

# THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) NO.(SH)267/2012

Shri Janardhan Prasad Singh,  
S/o Mahendra Prasad Singh,  
Resident of Chief Minister's Drivers  
Quarter Tara Ghar Complex, Shillong,  
East Khasi Hills District, Meghalaya.

...Petitioner

-VERSUS-

1. The State of Meghalaya,  
represented by its Chief Secretary.
2. The Under Secretary to the  
Govt. of Meghalaya Sectt. Adm.  
Department (Estt),  
Shillong, Meghalaya.
3. The Deputy Secretary to the Govt. of  
Meghalaya Sectt. Adm. Department  
(Estt) Shillong, Meghalaya.
4. The Principal Secretary Chief  
Minister's Secretariat, Govt. of  
Meghalaya
5. The Commissioner and Secretary to  
the Govt. of Meghalaya, Chief Minister's  
Secretariat.
6. The Under Secretary to the  
Govt. of Meghalaya,  
Chief Minister's Secretariat.

...Respondents

**BEFORE  
THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the petitioner

- Mr. KC Gautam, Adv
- Mr. D Gangte, Adv.
- Mr. K CH Gautam, Adv
- Mr. WM Sangma, Adv
- Ms. SR Marak, Adv

For the respondent	-	Mr. ND Chullai, Sr. GA
	-	Mr. K.Khan, Addl. Sr. GA
Date of hearing	-	30-7-2013
Date of Judgment	-	30-7-2013

### **JUDGMENT AND ORDER (ORAL)**

Heard Mr. KC Gautam, learned counsel appearing for the petitioner and also Mr. K. Khan, learned Addl. Sr. Govt. Advocate appearing for the respondents.

2. It appears that the case of the petitioner has a very chequered history. It is stated that about 25(twenty five) years ago, the petitioner was declared to have passed the interview conducted by the District Selection Committee (for short DSC) for recruitment to the post of driver in the Meghalaya (C) Secretariat vide office order dated 22-06-1987. Therefore, it appears that the petitioner was qualified to be appointed as driver as early as 22-06-1987, but for the reasons not known to the petitioner by an office order dated 30-10-1987, instead of appointing him as a regular driver, had appointed him as a casual driver w.e.f. 17-10-1987.

3. Later on, the petitioner was again appointed as a casual driver vide office order dated 17-3-1993 at the Scale of Pay of Rs. 975-1550/- P.M plus other allowances as admissible w.e.f. 20-2-1993. After serving a considerable number of years as driver, the services of the petitioner was terminated w.e.f 2-2-1995 vide office order dated 3-2-1985. Being aggrieved by this order, the petitioner approached the High Court by filing Civil Rule No. 165 (SH) of 1999. The High Court allowed the writ petition vide order dated 24-3-2003 by quashing the termination order dated 2/2/1995 with the observations that the termination order was not a termination simplicities but one with stigma.

4. Pursuant to the order of the High Court dated 24-3-2003 passed in Civil Rule No. 165 (SH) 1999, the petitioner was re-instated in service as casual driver

and posted in the Chief Minister's Bungalow. Again the services of the petitioner as a casual driver in the Chief Minister's Bungalow was terminated vide office order dated 7-4-2004. Again the petitioner approached the High Court by filing WP(C) 114 (SH) 2004 assailing the said termination order i.e. office order dated 7-4-2004. Unfortunately, the High Court had dismissed the WP(C) 114 (SH) 2004 vide Judgment and Order dated 9-4-2008 with the observation that:

*"In the light of the unambiguous pronouncement of law made by the Apex Court, this Court has no alternative but to dismiss the writ petition. Nevertheless, keeping in mind the long years of services rendered by the petitioner as casual driver, he must be given an opportunity to apply for the post, for that matter, any post of driver under the State-respondents as and when recruitment process for the same is initiated. The State-respondents shall also relax the age bar in favour of the petitioner so as to enable him to participate in the recruitment process for the post of driver."*

5. The High Court had already directed the State respondents to relax the age bar in favour of the petitioner so as to enable him to participate in the recruitment process for the post of driver taking into consideration the services rendered by the petitioner as casual driver.

6. Govt. of Meghalaya vide Notification dated 1-12-2005 notified the Rules "Meghalaya (C) Secretariat Driver's Service Rules (Non-Gazetted) 2005" framed under the Article 309 of the Constitution of India. Under the said Rules 2005, the educational qualification for the post of driver is Class IX, but there is provision for relaxation under Rule 17 of the Recruitment Rules 2005. Rule 17 of the said Recruitment Rules 2005 read as follows:

**"17. Power of the Governor to dispense with or relax any rules:-**

*The Governor, if satisfied that the operation of any of the provision of these Rules causes under hardship in any particular case or cases or results in any particular post or posts being left unfilled for want of person(s) possessing the minimum experience as specified by these Rules for promotion to such*

post(s), may dispense with or relax the requirement of any of these Rules to such extent and subject to such condition, as it may consider necessary for dealing with the case in a just and equitable manner and with transparency or for meeting the exigencies of public interest.”

7. Therefore, it is the case of the petitioner that as directed by the High Court vide the said order dated 9-4-2008 passed in WP(C) 114 (SH) 2004, the essential qualification, so far as the petitioner is concerned, prescribed under the said Recruitment Rules, 2005 should have been relaxed in the given case in a just and equitable manner.

8. From the above facts, it is clear that the petitioner was selected for appointment to the post of driver by the DSC of the Govt. of Meghalaya as far back as 1987, but for the reasons best known to the authority, the petitioner was not appointed on regular basis but on casual basis. This being the peculiar condition, the respondents were directed by the High Court vide order dated 9-4-2008 passed in WP(C) 114 (SH) 2004, to resort to the relaxation provision, i.e. Rule 17 of the said Recruitment Rules 2005 which had been quoted above for relaxation of the conditions mentioned in the said Recruitment Rules 2005 for the petitioner in a just and equitable manner.

9. Mr. K.Khan, learned Addl. Sr. Govt. Advocate appearing for the respondents strenuously contended that the candidature of the petitioner for the post of driver had already been rejected. In the given case, this Court is of the considered view that the case of the petitioner should have been considered by resorting to the relaxation provision as provided under Rule 17 of the said Recruitment Rules, 2005. In the peculiar nature of this case, it should not be taken as precedence.

10. For the foregoing reasons, this writ petition is disposed of by directing the respondents to consider and dispose of the representations dated 7-4-2010 and 10-5-2012 filed by the petitioner for consideration of his case for appointment to the post of driver by passing necessary orders, if necessary, even by resorting to

the provision for relaxation as provided under Rule 17 of the said Recruitment Rules 2005 within a period of 3(three) months from the date of receipt of the certified copy of this Judgment and Order.

The writ petition is allowed.

JUDGE

S.Rynjah