

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C) No.624 of 2023

Heigrujam Pinky Devi, aged about 38 years
d/o H.Dilip Kumar, w/o Birajit Singh Oinam of
Singjamei Oinam Thingel, PO & PS
Singjamei of Imphal West District, Manipur
795008, now working as Fishery Inspector
in the Fishery Department.

... Petitioner

-Versus-

1. State of Manipur represented by the
Secretary, Fishery, Government of Manipur,
Old Secretariat Complex, Imphal 795001.

2. Director, Fisheries, Government of
Manipur, Lemphepat.

3. Secretary, MPSC, North A.O.C.

... Respondents

**BEFORE
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**

For the Petitioner: Mr.A.Romenkumar, Sr.Adv. with
Mr.R.K.Banna, Advocate

For the Respondents: Mr.M.Devananda, Addl. AG with
Ms.Jyotsna, Advocate &
Ms.Momota Devi Oinam, Adv

Date of Hearing: 09.11.2023.

Date of Judgment: 21.03.2024

JUDGMENT AND ORDER

[1] By the present writ petition, the petitioner is praying
for a direction to the respondents to include her name in

recommending the eligible candidates for holding Review DPC for promotion to the next higher rank of Fishery Officer. It is stated that the proposal for Review DPC made by the respondent No.1 is contrary to the judgment and order dated 3.2.2023 passed by a Division Bench of this Court in WA No.111 of 2022, WA No.112 of 2022 and WA No.115 of 2022.

[2] The brief facts of the case is that the petitioner was appointed on regular basis to the post of Fishery Inspector, in the Directorate of Fisheries, Government of Manipur in order of merit w.e.f. 1.12.2016 vide order dated 1.12.2016. After successful completion of One Year Post Graduate Diploma in Inland Fisheries and Aquaculture Management (PGDIFI & AM) from May 2019 to April 2020 [the course duration was extended due to Pandemic, COVID 19], the petitioner is eligible for consideration for promotion to the post of Fishery Officer as stipulated by the Fishery Department, Manipur (Fishery Officer) Recruitment Rules, 1996 (RR). It is stated that as per the RR, the petitioner has already completed three years regular service and has successfully passed and possessed Diploma, i.e. Post Graduate Diploma in Inland Fisheries and Aquaculture Management.

[3] On 4.9.2019, the Director, Fisheries notified the combined final inter-se seniority list of the Fishery Inspector, Fishery Instructors, Fishery Extension Assistants as on 31.8.2019. The name of the petitioner is shown at serial number 14.

[4] In the common Judgment and Order delivered by the Division Bench of the Hon'ble High Court of Manipur in WA No.111 of 2022, WA No.112 of 2022, WA No.115 of 2022, WA No.115 of 2022 on 3.3.2023, it is clearly mentioned that "Note – appended to the Tabular Statement in the Recruitment Rules provides that where a person is considered for appointment, all persons possessing requisite qualification and who are senior to him in the grade shall

also be considered irrespective of whether or not they fulfil the requirement as to minimum qualifying service prescribed for the purpose of promotion.”

[5] In para 19 of the above common judgment, it is observed as “That apart, there may have others who possess the requisite qualification but did not put in the prescribed length of service but would still have to be included in the list of eligible Officers by virtue of Note 1 in the RR. Therefore, the DPC proceedings held on 16.11.2020 require to be reviewed.

[6] In para 20 it is noted as “The Fishery Department, Government of Manipur shall communicate the list of eligible officers in the feeder categories to be considered by the Review DPC within four weeks from the date of receipt of a copy of this order. “The said list shall be drawn up in accordance with the recruitment rules, keeping in mind the observations made herein above and shall include Gunabati Kangabam, Loveson Golmei and Lairenlakpam Lindai Chanu, as they are deemed to have completed the Diploma course within time despite the fact that the Diploma Certificates were issued to them thereafter.” From the above directions it is now crystal clear that Gunabati Kangabam who is at Sl.No.18, Loveson Golmei at Sl.No.34 in the Seniority List are to be recommended for consideration for promotion although the petitioner who is at Sl.No.14 senior to above persons are not included on the ground that her name is not reflected in the judgment.

[7] The petitioner submitted a representation to the respondents on 10.02.2023 for including her name for consideration in the Review DPC as directed by the Division Bench, but no positive step has been taken up by the respondents on the ground that the name of the petitioner is not reflected in the judgment. It is further to submit that since the Hon’ble High Court directed the name of Gunabati Kangabam in the list for consideration at Revised DPC who

is at Sl.No.18 of the Inter-se Seniority List, it is not mandatorily incumbent that the name of the petitioner who is at Sl.No.14 in the Inter-se seniority list of the candidate should also be included in the eligible list of candidates for Review DPC.

[8] In compliance with the directives of the Hon'ble High Court, the Director, Fisheries on 18.8.2023 submitted a proposal for holding review DPC in which the name of the petitioner was not included as evident from the proposal concerning the "Information about the integrity of eligible offices and as such the impugned proposal of 18.08.2023 [Annexure A-7 (Colly)] sent by the Director of Fisheries to the Secretary (Fishery), Govt. of Manipur. It is prayed for immediate interference from this Court by passing an appropriate interim order for the ends of justice.

[9] The petitioner, having no alternative remedy, has approached this Court for grant of relief of directing the respondents to include the name of the petitioner in the list of candidates for review DPC being senior and possessing requisite qualification and to quash and set aside the proposal for holding Review DPC of 18.08.2023 being violative of RR of Fishery Officer and judgment & order of the Division Bench of Hon'ble High Court.

[10] Respondent Nos. 1 & 2 filed affidavit in opposition. It is pointed out that the petitioner has concealed material facts of filing MC(WA) No. 120 of 2023 [Ref: WA Nos. 111 of 2022, 112 of 2022 & 115 of 2022 before the Division Bench with the same prayer as in the present writ petition. The application was withdrawn on 14.9.2023, but the present writ petition was filed 8.9.2023 without disclosing pendency of misc. application before the Division Bench. Hence, the petitioner has not come before this Court with clean hands and deserves to be dismissed on this point alone. In the affidavit in opposition filed by respondent No.2, it is stated that the petitioner is not eligible for promotion to the post of Fishery Officer

as she has not obtained the Diploma Course/one year certificate Course in the year 2019-2020, and she passed her Diploma Course only on 20.09.2021. It is stated that the prayer sought in the writ petition is not maintainable. It is further submitted that the Certificate of the Court was issued to the petitioner only after passing of the Diploma Course, as such the petitioner passed her Diploma Course only on 20.09.2021 and hence, the petitioner's Diploma Course certificate cannot be considered for the vacancies for the year 2019 to 2020.

[11] In the additional affidavit filed by the petitioner, it is stated that on 11.09.2023 while the writ petition was taken up, clarification about the certificate of successfully passing the one year Post Graduate Diploma in Inland Fisheries and Aquaculture was in the course of hearing. Thereafter, it was further ascertained that "the insertion of words in the certificate that is" "despite the fact that the course duration was extended due to the pandemic, COVID 19 which was inevitable" was only to convey the reason for issuing the "Successfully Passed Certificate" late although the said course of May 2019 to April 2020 has already completed before pandemic. The authority has issued certificate dated 13.09.2023 which is annexed as Annexure A-8, which indicates that the petitioner has successfully completed and passed the one year Post Graduate Diploma in Inland Fisheries and Aquaculture of May 2019 to April 2020 and is eligible for consideration for promotion to the next higher rank of Fishery Officer.

[12] In the rejoinder affidavit, petitioner has stated that an application dated 8.9.2023 was submitted to the Registrar (Judl) for withdrawal of misc. application MC No. 120 of 2023 with copies to other counsel appearing for the parties and thereafter the present writ petition was filed on 8.9.2023 itself. It is stated that there is no concealment of fact. It is denied that the petitioner is not eligible for

promotion. It is pointed out that as held by the Division Bench in terms of Note 1 appended to RR provides that where a person is considered for such appointment, all persons possessing the requisite qualification and who are senior to him in the grade shall also be considered irrespective of whether or not they fulfil requirement as to minimum qualifying service prescribed for the purpose of promotion. It is reiterated that the petitioner passed the Diploma course for the year May 2019 to April 2020 and as such she is eligible as per RR.

[13] Heard Mr. A. Romenkumar, learned senior counsel for the petitioner, Mr. M. Devananda, learned Addl. AG for State respondents and Ms. Momota for MPSC.

[14] Mr. A Romenkumar, learned senior counsel for the petitioner submits that the petitioner has completed 3 years of regular service in the feeder cadre of Fishery Inspector and has completed the diploma course for the May 2019 to April 2020 and as such she has all the requisite qualifications as per RR. Moreover, her junior at serial No. 18 of the common final seniority list was considered for the review DPC while the petitioner at serial No. 14 was ignored. It is submitted that in terms of Note 1 appended to the RR, the petitioner ought to be considered for the review DPC as her junior has been recommended for consideration. Reliance is place on the judgments reported as (i) **Ganapath Singh Gangaram Singh Rajput v. Gulbarga University: (2014) 3 SCC 767** – The academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority.; (ii) **Mamta Sharma v. Central Board of Secondary Education: (2022) 1 SCC 368**- Autonomous Boards are entitled to evolve their own schemes independently.; (iii) **R B Desai v. S K Khanolkar: (1997) 7 SCC 54**- In case of promotion, the seniority shall prevails, unless the rules excludes weightage to the seniority. ; and (iv) **Maibhai**

Hongchu v. State of Manipur: (2020) 1 NEJ 166 (MAN)- In Review DPC, all eligible candidates should be considered. It is prayed that the respondents be directed to include the name of the petitioner for consideration in the review DPC as directed by Division Bench as her junior has been recommended.

[15] Mr. M. Devananda, learned Addl. AG for the State respondents submits that the petitioner has not disclosed the fact of filing of multiple cases before different benches praying for the same and the writ petition is to be dismissed for not coming with clean hands as held in the judgments reported as **(2007) 8 SCC 449** and **(2008) 1 SCC 560**.

[16] On merit, it is stated that the petitioner prays for considering her for the vacancy arose in the year 2019-2020. Learned Addl. AG draws the attention of this Court to the Office Memorandum dated 15.5.2014 issued by the Department of Personnel & Administrative Reforms (Personnel Division), Government of Manipur which stipulates the consolidated instructions for DPC. Para 4.2 prescribes that the vacancies for DPC should be calculated as financial year-wise, unless the relevant RR specifies otherwise. It is pointed out that the vacancy should be calculated from April of previous year to March of current year. The RR is silent about the year of calculation of vacancies. It is clarified that for the year 2019-2020, ie, from 1st April 2019 to 31st March 2020, the person should possess the eligible criteria between this period for considering against the vacancies arisen during this period.

[17] Mr. M. Devananda, learned Addl. AG has pointed out that as per Annexure A-3 (Colly) produced by the petitioner, she successfully completed One Year Post Graduate Diploma from May 2019 to April 2020 in 'Inland Fisheries and Aquaculture Management' from ICAR-CIFE, Kolkotta On 20.9.2021 as per her

marksheet. In the certificate dated 28.8.2023 issued by ICAR-CIFE, Kolkotta, it is stated that the duration of the course was extended due to covid-19 pandemic. In another certificate dated 13.9.2023 [Annexure A-8] issued by ICAR-CIFE, Kolkotta, the words, ie, extension of course due to pandemic have been dropped and it has simply stated that the petitioner passed one year PG Diploma in Inland Fisheries and Aquaculture from May 2019 to April 2020. Learned Addl. AG explains that on co-joint reading of OM dated 15.5.2014 and Annexures A-3 & A-8, the petitioner should pass the PG Diploma in Fisheries as per RR within the period from 1st April, 2019 to 31st March 2020. But she passed the examination on 20.9.2021 as per Annexure A-3 and/or in April 2020 as per Annexure A-8. In both cases, the petitioner did not possess the PG Diploma with the period from 1st April, 2019 to 31st March 2020. Learned Addl. AG emphasizes that she was not rightly considered for the review DPC for the vacancy arose in the year 2019-2020. In the Note for Review DPC dated 18.8.2023 [Annexure A-7 @Page 70], it is recorded in remarks column with respect to the petitioner that "Not eligible at the time of original DPC for not possessing the requisite diploma or certificate as prescribed in criteria 1 and 2 of the existing RR. It is submitted that the petitioner has not challenged the remarks made against her and hence she is not eligible for the vacancy arose in the year 2019-2020 for not possessing the essential qualification. Reference is made to the decisions reported as (i) **(1991) Suppl 2 SCC 432** and (ii) **(2007) 10 SCC 260** to buttress the principle that the eligibility criteria should be as on the last date of filing of application form or as stipulated by rules. It is prayed that the writ petition be devoid of any merit and is liable to be rejected with cost.

[18] Mrs. O. Momota, learned counsel for MPSC has adopted the submissions of learned Addl. AG and stated that the petitioner is not in the list of eligible candidates for the Review DPC.

[19] This Court case has considered the rival submissions of the parties made at bar, the materials on record and case laws cited.

[20] This Court is not inclined to delve on the question of suppression of material facts and proposes to discuss the merit of the case. The RR provides that the post of Fishery Officer is by promotion from- (1) Fishery Inspector and Fishery Extension Assistant/Fishery Instructor possessing Diploma with 3 years regular service in the respective grades; (2) Fishery Inspector and Fishery Extension Assistant/Fishery Instructor possessing 1 year Certificate in the Fishery Science from a recognised Inland Fisheries obtained from a Centre recognised CIFE with 5 years of regular service in their respective grades; (3) Research Assistant possessing Diploma/Post Graduate in Zoology/Chemistry with 12 months training from CIFE, Barrackpore Unit with 3 years regular service in the grade; (4) Other Fishery Inspector/Fishery Extension Assistant/Fishery Instructor who are not Science Graduate possessing Fisheries Training of not less than 9 months course from any recognised Institute with 10 years regular service in their respective grades. If the petitioner completed the Diploma between the period from 1st April 2019 to 31st March 2020 as per OM dated 15.5.2014, she would be eligible for considering against the vacancies for the year 2019-2020.

[21] Admittedly, the petitioner completed the Diploma in Fishery for the course May 2019 to April 2020 on 20.9.2021, as the course was extended due to pandemic. Later on, the Institute clarified that she completed the course of May 2019 to April 2020. In any case, the petitioner completed the Diploma in April 2020.

However, as per OM dated 15.5.2014 and for the vacancies arising during the period from 2019 to 2020, the petitioner should possess the eligibility criteria between the period from 1st April 2019 to 31st March 2020. Since the petitioner completed the Diploma in April 2020 as per Annexure A-8, she is not eligible for the vacancy arose in the year 2019-2020. This Court is of the considered view that the petitioner was rightly not sent for considering in the Review DPC. However, it is clarified that the petitioner will be eligible for subsequent vacancies in the post Fishery Officer.

[22] With these observations, the writ petition is disposed of. No cost.

JUDGE

FR/NFR
Priyojit

JOHN
TELEN
KOM

Digitally signed
by JOHN TELEN
KOM
Date: 2024.03.22
10:17:07 +05'30'