

BEFORE
MANIPUR LOKAYUKTA
3rd Floor, Directorate Complex, 2nd M.R., North AOC, Imphal

COMPLAINT CASE NO. 7 OF 2021

In the matter between:

Mr. Seth Shatsang, S/o Lt. Achung Shatsang, Marem
Village, Tehsil Chingai, District Ukhrul, Manipur
... Complainant

Principal Secretary/Administrative Secretary,
Department of Health, Government of Manipur.
..... Respondent/Opposite Party

BEFORE

Mr. Justice T. Nandakumar Singh, Hon'ble Chairperson
Mr. Ameising Luikham, Hon'ble Member

For the Complainant : Ms.H.Bisheshwari Devi,
Advocate
Ms. Jimmiwon Rahing,
Advocate
For the Respondent : NEMO

Date of Order : 27.10.2021

JUDGEMENT AND ORDER

[1] Heard Ms. H. Bisheshwari Devi, learned counsel appearing for complainant.

[2] Only a concise fact of the complaint in thumbnail sufficient for deciding the matter in issue is recapitulated. The allegations and assertion of the complainant are that according to the Guidelines for District Hospital by the Indian Public Health Standard 2012 (revised) for short (IPHS) a 100 bedded District Hospital should have the minimum of 105 (29 Doctors, 45 Staff Nurses, 31 Paramedical). As per the table prepared by the complainant in his complaint, the total strength of post for medical and non-medical staff, vacancies filled and post lying vacant for the 2 (two) Districts i.e. Ukhurul and Senapati District are as under :

| District Hospital | Total sanctioned post MEDICAL (Specialist, Doctors, Staff Nurse, Paramedical) | Staff in position MEDICAL (as on 05/06/2021) | Vacant post MEDICAL (as on 05/06/2021) |
|-------------------|---|--|--|
| Ukhurul | 103 | 47 | 56 |
| Senapati | 113 | 61 | 52 |

Table for non-medical staffs.

| District Hospital | Total sanctioned post (including Medical Record Technician and officer) | Staff in position (as on 05/06/2021) | Vacant post (as on 05/06/2021) |
|-------------------|---|--------------------------------------|--------------------------------|
| Ukhurul | 24 | 6 | 18 |
| Senapati | 48 | 30 | 18 |

The comparison between the minimum essential numbers of Specialist Doctors in different departments recommended by IPHS with the sanctioned and current position in district hospital Ukhurul and Senapati as on 05.06.2021 is as follows:

| SPECIALITY | IPHS GUIDELINE | UKHRUL | | SENAPATI | |
|--------------------------------|-------------------|------------|-------------|------------|-------------|
| | | SANCTIONED | IN POSITION | SANCTIONED | IN POSITION |
| MEDICINE | 2 | 1 | 1 | 1 | 1 |
| SURGERY | 2 | 1 | 1 | 1 | 1 |
| OBSTERIC&GYNAE | 2 | 1 | 1 | 1 | 1 |
| PAEDIATRICS | 2 | 1 | 1 | 1 | 0 |
| ANAESTHESIA | 2 | 1 | 0 | 1 | 1 |
| OPHTHALMOLOGY | 1 | 1 | 0 | 2 | 1 |
| ORTHOPAEDICS | 1 | 1 | 0 | 1 | 0 |
| RADIOLOGY | 1 | 1 | 0 | 1 | 0 |
| PATHOLOGY | 1 | 1 | 1 | 1 | 0 |
| ENT | 1 | 1 | 0 | 1 | 0 |
| DENTAL | 1 | 1 | 0 | 1 | 0 |
| MO | 11 | 14 | 13 | 24 | 17 |
| DERMATOLOGY | 1 | 1 | 0 | 1 | 0 |
| PSYCHIATRY | 1 | 1 | 0 | 1 | 0 |
| MICROBIOLOGY | 1 | 1 | 1 | 1 | 0 |
| FORENSIC SPECIALIST | 1 | 0 | 0 | 0 | 0 |
| AYUSH DOCTORS | 1 | 1 | 1 | 4 | 0 |
| TOTAL | 29 | 29 | 20 | 43 | 22 |

[3] The complainant further alleged that from the number of sanctioned posts and number of post filled up in the said two District Hospitals of Ukhul and Senapati, it is very clear that the Government had neglected the said two District Hospitals and also that though the number of sanctioned post is quite encouraging to look at, the number of actual staff working in the hospital shows a different picture. It is also alleged that Ukhul District Hospital allocated with 34 seats has only 18 nurses tending to the health care of its 1.8 lakhs citizens, while Senapati district with a population of more than 4.5 lakh has 23 nurses against the 38 sanctioned posts. The available data clearly indicate that the Administrative Secretary has not functioned, in accordance with equity, in posting a lesser number of medical staffs against the established norms of IPHS. Thus, there is serious allegation against the Administrative Secretary. The complainant also annexed a list of sanctioned post with incumbents for the District Hospital Ukhul (100 bedded) and District Hospital Senapati (100 bedded). For easy reference and also for evidence the said lists of sanctioned posts with incumbents for the said two District Hospitals are quoted hereunder :

DISTRICT HOSPITAL UKHRUL

(100 bedded)

LIST OF SANCTION POST WITH INCUMBENTS

| Sl. no. | Category of post | No. of sanction post | No. of available as on 05/06/2021 | No. of vacant as on 05/06/2021 |
|---------|------------------|----------------------|-----------------------------------|--------------------------------|
| 1. | CMO (INCHARGE) | 1 | 1 | 0 |
| 2. | Medical Supdt. | 1 | 0 | 1 |

| | | | | |
|-----|------------------------------|----|----|----|
| 3. | Medical Officer | 14 | 13 | 1 |
| 4. | Staff Nurse | 33 | 16 | 17 |
| 5. | Medical Record Technician | 1 | 0 | 1 |
| 6. | Specialist (Anaesthesiology) | 1 | 0 | 1 |
| 7. | Specialist (Biochemistry) | 1 | 0 | 1 |
| 8. | Specialist (Dental) | 1 | 0 | 1 |
| 9. | Specialist (Dermatology) | 1 | 0 | 1 |
| 10. | Specialist (ENT) | 1 | 0 | 1 |
| 11. | Specialist (IHTM) | 1 | 0 | 1 |
| 12. | Specialist (Medicine) | 1 | 1 | 0 |
| 13. | Specialist (Microbiology) | 1 | 1 | 0 |
| 14. | Specialist (Obs & Gynae) | 1 | 1 | 0 |
| 15. | Specialist (Ophthalmology) | 1 | 0 | 1 |
| 16. | Specialist (Orthopaedics) | 1 | 0 | 1 |
| 17. | Specialist (Paediatrics) | 1 | 1 | 0 |
| 18. | Specialist (Pathology) | 1 | 1 | 0 |
| 19. | Specialist (Psychiatry) | 1 | 0 | 1 |
| 20. | Specialist (Radiology) | 1 | 0 | 1 |
| 21. | Specialist (Surgery) | 1 | 1 | 0 |
| 22. | Dental Surgeon | 1 | 1 | 0 |
| 23. | Sr. MO | 2 | 1 | 1 |
| 24. | Sr. Specialist | 8 | 0 | 8 |
| 25. | Nursing Sister | 5 | 1 | 4 |
| 26. | Nursing Supdt. | 1 | 1 | 0 |
| 27. | Medical Record Officer | 1 | 0 | 1 |
| 28. | Dental Surgeon | 5 | 1 | 4 |
| 29. | Female Health Worker | 2 | 1 | 1 |

| | | | | |
|--------------|--|------------|-----------|-----------|
| 30. | Homeopathic Physician (Ayush) | 1 | 1 | 0 |
| 31. | Laboratory Assistant | 1 | 0 | 1 |
| 32. | Laboratory Technician | 4 | 1 | 3 |
| 33. | L.D.C | 3 | 0 | 3 |
| 34. | Central Sterilization Room Technician | 1 | 0 | 1 |
| 35. | Pharmacist (Allo) | 2 | 0 | 2 |
| 36. | Radiographer | 1 | 0 | 1 |
| 37. | Radiologist | 1 | 0 | 1 |
| 38. | Ophthalmic Assistant | 2 | 2 | 0 |
| 39. | Ayah | 3 | 0 | 3 |
| 40. | Chowkidar | 2 | 0 | 2 |
| 41. | Cleaner | 2 | 1 | 1 |
| 42. | Consultant | 1 | 0 | 1 |
| 43. | Cook | 3 | 1 | 2 |
| 44. | Dhobi | 2 | 1 | 1 |
| 45. | Dresser | 1 | 1 | 0 |
| 46. | Driver (Light) | 2 | 1 | 1 |
| 47. | Mali cum water carrier | 1 | 1 | 0 |
| 48. | Massalchi | 1 | 1 | 0 |
| 49. | Peon | 2 | 0 | 2 |
| Total | | 127 | 53 | 74 |

DISTRICT HOSPITAL SENAPATI
(100 bedded)
LIST OF SANCTION POST WITH INCUMBENTS

| Sl. no. | Category of post | No. of sanction post | No. of available as on 05/06/2021 | No. of vacant as on 05/06/2021 |
|---------|--------------------|----------------------|-----------------------------------|--------------------------------|
| 1. | Medical Supdt. | 1 | 1 | 0 |
| 2. | Sr. Specialist | 8 | 2 | 6 |
| 3. | Anaesthesiology | 1 | 1 | 0 |
| 4. | Medicine | 1 | 1 | 0 |
| 5. | Obs & Gynae | 1 | 1 | 0 |
| 6. | Ophthalmology | 2 | 1 | 1 |
| 7. | Bio Chemistry | 1 | 1 | 0 |
| 8. | Dermatology | 1 | 0 | 1 |
| 9. | Orthopedics | 1 | 0 | 1 |
| 10. | ENT | 1 | 0 | 1 |
| 11. | Psychiatry | 1 | 0 | 1 |
| 12. | Surgery | 1 | 0 | 1 |
| 13. | Paediatrics | 1 | 0 | 1 |
| 14. | Microbiology | 1 | 0 | 1 |
| 15. | Pathology | 1 | 0 | 1 |
| 16. | MC & H | 1 | 0 | 1 |
| 17. | IHTM | 1 | 0 | 1 |
| 18. | Radiology | 1 | 0 | 1 |
| 19. | Dental | 1 | 0 | 1 |
| 20. | Sr. Dental Surgeon | 1 | 0 | 1 |
| 21. | Dental Surgeon | 3 | 2 | 1 |
| 22. | Sr. MO | 2 | 2 | 0 |

| | | | | |
|-----|-----------------------|----|----|----|
| 23. | Homeopathic Physician | 2 | 0 | 2 |
| 24. | MO (C&T Centre) | 10 | 6 | 4 |
| 25. | Mo General Duty | 14 | 11 | 3 |
| 26. | Nursing Supdt. | 1 | 1 | 0 |
| 27. | Nursing Sister | 4 | 4 | 0 |
| 28. | Steward | 1 | 0 | 1 |
| 29. | Medical Record Tech | 1 | 1 | 0 |
| 30. | Consultant | 1 | 0 | 1 |
| 31. | Pharmacist (Allo) | 3 | 3 | 0 |
| 32. | Homeo | 2 | 0 | 2 |
| 33. | Staff Nurses | 33 | 18 | 15 |
| 34. | CSRT | 1 | 1 | 0 |
| 35. | Lab Tech | 4 | 3 | 1 |
| 36. | Driver | 2 | 2 | 0 |
| 37. | Dresser | 1 | 0 | 1 |
| 38. | Oph. Asst. | 1 | 1 | 0 |
| 39. | LDC | 3 | 1 | 2 |
| 40. | F.H. Worker | 2 | 2 | 0 |
| 41. | Radiographer | 1 | 1 | 0 |
| 42. | Lab Asst. | 1 | 0 | 1 |
| 43. | Work Attendant | 17 | 16 | 1 |
| 44. | Cook | 3 | 3 | 0 |
| 45. | Chowkidar | 2 | 2 | 0 |
| 46. | Ayah | 3 | 0 | 3 |
| 47. | Cleaner | 2 | 0 | 2 |
| 48. | Dhobi | 3 | 1 | 2 |
| 49. | Masalchi | 1 | 0 | 1 |
| 50. | Peon | 2 | 0 | 2 |

| | | | | |
|--------------|--------------|-----|----|----|
| 51. | Sweeper | 6 | 1 | 5 |
| 52. | Mali cum W/C | 1 | 1 | 0 |
| Total | | 161 | 91 | 70 |

[4] In the additional affidavit/concise filed by the complainant, it is stated that on 12.04.2021, the Health Department, Government of Manipur issued the transfer and posting order of the Manipur Health Services Officers at different places of the State in the public interest. As per the said transfer and posting order dated 12.04.2021, Doctor at Sl. No. 10 namely Dr. Md Yahai Khan, MO, DH Thoubal was transferred and posted as Specialist (Gynae), DH Ukhrul on promotion, Doctor at Sl. No. 17 namely Dr. M. Sanjeet, MO, DH Senapati was transferred and posted as MO, PHC, Somdal, Doctor at Sl. No. 24 namely Dr. Geetchandra Tongbram, MO, DH Thoubal was transferred and posted as MO, DH Ukhrul, Doctor at Sl. No. 37 namely Dr. N. Pinky Chanu, Specialist (ENT) as Specialist (ENT), DH Thoubal was transferred and posted as Specialist (ENT), DH Ukhrul and Doctor at Sl. No. 51 namely Dr. Priyadarshini Shougrakpam, MO UPHC, Kwakeithel as Mo, CMO Pook Ukhrul. Further, under the order of the Government of Manipur dated 27th January, 2021, Dr. Tikendrajit Ningombam (Anaesthetist) had been transferred to Ukhrul District Hospital. In spite of such transfer and posting order, the said Doctors had not joined the District Hospital Ukhrul and accordingly, the Chief Medical Officer, Ukhrul District wrote a letter dated 08.05.2021 to the Director, Health Services, Government of Manipur informing that the said Doctors had not joined their place of posting as per the transfer and posting orders dated 12.04.2021 and 27.01.2021 and their early joining are highly required as there was acute shortage of Doctors in the Ukhrul District Hospital while facing the second wave of Covid pandemic.

[5] It is also the further case of the complainant that the respondent i.e. the State Government failed to take up any action against the MHS officers who failed to join and discharge their duty even after lapse of 1/2 (one/two) months of their transfer order, as such, it indicates that there are practice of corruption in the Health department and officers should be booked in accordance with law for the ends of justice. The failure of the said Members of the MHS to join their place of duty at Ukhrul District Hospital was because of the corruption of the officers of the Administrative Department.

[6] Manipur Lokayukta by passing a speaking order dated 02.07.2021 directed the Principal Secretary, Department of Health, Government of Manipur to submit his comment to the allegations and assertions made in the complaint and additional affidavit/concise statement of the complainant on or before 19.07.2021. In compliance of the said order of Manipur Lokayukta dated 02.07.2021, the Principal Secretary, Health and Family Welfare, Government of Manipur through the Deputy Secretary, Health and Family Welfare, Government of Manipur filed a reply dated 17.07.2021. In the said reply, the respondent had strongly denied the allegation of committing favouritism and nepotism to some Doctors in the matter of transfer and posting. In the reply, the respondent further stated that appropriate replacement for the 3 (three) Doctors have already been made and now posted in the Ukhrul District Hospital and Primary Health Center, Somdal. For convenience, para Nos. 4, 5 and 8 of the reply affidavit are quoted hereunder:

“4. Among the doctors posted to Ukhrul, the complainant has cited the stay of Order in respect of three doctors and the specific circumstances of each case are outlined below.

a. The transfer of Dr. M. Sanjeet, Medical Officer from District Hospital, Senapati to PHC Somdal was stayed vide Government Orders No. MED-402/20/2020-HS-HEALTH dated 8th May, 2021 as Medical Superintendent, District Hospital, Senapati was reluctant to release the said Medical Officer from District Hospital, Senapati on the grounds of shortage of Medical Officers in District Hospital and also as the said Medical Officer is being utilised in important COVID-19 related duties. The stay order was issued after obtaining approval of the competent authority. A Medical Officer to PHC Somdal has been provided as replacement vide Director of Health Services order No.G(COVID Centre)/1/2021-DHS) dated 13-05-2021. There has not been further instruction from the Hon'ble Chief Minister to the Administrative Secretary (Heath &FW) to cancel the stay order.

b) The transfer of Dr. Geetchandra Tongbram, Medical Officer from District Hospital, Thoubal to District Hospital, Ukhrul was stayed vide Government Order No. MED-402/14/2020-HS-HEALTH dated 15th May, 2021 on humanitarian ground that both the parents of the Medical Officer passed away last year and his wife namely, Dr. R.K. Kamala is presently undergoing Medical Post Graduate studies in Regional Institute of Medical Sciences, Imphal. There is also a scheme for posting both spouses in the same station. The stay order was issued after obtaining approval of the competent authority.

There has not been further instruction from the Hon'ble Chief Minister to the Administrative Secretary (Health &FW) to cancel the stay order.

c) Regarding stay of transfer of Dr. Tikendrajit Nongomba, Anaesthetist from District Hospital, Bishnupur to District Hospital, Ukhrul vide Government Order No. MED-402/20/2020-HS-HEALTH dated 13th May, 2021, it may be clarified that the posting of the required Anaesthetist at District Hospital, Ukhrul had been settled by the posting of Dr. Md. Nushrat, MD (Anaesthesia) at District Hospital, Ukhrul. It is also pertinent to mention here that Dr. Tikendrajit Nongombam filed a representation dated 21/05/2021 to the Administrative Secretary (Health) for not taking any further action in terms of recommendation letter dated 19th May, 2021 of Director (Health) under reference to the Lok Ayukta Case and also not to review his stay order dated 13th May, 2021. He also made a prayer before the Hon'ble High Court by filing Writ Petition (C) NO. 416 of 2021 to quash the Director (Health)'s recommendation letter dated 19th May, 2021. The Hon'ble High Court passed an Order dated 31/05/2021 in the said Writ Petition to consider and dispose of the representation of Dr. Tikendrajit. In compliance with High Court Orders, the Govt. issued an Order No. MED-16/1/2021-HS-HEALTH dated 26th June, 2021 disposing of the representation with the conclusion that posting of the required Anaesthetist at Ukhrul DH has been settled by

posting Dr. Md. Nushrat, MD (Anaesthesia) and there is no process at present for review of the posting of Dr. Tikendrajit at DH Bishnupur and the transfer & Posting may be effected when necessity arises in public interest. Order copy enclosed.

5. With regard to letter dated 19-5-2021 of Director of Health Services cited by the complainant in his Additional Affidavit dated 28.06.2021, it is submitted that the letter was processed in the context of the Writ Petition filed by Dr. Tikendrajit Ningombam as mentioned in para 4 above. After due approval from competent authority, it was decided not to review the stay order in respect of Dr. Tikendrajit Ningombam allowing him to remain posted at District Hospital, Bishnupur. As also stated by Director of Health Services vide letter dated 22-05-2021 (copy enclosed) there was also no further instruction from higher authorities for cancellation of the stay orders in respect of the three MHS Doctors.

8. As there is general shortage of Doctors, Nurses and Paramedics under the Health Department, the sanctioned strength of not only health institutions in Ukhul District, but the sanctioned strengths of Health Institutions in other Districts also cannot be fully filled up. But the functional requirement of manpower has been provided for each district. To fill up the manpower gap, requisitions have been sent to Manipur Public Service Commission for recruitment of 300 Medical Officers (Allopathy), 7 Homoeopathic Physician and 3 Unani Physicians.”

[7] The aim and object of enacting the Manipur Lokayukta Act, 2014 was to provide for the establishment of a body of Lokayukta for the State of Manipur to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The 'complaint' under Section 2 (d) of the Manipur Lokayukta Act, 2014 means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988. Chapter III of the Prevention of Corruption Act, 1988 which deals with the offence and penalties under the Prevention of Corruption Act, consists of 11 (eleven) Sections i.e.

OFFENCES AND PENALTIES

7. Offence relating to public servant being bribed
- 7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence
8. Offence relating to bribing of a public servant
9. Offence relating to bribing a public servant by a commercial organisation
10. Person in charge of commercial organisation to be guilty of offence
11. Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant
12. Punishment for abetment of offences
13. Criminal misconduct by a public servant
14. Punishment for habitual offender

15. Punishment for attempt
16. Matters to be taken into consideration for fixing fine.

[8] We, therefore, confine ourselves within our jurisdiction circumscribed by the Manipur Lokayukta Act, 2014 by giving anxious consideration to the allegations and assertions made in the complaint, supporting documents and also the reply submitted by the Respondent, as to whether materials are available for substantiating the allegations against public servant/state respondent regarding the corruption, favouritism and nepotism in the transfer and posting of the Members of the Manipur Health Services Officers in the District Hospital Ukhrul and also inaction of the State Respondent in filling up the sanctioned posts of the medical officer and others as per the Indian Public Health Standards 2012 (revised) for the 100 bedded District Hospital for Ukhrul District, We are also not oblivious of the settled law that Manipur Lokayukta has no power to exercise the writ jurisdiction under Article 226 of the Constitution of India so as to make a judicial review of the policy decision of the Government of Manipur and also the transfer and posting policy and also the orders for the Members of Manipur Health Services. In other words, a constitutional court has the power for judicial review of the policy decision for filling up of different posts as per the IPHS in Ukhrul District and Senapati District and also the transfer and posting policy decision. However, since the matter has been brought to our knowledge, we are constraint to make some observations in the interest of the public in large, the complainant and denizens of the 2 (two) district in particular.

DOCTRINE TO ACT FAIRLY IN ADMINISTRATIVE LAW

[9] Doctrine to act fairly in administrative law and also administrative action has to be just and reasonable and should be clear is well settled by the Hon'ble Supreme Court in a plethora of cases. The Apex Court in **Tata Iron & Steel Co Ltd. Vs. Union of India and Others (2001) 2 SCC 41** had discussed the nature, object and scope of **Doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law courts are to act fairly and reasonably in accordance with the law. The correspondence unmistakably divulges an obligation to pay certain compensation in the event there is a payment of certain levy by the appellant herein. The appellant admittedly has not made the payment: Doctrine of unreasonableness is opposed to doctrine of fairness and reasonableness will have its play, if allowed.** The Apex Court again in *Anil Ratan Sarkar Vs. Hirak Ghosh* (2002) 4 SCC 21 had discussed the methodology of governmental working and held that **the most accepted methodology of governmental working ought always to be fairness and in the event of its absence, law courts would be within their jurisdiction to deal with the matter appropriately. This proposition is so well settled that we need not dilate further on this.**

GROUND FOR REVIEW OF ADMINISTRATIVE ACTION ARE ARBITRARINESS AND UNFAIRNESS

[10] The Apex Court in **Man Singh Vs. State of Haryana and Ors. (2008) 12 SCC 331** held that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have

made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.

[11] The Apex Court in **Noida Entrepreneurs Association Vs. Noida and Ors. (2007) 10 SCC 385** held that the foundation of administrative order will be rational if the administrative order is not based on rational foundation, it is arbitrary and bias. Relevant portion i.e. Para 11 of the SCC in Noida Entrepreneurs’ case (supra) read as follows:

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India {(1994) 6 SCC 651} and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh {(2004) 2 SCC 130}] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas, {(2004) 7 SCC 442: 2004 SCC (L&S) 1011}, Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry {(2005) 10 SCC 471:2005 SCC (Cri) 1605 and Uttaranchal RTC v. Mansaram Nainwal {(2006) 6 SCC 366 : 2006 SCC (L&S) 1341.”

[12] The Apex Court in **Commissioner of Income Tax, Bombay & Ors. Vs. Mahindra and Mahindra Ltd. and Ors. AIR 1984 SC 1182** held that indisputably it is settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. Para 11 of the AIR in Commissioners of Income Tax's case (supra) read as follows :

“11. By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from Barium Chemicals, 1966 Supp SCR 311: (AIR 1967 SC 295) case on the point. Indisputably, it is a settled position that if the action or decision is perverse or in such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influence by irrelevant or extraneous matters the Court would be justified in interfering with the same. This Court in one of its later decisions in Smt. Shalini Soni V. Union of India, (1981) 1 SCR 962: (AIR 1981 SC 431), has observed thus: “It is an unwritten

rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote". Suffice it to say that the following passage appearing at pages 285-86 in Prof. de Smith's treatise 'Judicial Review of Administrative Action' (4th Edn.) succinctly summarises the several principles formulated by the Courts in that behalf thus: "The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant consideration, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two

classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, is it possible to differentiate with precision the grounds of invalidly contained within each category”.”

[13] For the foregoing discussion, keeping in view of the well settled laws laid down by the Apex Court about administrative law, it is required to see whether the administrative action of the State Government in making the arrangement for filling up the vacant essential posts in the District Hospital Ukhrol and Senapati District is reasonable, act fair, justifiable and a prudent person properly informed would arrived at that the authority misdirected itself by adopting a wrong approach and has been influenced by the irrelevant and extraneous matter. We are not deciding this issue in the complaint, inasmuch this is not the proper forum for deciding this issue and it is matter and dispute for a Constitutional Court to decide through writ jurisdiction. The complainant may approach the Constitutional Court.

TRANSFER AND POSTING

[14] It is so clear under the service jurisprudence that transfer and posting is a condition of service for which no explanation is required. It is really surprising that the respondent in their reply dated 17.07.2021 made certain submission at the outset that posting of adequate doctors, nurses another staff has been a chronic problem due to deficiencies in manpower, especially specialist doctors, and general reluctant by many

employees for posting in remote locations due to difficulties of road connections, basic amenities etc. It is not proper, reasonable and fair on the part of the Government to deny the service of the specialist doctors, nurses and other staff to the denizens of the hill district more particularly Ukhrol and Senapati Districts on that ground. This Lokayukta is of the firm view that administrative authority are very thorough with the law and the principles relating with the transfer and posting of the Medical Officers/Members of Manipur Health Services, Govt. of Manipur while issuing the transfer and posting order. If the administrative authority had misled/misdirected itself with the relevant provision of law relating with the transfer and posting order while issuing the transfer and posting order of the Members of the Manipur Health Services, the result would be that the respondent is bias, arbitrary and capricious in issuing the transfer and posting order of the Doctors thereby denying the rights of the denizens of the Ukhrol and Senapati District to save their lives.

[15] The respondent in their reply dated 17.07.2021 submits that there is a scheme for posting both the spouses in the same station. It appears that the transfer order of Dr. Geetchandra Tongbram, Medical Officer from District Hospital, Thoubal to District Hospital, Ukhrol was stayed only on the that ground. Para No. 4 (b) of the reply dated 17.07.2021 is quoted hereunder:

b. “The transfer of Dr. Geetchandra Tongbram, Medical Officer from District Hospital, Thoubal to District Hospital, Ukhrol was stayed vide Government Orders No. MED-402/14/2020-HS-HEALTH dated 15th May, 2021 on humanitarian ground that both the parents of the Medical Officer passed away last year and his wife namely, Dr. R.K. Kamala is presently undergoing Medical Post Graduate studies in Regional Institute of Medical Sciences, Imphal.

There is also a scheme for posting both spouses in the same station. The stay order was issued after obtaining approval of the competent authority. There has not been further instruction from the Hon'ble Chief Minister to the Administrative Secretary (Health &FW) to cancel the stay order."

There is no settled law that husband and wife should be posted at the same station/region irrespective of public interest and exigency of service. There is no straightjacket formula in the matter of transfer and posting that the husband and wife should be posted at the same station neglecting all the public interest and exigency of service. Public interest and exigency of service are the main criteria for deciding who are to be posted where, no doubt, this decision is taken by the respondent authority. Regarding the guideline requiring the husband and wife to be posted in the same station has been authoratively discussed by the Apex Court in **Union of India and Ors. Vs. S.L. Abbas (1993) 4 SCC 357**, in a case coming from Shillong, and held that Guideline is not mandatory and the Guideline do not confer any right on the employee. Para No. 9 of the SCC in S.L. Abbas's case (supra) reads as follows:

"9. Shri. Goswami, learned counsel for the respondent relies upon the decision of this Court in Bank of India v. Jagjit Singh Mehta {(1992) 1 SSC 306:1992 SCC (L&S) 268: (1992) 19 ATC 528} rendered by a Bench of which one of us (J.S. Verma, J.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein: (SCC pp. 308-09), Para 5: ATC pp.530-31, para 5)

“There can be no doubt that ordinarily and as far as practicable the husband and wives who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other’s posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid

transfer to a different place on the ground that the spouses thereby would be posted at different places... No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

[16] The Apex Court in Union of India and Anr. Vs. N.P. Thomas AIR 1993 SC 1605 held that the employee holding transferable post has no vested right to remain in original circle from the place of his choice. The Apex Court had reiterated this ratio in Rajendra Singh & Ors. Vs. State of Uttra Pradesh and Ors. (2009) 15 SCC 178 and also held that the transfer is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. Para 8 of the SCC in Rajendra Singh's case (supra) reads as follows:

"8. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential

condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P v. Gobardhan Lal {(2004) 11 SCC 402: 2005 SCC (L&S) 55, SCC p. 406, para 7)”

However, the transfer and posting of an officer is required to be effected on the basis of the normal norms. [Reference : **Sarvesh Kumar Awasthi Vs.U.P. Jal Nigam and Ors. (2003) 11 SCC 740.**] Para 3 of the SCC in Sarvesh Kumar’s case (supra) reads as follows :

“3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.”

[17] Regarding the allegation of corruptions mentioned in para No. 5 mentioned above, there is no sufficient material, as on today, in the complaint, supporting evidence/affidavit and additional affidavit filed by the Complainant for coming to a considered opinion that there exists a

prima facie case for taking up actions for investigation by any agency against the concerned Administrative Officers and authorities of the Health Department, Government of Manipur. But it does not mean that a case will not be registered against them even if the materials are produced by the Complainant or /any other persons in future for coming to a considered view that there exist a prima facie case against them.

[18] For the foregoing discussions, we are of the considered view that the allegations of the complainant in the present complaint regarding the bias and arbitrariness on the part of the respondent in the matter of filling up the sanctioned posts as per the IPHS for the 100 bedded District Hospital for Ukhrol and Senapati District are the matter of dispute for a Constitutional Court to resolve through writ jurisdiction. We are simply reiterating that inaction of the respondent in the given case regarding the filling up of sanctioned posts for 100 bedded District hospitals of Ukhrol and Senapati Districts are to be authoratively decided by a Constitutional Court having the writ jurisdiction as to whether administrative action of the respondent is just and reasonable and act fairly inasmuch as all the administrative action should fulfil the Doctrine to act fairly, just and reasonable and also the reason given by the respondent in their reply dated 17.07.2021 will be reasonable or rational decision according to reasonable body of persons properly informed would arrived that the authority was not misdirected itself by adopting a wrong approach or has not been influenced by irrelevant or extraneous matter. The very manner of transfer and posting order of the Doctors and the reason given by the State Government in issuing the transfer and posting order of the officers may not pass the law laid down by the Apex Court in the cases discussed above. We reiterate that Manipur Lokayukta is not a proper forum to decide above issues in the present complaint and those issues are the issues to be decided by the Constitutional Court having writ

jurisdiction. Therefore, we observe that the complainant may seek appropriate remedy by approaching the competent Constitutional Court.

[19] In the given case, we are constraint to observe that in the interregnum, it is incumbent on the part of the competent authority of Health Department, Government of Manipur to make an endeavour to post Doctors against the sanctioned posts for the District Hospitals of Ukhrol and Senapati Districts inasmuch as there cannot be a lame excuse on the part of the administrative authority that the Government is trying to fill up the manpower gap by sending requisitions to the Manipur Public Service Commission for recruitment of 300 Medical Officers (Allopathy), 7 Homoeopathic Physicians and 3 Unani Physicians. Action taken as per this observation by the authority of the Health Department, Government of Manipur may be intimated to the Manipur Lokayukta as early as possible.

[20] With the above observation, the present complaint is disposed of accordingly.

[21] Deputy Registrar, Manipur Lokayukta is directed to furnish a copy of this order to (i) the Complainant and (ii) the Principal Secretary, Department of Health and Family Welfare, Government of Manipur.

Sd/-
MEMBER

Sd/-
CHAIRPERSON
