

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

**MC(WP(C)) No. 33 of 2023**

*Ref:- WP(C) No. 312 of 2022*

1. Shri Thoudam Arunkumar, aged about 31 years, S/o Th. Gulapi Singh, resident of Khurai Thoudam Leikai, Lamlong, P.O. Lamlong, P.S. Imphal East District, Manipur-795010.

**.....Applicant**

**-Versus-**

1. The State of Manipur represented by the Chief Secretary, Secretariat South Block, Babupara, Imphal West, Manipur, Pin No.- 795001.
2. Manipur Public Service Commission, represented by the Secretary, MPSC, North AOC, Imphal East, Pin No. 795001.

**.....Respondents.**

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN  
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Applicant :: Mrs. G. Pushpa, Advocate

For the Respondents :: Mr. Lenin Hijam, AG  
Mr. M. Rarry, Adv.  
Mr. Chongnem, Adv.

Date of Hearing and  
reserving Judgment & Order :: 27.02.2023

Date of Judgment & Order :: **13.03.2023**

**JUDGMENT AND ORDER**

(CAV)

*(M.V. Muralidaran, Acting CJ)*

This miscellaneous case has been filed by the petitioner, who is the third petitioner in the writ petition, to amend the prayer of the writ petition and also to insert certain paragraphs after paragraph 30 in the writ petition.

2. Heard Mrs. G. Pushpa, learned counsel for the petitioner; Mr. Lenin Hijam, learned Advocate General, Advocate for the first respondent and Mr. M. Rarry, learned counsel for the second respondent.

3. The grievance of the petitioner is that glaring irregularities found in the conduction of the MCSCCE (Main) 2016(2022) due to the improper and faulty rules which are not amended in the light of the order dated 28.2.2017 passed in W.P.(C) No.803 of 2016 read with the judgment dated 18.10.2019 passed in W.A.No.19 of 2017.

4. Mrs. Pushpa, the learned counsel for the petitioner submitted that being apprehended by the callous and the failure of the Manipur Public Service Commission to amend the MPSC (Procedure and Conduct of Business) Rules, 2011 despite the orders and directions passed by this Court in various proceedings and also in the conduction of the MCSCCE (Main)

2016 by the MPSC, the writ petitioners have filed W.P.(C) No.312 of 2022. The learned counsel would submit that the writ petitioners have approached this Court with a prayer to the appropriate Government to handover the conduct of the examination, namely MCSCE (Main) 2016 to the Union Public Service Commission or to any other State Public Service Commission so as to avoid irregularities, illegalities, manipulations which were going to crop up in the conduct of the examination 2016 in the event MPSC (Procedure and the Conduct of Business) Rules, 2011, as amended on 22.6.2017, 4.6.2020, 14.6.2020 and 7.8.2020, was going to apply in the conduct of the examination as prayed at prayer (ii) of the writ petition.

5. The learned counsel for the petitioner further submitted that though the conduct of the examination completed, the order dated 11.5.2022 passed by this Court in the writ petition has not been regarded in its true spirit. The second respondent MPSC have totally neglected and have not complied with the order and direction dated 3.2.2022, for which, as on date it has become necessary to amend the prayer in the writ petition by way of inserting prayer between prayer (i) and (ii) as the existing prayer Nos.(i) and (ii) has rendered infructuous during the

pendency of the writ petition. Thus, a prayer has been made to amend the prayer portion in writ petition as also permit the petitioner to insert certain paragraphs in the pleading after paragraph 30.

6. Refuting the submissions made by the learned counsel for the petitioner, the learned counsel for the second respondent MPSC, *inter alia*, submitted that when the main prayers are rendered infructuous, the writ petition itself has becomes infructuous too. Therefore, the prayer for amending the main prayers of the writ petition is unacceptable as well as not sustainable in the eyes of law, as the petitioners can very well file a fresh writ petition with fresh cause of action, if it has arisen.

7. Mr. M. Rarry, the learned counsel for the second respondent would submit that the MPSC has conducted the MCSCCE (Main) 2016 (2022) afresh from 26.5.2022 to 11.6.2022 in compliance of the order dated 11.2.2022 passed by the Hon'ble Supreme Court in SLP (C) No.5680 of 2021 and the order passed in W.A.No.19 of 2017 and declared the final merit list as well. Thus, the basic issue raised in the writ petition has been exhausted and the cause of action of the writ petition has ceased to exist and, therefore, the present miscellaneous case is not maintainable.

8. Adding further, the learned counsel for the second respondent argued that MCSCCE (Main) 2016 (2022) was held as per the amendments made in the MPSC (Procedure and Conduct of Business) Rules, 2011 and the same amendments have been placed before this Court at the time of hearing of W.P.(C) No.378 of 2019 and connected cases and, this Court passed an order dated 2.5.2022, whereby dismissing the writ petitions and allowed the MPSC to go ahead with the recruitment process of MCSCC (Preliminary) Exam, 2019 and that the amendments made by the MPSC were already upheld and approved by this Court and, therefore, the same principles are equally applicable in the present case also. Thus, a prayer has been made to dismiss the miscellaneous case.

9. We have also heard the learned Government Advocate, who adopted the arguments raised by the learned counsel for the second respondent MPSC.

10. We have considered the rival submissions and also perused the materials available on record.

11. The writ petitioners have filed the present writ petition seeking direction on the second respondent MPSC to amend the MPSC (Procedure and Conduct of Business) Rules,

2011 as amended on 22.6.2017, 4.6.2017, 14.6.2020 and 7.8.2020 in the light of the judgment dated 18.10.2019 passed in W.A.No.19 of 2017 and its related cases, as the same is going to haunt the candidates who had approached this Court since the year 2016 and had wasted the prime time of entire lives in pursuing the litigations before this Court as well as before the Hon'ble Supreme Court and to direct the State Government to hand over the conduct of the MCSCCE (Main) 2016 to the UPSC or to any other State Public Service Commission to avoid irregularities and illegalities which are going to crop up in the conduct of the Examination 2016 in the event the MPSC (Procedure and Conduct of Business) Rules, 2011 is applied. The writ petitioners have also prayed to quash the policy decision taken by the MPSC not to furnish the evaluated answer scripts for descriptive type papers to candidates as reflected in the letter dated 19.11.2020 issued by the SPIO, MPSC.

12. Now the petitioner, who is arrayed as third respondent in the writ petition on behalf of the other writ petitioners, seeks to amend the prayer as under:

*“(ia) to issue a writ in the nature of certiorari or any other appropriate writ or writs for quashing and further be pleased to direct to re-conduct the MCSCC main examination*

2016 (2022) as the examination was conducted without amending the Manipur Public Service (Procedure & Conduct of Business) Rules, 2011 in the light of the order and direction passed by the Hon'ble Division Bench of this Hon'ble Court in W.A.No.19 of 2017 & batch and the judgment dated 17.12.2020 of the said Division Bench in Review Petition no.3 of 2020 & batch, as the same has attained finality.

(iia) To issue notice to the MPSC as to why MPSC had not followed the mindful advice from the ends of this Hon'ble Court passed vide order dated 11/05/2022 in the above referred writ petition as to the implementation of the directions passed by the Division Bench of this Hon'ble court in W.A.No.19 of 2017 & Batch and the judgment and order dated 17/12/2020 of the said Division Bench in Review Petition No.3 of 2020 & batch which has attained finality in the conduct of the MCSCC (Main) Examination 2016 (2022).

(iiia) To issue notice as to why the signatures for the supervisor column has been removed from the answer booklet and as to why the instruction "to draw a line at the end of each answer and to start the next question from the next page" has been removed by the

*MPSC from the Main Examination 2016 and as to why such sudden changes has been made by the MPSC.*

*(iva) To direct the MPSC to produce the decision of the Full Commission of the MPSC with reason, if any.”*

And/Or in the alternative, the petitioner also sought the following direction as prayer (v):

*“(v) To direct the Government of Manipur to appoint the petitioners to any post equivalent to MCS Grade-II, MPS Grade-II or any other posts as mentioned in the advertisement.”*

13. Apart from the proposed amendment in the prayer portion, the petitioner has also sought insertion of the following paragraphs after paragraph 30 as paragraphs 30A, 30B, 30C, 30D, 30E and 30F:

*“30A. That the petitioners being candidates who had participated the MCSCCE examination 2016 have come across while appearing the aforesaid examination held in the year 2022 that the MPSC has repeated the same process of examination as was done in the MCSCC main examination 2016 which was quashed and set aside by an*



*order dated 18.10.2019 passed by the Special Division Bench of the Hon'ble High Court of Manipur based on dozens of irregularities and illegalities committed by the MPSC that goes to the root of the matter. This order itself was upheld by the Hon'ble Supreme Court of India.*

*30B. That the petitioners being the bonafide and law-abiding citizen of India and being writ petitioners in the matter of MCSCCE main examination 2016 submitted memorandum (Annexure A/11 to the writ petition) to the MPSC to frame proper and appropriate rules and regulation for conducting the MCSCCE main examination 2016 afresh. That the petitioners were hoping that the MPSC will consider the memorandum dated 10/03/2022 (Annexure A/11 to the writ petition) submitted by the petitioners to amend the rules as per the judgment & order dated 18.10.2019. However, on seeking information by way of RTI application seeking a copy of the amended MPSC Procedure and Conduct of Business Rules 2011, if any. Despite the RTI application the MPSC had never provided a full and complete copy of the MPSC Procedure and Conduct of Business Rules, 2011. On the other hand a full and complete copy of the MPSC Procedure and Conduct of*

*Business Rules, 2011 was furnished by the counsel of the MPSC in W.P.(C) No.378 of 2019 during the course of hearing in the matter of MCSCCE examination 2019, under which the petitioners came across several defects and loopholes in the MPSC Procedure and Conduct of Business Rules, 2011.*

*30C. That the petitioners being apprehended that the examination which was on the way was not going to be an untainted examination if the same would be conducted by using the defective rules particularly the question-setting rules and the procedure of evaluation & evaluation rules. It has come to the knowledge of the petitioners that the MPSC have not amended the Rules by way of following the observations, directions and findings by the judgment and order dated 18/10/2019 passed by the Special Division Bench of the Hon'ble High Court of Manipur in W.A.No.19 of 2017 & batch.*

*Accordingly, the writ petitioners have filed the above referred writ petition being W.P.(C) No.312 of 2022 well in advance i.e. before conducting the exam "MCSCCE main exam 2016.*

*30D. That the petitioners in view of the order dated 11/05.2022 passed by this Hon'ble*

*Court well before the commencement of the Main examination 2016 (2022) were hoping that MPSC will consider and follow the order dated 11.05.2022. To mention some of the defects which came vividly at the time of examination are cited as under:-*

- a) Lack of Column for the signature of the supervisor*
- b) The no. of pages on which a candidate attempts the questions and wrote their answers to be filled by the examiner.*
- c) Removal of an important instruction to the candidates "To draw a line at the end of each answer and star the answer of the next question on a fresh page"*
- d) Unequal distribution of marks for each and every question in many optional papers.*
- e) Asking questions out of the syllabus and asking question which was directly present in books and guide books etc.*

*30E. That it may be pertinent to mention herein that the writ petitioners have also preferred a Misc. application in the above referred writ petition highlighting the defects cited above as the writ petitioners have come across such defects during the course of the examination and prayed before this Hon'ble Court for staying the declaration of results of*

*the Main examination 2016 (2022), however this Hon'ble Court was pleased to dismiss the Misc. Application.*

*30F. That on 23/12/2022 the SPIO of MPSC provided information to the Misc. Applicant as the applicant was seeking for information by way of filing RTI Application dated 29/11/2022. The SPIO MPSC had informed the applicant herein with the following information which amounts to revealing the defects and irregularities in the conduct of the Main examination 2016 (2022). That the Main examination 2016 (2022) was conducted irregularly for the following reasons which are reflected in the RTI replay dated 23/12/2022.*

- I. No head examiners were appointed*
- II. No question moderators were appointed*
- III. No moderation was done*
- IV. No scaling was done*
- V. Supervisors were appointed by no column for signatures were provided on the front page of the answer booklets.”*

14. Admittedly, the examination in question has already been held and the result was also declared. When that being the

position, the proposed amendments sought by the petitioner cannot be permitted at this distant point of time, as the same would change the fundamental character and nature of the writ petition. That apart, the subsequent cause of action, i.e. after the examination, cannot be brought into the present writ petition, as it would amount to a totally different cause of action.

15. It is well settled by decisions of the Hon'ble Supreme Court as well as this Court that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. As stated supra, after completion of the examination in question, the entire cause of action has changed and the petitioner cannot be allowed to amend the writ pleadings so as to alter materially or substitute the cause of action.

16. The well settled proposition is that where the amendment changes the nature of the litigation or the cause of action, so as to set up an entirely new case, foreign to the case set up originally, the amendment must be disallowed. In the instant case, admittedly, the petitioner wants to introduce a new case by way of amendments, which cannot be permitted.

17. In the facts and circumstances of the case and upon analysis of the entire materials on record, we are of the view that the proposed amendments would change the nature and character of the writ petition by making the recast writ petition and to be a totally different and a new case. The petitioner by way of this miscellaneous case wants to amend the entire pleadings and if the same is allowed, it would lead several complications. Further, the drafting of the irrelevant and immaterial statements as found in the writ petition cannot be cured by way of the proposed amendments thereby inserting certain new paragraphs. In fact, the basic issue raised in the writ petition has been exhausted and the cause of action of the writ petition has ceased to exist. When such being the factual position, the writ petitioners have to work out their remedy in the manner known to law and not by way of amendments in the present writ petition. Further, the proposed alternative prayer, prima facie, cannot be permitted, as the same would be beyond the scope of writ jurisdiction.

18. As could be seen from the records that the main ground for filing W.P.(C) No.378 of 2019 was that the second respondent MPSC has not amended the MPSC (Procedure and Conduct of Business) Rules, 2011 and, this Court, in its order

dated 2.5.2022, dismissed the said writ petition. Thus, it is clear that the same subject matter was brought in W.P.(C) No.378 of 2019 and this Court decided the issue in favour of the second respondent MPSC thereby directing them to go ahead with the recruitment process of MCSCC (Preliminary) Examination, 2019. Therefore, the writ petitioners herein cannot pretend to be ignorant and are now by way of the present proposed amendments attempting to re-agitate the same matter, which has already decided by this Court in the earlier round of litigation. Therefore, in the aforesaid factual scenario, we are of the view that the present miscellaneous case is devoid of merits and if the proposed amendments are permitted, it would in fact change the very nature and character of the writ petition and introduce an entirely different cause of action, which is in law impermissible.

19. In the result, MC (WP) No.33 of 2023 is dismissed.  
No costs.

**JUDGE**

**ACTING CHIEF JUSTICE**

**FR/NFR**

*Sushil*