concerned Engineer. There is no law that during the pendency of the departmental

enquiry, senior most employee cannot look after the charge of the higher post. Thus, a prayer is made to dismiss the writ petition.

13. This Court considered the rival submissions and also perused the materials available on record.

14. The grievance of the petitioner is that since the third respondent is facing departmental enquiry in terms of the order dated 1.9.2022 passed in W.P.(C) No.506 of 2022 and the petitioner is presently functioning as Project Director in MTDC Limited and also he being senior to the third respondent, the State ought not to have conferred the charge of Chief Engineer in MTDC Limited to the third respondent and the petitioner alone is entitled to be considered for conferment of charge of the Chief Engineer in MTDC Limited.

15. On the other hand, the third respondent contended that as per the seniority list, the third respondent is senior to the petitioner and as per law, in-charge appointment is to be afforded to the senior most officer. Further, the petitioner is facing vigilance case relating to forfeiture of Rs.14.7 crore regarding a project, namely Construction of 69 bridges in Myanmar.

16. In the affidavit-in-opposition filed by the respondents 1 and 2, it has been stated that neither the petitioner nor the private respondents are eligible as per the Recruitment Rules to fill up the post of Chief Engineer, MTDC Limited. Hence, the senior most amongst the cadre/officials belonging to the feeder post of the said particular post shall be appointed to hold the said post on in-charge basis.

17. It is contended by the petitioner that he has challenged the seniority list by filing W.P.(C) No.327 of 2022 and the same is pending. By the order dated 11.5.2022, the said writ petition was admitted by this Court. According to the petitioner, when the seniority list is under challenge in W.P.(C) No.327 of 2022, the respondent State ought not to have considered the third respondent for conferment of the charge of Chief Engineer.

18. Earlier when the State issued an order dated 24.6.2022 conferring the charge of Chief Engineer to the third respondent, the petitioner has filed W.P.(C) No.470 of 2022 and one Brojendra Singh has filed W.P.(C) No.498 of 2022. By the interim order, this Court stayed the order dated 24.6.2022 impugned in the said writ petitions and, accordingly, the competent authority passed an order conferring the charge of Chief Engineer of MTDC Limited to Brojendra Singh. The said

order of the State has been challenged by the third respondent by filing W.P.(C) Nos.928 and 942 of 2022 and another person also filed W.P.(C) No.232 of 2023. According to the petitioner, W.P.(C) Nos.470, 498 and 928 of 2022 have been disposed of and W.P.(C) Nos.942 of 2022 and 232 of 2023 are still pending. It appears that since the contractual engagement of the Brojendra Singh has not been extended, by the order dated 1.8.2023, W.P.(C) No.942 of 2022 has been withdrawn by the third respondent.

19. According to the respondent State, the substantive regular post held by the petitioner and the third respondent is the post of Assistant Engineer (Degree Civil) as on 31.8.2021 when the seniority list of Assistant Engineer was published as on 31.8.2021. In the seniority list as on 31.8.2021, the third respondent is shown at Serial No.1 while the petitioner's name shown at Serial No.2.

20. The Office Memorandum dated 3.10.2020 reads thus:

“No.23/20/2019-Misc (PHED)/DP: A large number of references has been made by various departments under the Government of Manipur seeking clarity from Department of Personnel in

regards to appointments on in-charge basis to various posts and candidates for making such appointments, etc.

2. At present, there is no laid down norm for making appointments on in-charge basis to posts under the State Government. In the absence of laid down norms, various departments have been resorting to such appointment usually by considering seniority of officials, place of posting etc. In other cases, there is want of better logic apparent on the face of such appointment leading to discontent in the cadre concerned and ultimately affecting efficiency of public administration.

3. In this context, the need to issue details norms for appointment of officials to a post on in-charge basis has been under consideration of the State Government from some time.

4. Thus, with a view to bring uniformity, clarity and enforceable norms in making such in-charge appointments, the following norms are hereby issued for compliance by all concerned:

i. Appointment on in charge basis shall be made against a post only when there is no official eligible as per RR to fill up the said post, either by direct recruitment or by promotion through duly constituted DPC.

ii. In the absence of any official eligible as per RR to fill up a particular post, the senior most person amongst cadre/officials belonging to the feeder post of the said particular post shall be appointed to hold the said post on in-charge basis, at no extra remuneration and in addition to the substantial post held by the appointee in the lower post. Needless to say, the appointee shall draw pay against the lower post substantially held by him.

iii. Where no arrangement can be made as in para (ii) above, an in-charge appointment shall be made to a vacant post from a person holding a similar post (at same rank and/or designation) at no extra remuneration.

iv. An official appointed on in-charge basis against any post shall have the same financial power as a person appointed on substantial basis against the said post would apply.

5. These instructions shall be applicable while making appointments on in-charge basis to all posts under the State Government existing in all Government departments, agencies, societies, bodies, offices, companies, PSUs, autonomous bodies. etc.”

21. The pendency of the departmental enquiry against the third respondent is admitted by the third respondent himself. According to the third respondent until and unless the

departmental enquiry is completed, he cannot be considered as unbecoming of a Government servant, violating the conduct rules. The pendency of the departmental enquiry against the third respondent is evident from the written statement of defence submitted by the third respondent. On the other hand, there is nothing on record to show that the vigilance case was registered against the petitioner as alleged by the third respondent. On a perusal of the annexures to the affidavit-in-opposition filed by the third respondent, it is seen that the petitioner and one Chandrakumar Singh, the then Account Officer, MTDC have been required for examination and accordingly, they have been called for examination on 16.1.2021. Nothing has been placed on record to show about the further progress in the aforesaid vigilance enquiry. On the other hand, the departmental proceedings against the third respondent has been directed to be completed within a period of six months from the date of receipt of a copy of the order dated 1.9.2022 passed in W.P.(C) No.506 of 2022. The operative portion of the order reads thus:

“(7) On considering the arguments advanced by both the parties, this Court is inclined to pass the following orders:

a) This writ petition is disposed of.

b) *The respondents No.2 & 3 are directed to proceed the Departmental enquiry proceedings against the respondent No.4 as per the letter dated 24.05.2022 and to pass an appropriate order within a period of 6 (six) months from the date of the receipt of this order by giving personal opportunity to all concerned.”*

22. Despite the specific direction given in the aforesaid order, the departmental proceedings against the third respondent have not been completed and neither any extension of time was granted by this Court, nor sought for by the authorities. This only shows that the action of the authorities is prima facie in favour of the third respondent. The authorities are bound by the Office Memorandum, but that does not mean that they should be blindfolded to the directions issued by this court to complete the disciplinary proceedings within six months, which period has long lapsed.

23. In *Government of A.P. and another v. B.Vasantha Rao and another*, (1999) 5 SCC 183, the Apex Court held:

“4. We are at a loss to understand as to how the High Court could pass such an order. Admittedly, the disciplinary proceedings had commenced on 28-7-1998. Even if before that

*date the said respondent had been empanelled for promotion, the Government cannot be prohibited from starting disciplinary proceedings if there are reasons for doing so. The High Court has not quashed the disciplinary proceedings and looking at the charges levelled against the respondent, it cannot be said that there was any ulterior motive for the respondent being put under suspension. **Furthermore, when disciplinary proceedings are pending, we are doubtful whether it was appropriate for the High Court to have directed that the select list for promotion should be given effect to forthwith especially when the High Court in the said order has permitted the disciplinary proceedings to continue.** It is also difficult to appreciate the High Court holding that even though disciplinary proceedings could continue but no final order should be passed. No reasons for coming to this conclusion have been given.”*

[emphasis supplied]

24. From the above, it is clear that when disciplinary proceedings are pending, it is doubtful for the authorities to select and/or give promotion to the person to hold the high office. What needs to be noted at this juncture is that the respondent authorities, despite a time bound order passed by the High Court

to complete the disciplinary proceedings within six months, which has lapsed long back, have not taken any steps either to conclude the proceedings or to seek extension of time. This only shows that all is not fair with the authorities. That apart, the respondent authorities have not placed any shred of material to show what efforts have been put in by them to appoint a regular Chief Engineer in the absence of any eligible candidate.

25. Since the seniority of the petitioner and the third respondent is under challenge in W.P.(C) No.327 of 2022, prima facie, the third respondent cannot be considered to be the senior of the petitioner. That apart, departmental proceeding is pending against the third respondent.

26. It is pertinent to note that aggrieved by not conferment of the post of Chief Engineer, the third respondent had earlier filed W.P.(C) No.435 of 2023 before this Court. Pending writ petition, without leave of the Court, by the impugned order dated 26.7.2023, the State had conferred in-charge of Chief Engineer to the third respondent, which action of the State is not appreciable.

27. According to the petitioner, the petitioner is presently functioning as Project Director of MTDC Limited, which

is a higher post and, therefore, he is entitled for being appointed as Chief Engineer of MTDC Limited. It is also the case of the petitioner that the appointment of the petitioner as Project Director has not been challenged by anybody, including the third respondent and, hence, the petitioner should be considered conferment to the post of in-charge Chief Engineer.

28. Per contra, the Special Counsel for State contended that the post of Project Director held by the petitioner is co-terminus and after completion of the project, the designation as Project Director cannot stand.

29. In the order dated 24.8.2022, it has been stated as under:

“The Governor of Manipur is pleased to designate Shri Athokpam Dolendro Singh, Executive Engineer-IV, MTDC as Project Director (Technical/Civil Works) for EMRS projects taken up by the Manipur Tribal Development Corporation (MTDC) Ltd., Manipur with immediate effect and without any extra remuneration for a period that will be co-terminus with the completion of EMRS projects or until further orders.”

30. It is not the case of the respondent State that the project mentioned in the order dated 24.8.2022 was completed.

The order clearly states that “with the completion of EMRS projects or until further orders”, which means that still the petitioner is serving as Project Director. No contra evidence is also let in on the side of the respondents. As the petitioner is holding the higher post as on date, nothing prevented the authorities from considering the claim of the petitioner. That apart, it is seen from the documents on record that the services of the petitioner have been utilized as in-charge Executive Engineer in the Department of Medical and Health Service, Manipur vide order dated 22.10.2011 for a period of one year, which was extended for one more year vide order dated 23.11.2012. Thus, it is prima facie seen that the present petitioner has rendered longer service in the said cadre.

31. Since the impugned order has been issued pending disciplinary proceedings against the third respondent and that too without the leave of the Court while W.P.(C) No.435 of 2023 filed by the third respondent is pending on the date of issuance of the impugned order, the same is not sustainable in the eye of law. The pendency of the disciplinary proceedings has not been stated in the impugned order, however, by referring to paragraph 4(i) and (ii) of the Office Memorandum dated 3.10.2020, the

respondent State appointed the third respondent as Chief Engineer, MTDC Limited on in-charge basis.

32. For the reasons stated above, the impugned order is not sustainable in the eye of law and, therefore, the same is liable to be quashed.

33. In the result,

- (i) The writ petition is allowed.
- (ii) The impugned order dated 26.7.2023 passed by the Deputy Secretary (TA & Hills), Government of Manipur, is set aside.
- (iii) The respondent authorities are directed to confer the charge of Chief Engineer, in Manipur Tribal Development Corporation Ltd., Lamphelpat to the petitioner.
- (iv) No costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil