

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

WP(C)No.367 of 2022

1. Shri Mutum Dinamani, aged about 30 years, s/o Dr. M. Dinachandra, a resident of Khumbong Bazaar, Imphal West District Manipur-795113.
2. Shri Sorokhaibam Romio Singh, aged about 31 years, S/o. S. Bheigya Singh, a resident of Thoubal Charangpat, Thoubal District, Manipur-795138.
3. Smt. Rajkumar Bidyalakshmi, aged about 24 years, D/o. Rajkumar Akendrajit, a resident of Wangkhei Angom Leikai, Imphal East District, Manipur-794005.
4. Shri Wahengbam Zenith Singh, aged about 29 years, S/o Wahengbam Ningthoubi Singh, a resident of Lamphel Sana Keithel, Imphal West.
5. Smt. Rina Ningthoujam, aged about 27 years, D/o. Bira Ningthoujam, a resident of Keishamthong Elangbam Leikai, Leirak Achouba, Imphal West District, Manipur- 795001.

6. Shri Kh. Anush Sheikh, aged about 25 years, S/o Haji Abdul Helim, a resident of Kiyamgei Muslim Makha Leikai, Imphal West District, Manipur-795003.
7. Smt. Asem Aruna Devi, aged about 29 years, D/o Asem Achou Singh, a resident of Thoubal Wangmataba Sorok Makha, Thoubal Sub-Division, Thoubal District, Manipur-795138.
8. Shri Joydeep Thokchom, aged about 31 years, s/o. Thokchom Ingoshabi Singh, a resident of Heirok Part-I, Heitup Pokpi Maning Leikai, Thoubal District, Manipur- 795148.
9. Shri Songthat William Haokip, aged about 28 years, S/o Songthat Tongkai Haokip, a resident of Tingkai Khonou Aigijang Village, PO Nambol, Kangpokpi District, Manipur-795134.
10. Shri Kabrabam Dasanta Singh, aged about 35 years, S/o K. Nimai Singh, a resident of Lamdabung, Nongmeibung, Porompat, Porompat Sub-Division, Imphal East District, Manipur-795005.

.....Petitioners

- Versus -

1. The State of Manipur, represented by the Commissioner, (Horticulture & Soil Conservation), Government of Manipur, Secretariat building, Imphal West-795001.
2. The Commissioner/Secretary (DP), Government of Manipur, Secretariat building, Imphal West-795001.
3. The Director, (Horticulture & Soil Conservation), Government of Manipur, Sanjenthong, Imphal West-795001.

....Official Respondent

4. Rohit Sarangthem
5. Khuraijam Ashalata Devi
6. Ngangom Bishal Singh
7. Maisnam Paras Singh
8. Chirom Surajkumar Singh
9. Keisam Pradeep
10. Deepak Huidrom
11. Gurumayum Miranda
12. Gaichuipuilu Maringmei
13. R. Saveinai

14. Moirangthem Tijendra Singh
15. Sukham Joybi Singh
16. Thokchom Shanjip Singh

.....Private respondents.

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner : Mr. Y. Nirmolchand, Sr. Adv.
For the Respondents : Mr. Y. Ashang GA R-1 to 3.
Ms. G. Pushpa, Adv R-4 to 16.
Date of reserved : 25.05.2022
Date of Judgment & Order : 07.06.2022.

JUDGMENT & ORDER
(CAV)

1. The petitioners have filed this writ petition to quash the impugned order No.14/76/2021-HSC, dated 16.5.2022, issued during the pendency of W.P. (C) No.61 of 2022; to direct the respondents not to regularise or absorb contract employees under schemes/projects to

the vacant posts of Assistant Agriculture Officer in the Department of Horticulture & Soil Conservation, Government of Manipur; and, to fill up all the vacant posts of Assistant Agriculture Officer under direct recruitment quota as per the relevant Recruitment Rules, through Manipur Public Service Commission (MPSC) within a stipulated time.

2. According to the petitioners, they are unemployed Graduates/ Post Graduates in Agriculture/Horticulture seeking government job and they are duly qualified to be recruited to the post of Assistant Agriculture Officer, Horticulture Department, Government of Manipur.

3. It is the case of the petitioners that the Director Horticulture & Soil Conservation, Manipur, vide notification dated 30.6.2018 announced Walk-in-interview to fill up 11 posts of Horticulture Assistant/Field Consultant under Mission for Integrated Development of Horticulture (MIDH) for engagement on contractual basis with remuneration of Rs.20,000/- per month for one year. It is claimed that some of the petitioners also appeared in the said interview and there was no written test conducted. While so, during the first week of

January, 2022, the Confidential and Cabinet Department issued a Cabinet Meeting Notice to consider absorption/regularisation of the aforesaid 11 Horticulture Assistants/Field Consultants to the post of Assistant Agriculture Officers. However, due to imposition of Model Code of Conduct, no regularisation was effected till 15.5.2022.

4. It is further averred that for recruitment to the post of Assistant Agriculture Officer, the Government of Manipur has framed Rules which contemplate that the said post is Class II Gazetted post and is to be filled up 25% by promotion and 75% by direct recruitment in consultation with Manipur Public Service Commission. It is alleged that on an earlier occasion, the Commissioner (Hort. & S.C.) vide proceedings dated 28.11.2016 regularised contract appointment of 18 Horticulture Consultant/Assistants, MIDH as Assistant Agriculture Officers and the same is subject matter of challenge in W.P. (C) No.208 of 2017 filed by some other unemployed Agriculture Graduates, which is pending consideration.

5. It is the say of the petitioners that they earlier approached this Court by filing W.P. (C) No.61 of 2022 seeking a direction to the

respondent authorities not to fill up the vacant post of Assistant Agriculture Officers by absorption from contract Field Consultant/Horticulture Assistant. However, pending consideration of the said writ petition, the respondents vide proceedings dated 16.5.2022, which is impugned in this writ petition, absorbed/ appointed 13 Horticulture Assistants/Field Consultants of MIDH on regular basis in Horticulture and Soil Conservation Department, Manipur.

6. It is the specific case of the petitioners that there are over 60 vacant posts of Assistant Agriculture Officers in the Department of Horticulture and Soil Conservation which are meant for direct recruitment and the respondents without adhering to the recruitment rules and without making appointments through the Manipur Public Service Commission (MPSC), are absorbing and appointing contractual employees into regular vacancies. Therefore, the learned senior counsel prayed this Court for granting interim stay of the impugned order.

7. In the admission stage itself, the respondent Nos. 4 to 16 are appeared through their advocate Mrs. G Pushpa and filed their

counter affidavit. In the counter affidavit filed by the respondent Nos. 4 to 16, it is the case of the respondent authorities that some of the petitioners did not participate in the earlier recruitment process and some of them who participated failed and, therefore, they have no locus standi to file the writ petition. If the three petitioners who participated in the earlier recruitment process were aggrieved, they ought to have challenged the appointment orders issued on 25.7.2018.

8. It is further averred that the recruitment was done as per the policy decision of the Government of Manipur and it is not the case of the petitioners that the private respondents are ineligible to be appointed to the post of either Horticulture Assistant/Field Consultant, which is equivalent to the post of Assistant Agriculture Officer.

9. Heard learned counsel on either side and perused the documents available on record for considering the interim order as sought for by the petitioner.

10. A perusal of the Department of Horticulture and Soil Conservation, Manipur, Assistant Agriculture Officer/Assistant Subject Matter Specialist / Assistant Soil Conservator Officer / Farm manager /

Assistant Agriculture Officer (SC) / Research Assistant / Technical Assistant / Assistant Agriculture Officer (SS) / Assistant Agriculture Officer (Chemist) / Horticulture Inspector Recruitment Rules, 2012 makes it amply clear that the method of recruitment is: (i) 25% by promotion and (ii) 75% by direct recruitment. That apart, it is stated that "*Promotion: From the cadre of Field Assistant / Assistant Horticulture Inspector / Soil Surveyor / Observer for Silt Analyst having Degree in B.Sc. (Agri/Hort) from a recognised University only with 3 (three) years regular service in the grade.*"

11. It is the specific case of the petitioners that the employees appointed on contractual basis are being regularised and absorbed as Assistant Agriculture Officers. All that the respondents claim is that such regularisation and absorption is done based on the policy decision of the Government.

12. It is not in dispute that the Recruitment Rules are in place for appointment to the post in question. It is an elementary principle of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of

this rule is traceable to the decision in ***Taylor v. Taylor, (1875) 1 Ch. D 426***, which was followed in ***Nazir Ahmad v. King Emperor, AIR 1936 PC 253***.

13. In ***State of Orissa v Prasana Kumar Sahoo, (2007) 15 SCC 129***, the Hon'ble Apex Court held as under:

“12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.

13. In A. Umarani v. Registrar, Cooperative Societies and Others [(2004) 7 SCC 112], this Court has held:

‘45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.’”

[emphasis supplied]

14. It is also well settled that an employee appointed on contract basis cannot claim regularisation, absorption or permanent continuance, unless he had been appointed in pursuance of a regular recruitment in accordance with Recruitment Rules in an open competitive process, against sanctioned vacant posts.

15. In view of the law on the issue, this Court is of the view that if recruitment by way of absorption or regularization is done unhindered without adhering to the Recruitment Rules, solely based on the policy decision, then it would render the Recruitment Rules nugatory.

16. Considering both side arguments, the following order is passed:

(i) Admit.

(ii) the impugned order vide order No.14/76/2021-HSC, dated 16.5.2022 appointing the private respondent Nos. 4 to 16, shall be subject to the result of the writ petition;

(iii) All future recruitment to the post of Assistant Agriculture Officer shall be strictly in accordance with the Recruitment Rules of 2012;

(iv) The respondent authorities are directed to place on record all the materials which formed the basis for passing the order dated 16.5.2022; and

(v) Let notice be issued to the State respondents, who may file their counter affidavits, if so advised, before the next date of hearing.

17. List the writ petition on 25.07.2022.

JUDGE

FR/NFR

John Kom