

THE STATE OF MANIPUR AND ANR. A
v.
SMT. CHABUNGBAM THOIBISANA DEVI AND ORS.

APRIL 19, 2007

[ASHOK BHAN AND C.K. THAKKER, JJ.] B

Service Law:

Appointment—Post of Assistant Government Advocate-cum-Assistant Public Prosecutor—Conducting of writing as well as oral test—Subsequently, ban of direct recruitment and declaration of results by State Government—Challenge to—Writ Petition allowed without giving opportunity to the opposite party—Division Bench of High Court upholding the order without considering the additional facts on record—On appeal held: Orders of courts below cryptic and bereft of any reasons, thus, order of Division Bench set aside and matter remitted back. C D

Appellant-State issued advertisement for appointment to the posts of Assistant Government Advocate-cum-Assistant Public Prosecutor. Since only the dates were fixed for interview, on a writ petition, Single Judge of High Court directed the State Government to notify fresh date for conducting written as well as oral test. Thereafter, State Government banned direct recruitment and declaration of results of D.P.Cs. in respect of all the Departments except the appointments made in the Department of Home and Education, under Centrally sponsored scheme. Respondents filed writ petition. Single Judge of High Court allowed the same without giving any opportunity to the opposite party to file a reply and directed appellant-State Government to declare the result of the examination held in pursuance to the advertisement. Appellants filed writ appeal. It also filed an application to bring on record additional facts for which the Single Judge did not give any opportunity. Division Bench of the High Court upheld the order of Single Judge without referring to any of the facts. Hence the present appeal. E F G

Remitting the matter to the Division Bench of High Court, the Court

HELD: The orders passed by the Single Judge as well as the Division Bench were cryptic and bereft of any reasons. The Division Bench should

A have recorded that the Single Judge did not permit the respondents to file their response to the averments made in the writ petition. Since the Single Judge did not permit the respondents to file the response, the Division Bench, before which the facts had been brought by way of additional affidavit, should have taken the additional facts into consideration and it was up to the Division Bench to either accept them or reject them. The Division Bench did not assign any reason for upholding the order of the Single Judge except to say that they are not inclined to interfere with the order of the Single Judge. Thus, the impugned order is set aside. [Para 9] [388-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2065 of 2007.

C From the Judgment and Order dated 12.04.2006 of the High Court of Guhati, Bench at Imphal in Writ Appeal No. 75 of 2000.

Jaideep Gupta, and Khwairakpam Nobin Singh for the Appellants.

S.B. Sanyal, and Aribam Guneshwar Sharma for the Respondents.

D The Judgment of the Court was delivered by

ASHOK BHAN, J. 1. Leave granted. Heard Mr. Jaideep Gupta, learned Senior Counsel for the appellants and Mr. S.B. Sanyal, learned counsel for the respondents.

E 2. The present appeal has been filed by the State of Manipur and another against judgment and order passed by the Gauhati High Court, Imphal Bench, in Writ Appeal No. 75 of 2000 dated 12th April, 2006, by which the Division Bench of the High Court has upheld the order passed by the learned Single Judge of the High Court.

F 3. The facts of the matter are narrated here in brief. An advertisement was issued by the appellant-State on 12.4.1999 for appointment of the two posts of Assistant Government Advocate-Cum-Assistant Public Prosecutor. Thereafter, the State Government issued two notifications informing the dates of interview for appointment to the said posts. A writ petition (being WP (C) No. 570/99) was filed before the High Court challenging the Said notifications informing the date of interview on the grounds that (a) appointments could not be made only on the basis of oral interview, and (b) a written test was required to be taken. This writ petition was allowed by the learned Single Judge of the High Court on 9th June, 1999 and a direction was issued to the State Government for notifying a fresh date for conducting written test as

well as oral test within one month.

4. In pursuance to the directions issued by the High Court in W.P. (C) No. 570/99, the written test was held on 1st of August, 1999 and the oral test was held on 1st of December, 1999 for the said posts.

5. On 19th April, 1999, due to serious financial crunch faced by the State Government, an MOU was signed between the Government of Manipur and the Finance Ministry, Government of India to avail of Financial assistance from the Government of India. Pursuant to the said MOU, the State Government took a policy decision to ban direct recruitment and declaration of results of D.P. Cs. and the said policy decision was expressed in the form of an order dated 6th November, 1999.

6. On 24th of March, 2000, the State Government issued an Office Memorandum stating that the ban on direct recruitment and declaration of results of completed D.P. Cs. would continue in respect of all the Departments except in respect of appointments made in the Department of Home and Education, under Centrally sponsored scheme.

7. The respondents herein (hereinafter referred to as "writ petitioner") filed writ petition no. 355 of 2000 in the High Court on 3rd April, 2000, which was listed before the learned Single Judge on 6th April, 2000. The learned Single Judge, without affording any opportunity to the respondents therein to file a reply, allowed the writ petition and directed the appellant-State Government to declare the result of the examination held in pursuance to the advertisement dated 12th April, 1999 within a period of seven from the date of receipt of the copy of that judgment.

8. The State Government thereafter moved an application (C.M.A. no. 182/2000) for extension of time by six months to implement the order of the High Court or till the ban is lifted, whichever is later. This application was, however, rejected by the learned Single Judge on 12th June, 2000. Thereafter, the appellants filed writ appeal, which had been disposed of by the impugned order. In the writ appeal, the appellants brought on record the relevant facts (for which no opportunity was afforded by the learned Single Judge) by moving an application to take the additional facts on record. Subsequent facts were also brought on record in the year 2005, which were not to the knowledge of the State Government.

9. The Division Bench of the High Court upheld the order of the learned

A Single Judge, without referring to any of the facts and by simply observing that it did not find any illegality or perversity in the order passed by the learned Single Judge. It was further held that subsequent developments brought on record were not sufficient to interfere with the impugned judgment. The orders passed by the learned Single Judge as well as the Division Bench, to say the least, are cryptic and bereft of any reasons. The Division Bench should have recorded that the learned Single Judge did not permit the respondents to file their response to the averments made in the writ petition. Since the Single Bench did not permit the respondents to file the response, the Division Bench, before which the facts had been brought by way of additional affidavit, should have taken the additional facts into consideration and it was up to the Division Bench to either accept them or reject them. The Division Bench has not assigned any reason for upholding the order of the learned Single Judge except to say that they are not inclined to interfere with the order of the learned Single Judge.

D 10. For the reasons stated above, the impugned order of the Division Bench of the High Court is set aside and the case is remanded back for a fresh decision in accordance with law. We are remanding the case to the Division Bench to avoid further delay in final disposal of the matter. The writ petition pending before the learned Single Judge is ordered to be placed before the Division Bench for final disposal. The appellants herein (the respondents in the writ petition) are put at liberty to file a proper response by way of an affidavit in opposition (written statement). The Division Bench shall also permit the writ petitioners (respondents herein) to file a rejoinder to the affidavit in opposition filed by the appellants herein. All contentions are left open.

F 11. We are not expressing any opinion on merits of the case as well as on the rival contentions of the respective parties. The Division Bench shall decide the writ petition without being influenced by any of the observations made in this order or the earlier orders passed by the Division Bench and the learned Single Judge. Counsel of the parties are directed to appear before the Registry of the High Court on 2.5.2007 for further direction with regard to their case. We request Hon'ble the Chief Justice of the High Court to post the matter for an early disposal.

H 12. The Civil Appeal is disposed of accordingly with no orders as to costs.