

IN THE HIGH COURT OF MEGHALAYA

WP(C) No. 166 of 2012

Shri. Nilotpall Bhattacharjee,
S/o (L) N.K. Bhattacharjee,
Junior Engineer (Work Charged)
Office of the Executive Engineer, PWD (Roads)
NH Bye-Pass Division, Shillong
Meghalaya.

.....Petitioner

- Vrs -

1. State of Meghalaya,
represented by the Chief Secretary
to the Government of Meghalaya,
Shillong-1
2. Secretary to the Government of Meghalaya,
PWD (R&B) Department,
Shillong.
3. Chief Engineer, PWD (Roads),
Government of Meghalaya,
Shillong.
4. Administrative Officer,
Public Works Department (Roads)
Government of Meghalaya,
Shillong.
5. Executive Engineer, PWD (Roads)
NH Bye Pass Division,
Shillong-1.

..... Respondents

**BEFORE
THE HON'BLE MR JUSTICE SR SEN**

Advocate for the Petitioner	:	Mr. M Chanda
Advocate for the Respondents	:	Mr. R Gurung
Date of Hearing	:	26.03.2014
Date of Judgment and Order	:	26.03.2014

JUDGMENT AND ORDER (Oral)

This instant writ petition is directed against the denial for regularization of service of the petitioner.

2. The petitioner's case in nut shell is that, "the petitioner is a Diploma holder (Civil Engineering) of three years course from Shillong Polytechnic and was initially appointed as Work Charged Overseer Grade

III by the Chief Engineer (PWD) w.e.f 1.08.88 and thereafter as Work Charged Overseer Grade I vide order dated 9.12.88 and was posted at Baghmara Division (Annexure V). Thereafter, the petitioner passed the Departmental Examination in Civil Engineering and Accounts vide Notification dated 17.3.06 (Annexure VI). In the year 2007, the MPSC advertised for recruitment of regular Junior Engineers, the petitioner applied for, appeared and passed in the screening test conducted by the M.P.S.C and he was called by the Commission for interview but the Commission was not inclined to select him as he has already served for 19 years and he would be loser in respect of seniority etc. in case of his fresh selection as Junior Engineer Grade I, as such, the Department should be moved for regularization which was not done till today. Finding no other alternative, the petitioner approached the Hon'ble High Court, Shillong Bench vide Writ Petition vide WP(C) 50 [SH] of 2008 for redressal of his grievances. The Hon'ble High Court directed the respondents vide order dated 28.03.08 (Annexure XI) to consider the fresh representation to be submitted by the petitioner within two weeks and on the receipt of the same the respondents should dispose of within two months from the date of receipt by a speaking order. Accordingly, the petitioner submitted fresh representation dated 7.04.08 (Annexure XI-A). The Chief Engineer vide his letter dated 14.08.09 disposed of the representation of the petitioner in compliance with High Court's Order stating that :

- (a) the petitioner was appointed along with 27 others as work Charged Sub-engineer Grade I temporary and the appointment was made without following Constitutional Scheme of public employment. The appointment of Junior Engineer Civil can be made only after the person passes or qualifies the recruitment examination held by M.P.S.C
- (b) out of 27 Work Charged Junior Engineers, 19 Junior Engineer were regularized and brought to regular cadre in 1997 but the petitioner

has not been regularized due to his failure at the test conducted by the M.P.S.C.

(c) the petitioner's appointment was not made by following constitutional scheme in the matter of public employment and as such he is not entitled to be absorbed against regular post as per the decision of the Apex Court in ***“State of Karnataka and ors – versus – Smti. Uma Devi and Ors”*** and accordingly rejected the representation of the petitioner. The aforesaid reply given by the Chief Engineer is not correct as the petitioner has passed the Examination and interview conducted by the M.P.S.C in the year 2010. The petitioner applied for regular appointment of Junior Engineer advertised by the M.P.S.C and the Department has regularized 19 Nos. Work charged Junior Engineer out of 28 Nos. and brought to regular cadre excluding the petitioner. In case of the petitioner, the Department followed the recruitment procedure of the State Government for regular appointment through M.P.S.C and as such the decision of the Apex Court in the case of State of Karnataka and other – versus – Smti. Uma Devi and others is not applicable in this instant case. The petitioner has passed the recruitment examination conducted by the M.P.S.C in the year 2010 and the result was declared vide Notification dated 10.11.10 wherein out of 99 successful candidates, the petitioner's name was shown at Sl. No.76 of the selection list. On receipt of petitioner's letter dated 23.02.10 intimating his selection by the M.P.S.C for appointment as a regular Junior Engineer. The Deputy Secretary (PWD) vide letter dated 8.03.11 informed the petitioner that his position is not within the General quota as per Reservation Policy of the State. However, his case is being referred to the Government along with others for regularization but nothing has been done till date. According to the Reservation Policy of State Government, calculation of reservation quota for employment in this instant case

vide Government letter dated 12.01.72 (Annexure – XX) shall be as follows:-

(i)	General Quota (unreserved)	@15% of 99	14.80
(ii)	Khasi and Jaintia communities	@40% of 99	39.60
(iii)	Garo community	@40% of 99	39.60
(iv)	Others	@05% of 99	05.00
Total			<hr/> 99.00

Hence, it appears that, out of 99 candidates 14.8 falls under General quota (unreserved), therefore, the Government's aforesaid statement is not only incorrect but also against the provision of the Article-14 and Article-16 of the Constitution of India which forbids arbitrariness and discrimination in the matter of any employment. Since, the petitioner is a solitary candidate for General quota (non-tribal), he cannot be excluded. Besides, 100% reservation is not permissible. The petitioner has also submitted that, as per Government OM dated 1.07.93 issued by the Finance Department regarding entertainment of Work Charged employees, it has been specifically laid down that; Work Charged Employees whose services are essential for implementation of plan schemes and for efficient maintenance of projects may be retained and Work Charged employees who have completed five years or more of continuous service may be brought over to regular service by creating suitable posts. But in case of the petitioner, the order has not been followed. The petitioner is stagnating in the same post as Work Charged Engineer for about 24 years since 9.12.88 without any promotion. The Finance Department, Government of Meghalaya vide OM dated 22.02.10 (Annexure XXII) provides that, in case of genuine stagnation and hardship faced by the Government employee, two financial up-gradation in the next higher pay scale should be allowed under ACP Scheme. The first up-gradation after 12 years of regular service in a higher scale of pay and the second up-gradation after 12 years from the date of first up-gradation subject to giving his unqualified acceptance for regular promotion on

occurrence of vacancy subsequently. The benefit of up-gradation is also admissible to Work Charged employee. The action of respondents denying regularization as well as promotion as admissible under the Rules has violated the Fundamental Rights as guaranteed under Article-14, 16 and 21 of the Constitution of India and the same needs interference by this Hon'ble High Court. Hence this writ petition".

3. Mr. M Chanda, the learned counsel appeared for on behalf of the petitioner submitted that the petitioner has joined service since 1.08.88 as Work Charged and continued in service till date. The learned counsel further contended that in spite of long service rendered by the petitioner, his service has not been regularized till date. On earlier occasion, the petitioner has approached this Court praying for regularization of his service and the then erstwhile Guahati High Court has directed the petitioner to submit a representation to the respondent for redressal of his grievances. However, his representation was rejected on the ground that he has not been qualified in the Examination conducted by MPSC, thereafter, the petitioner again in the year 2010 appeared in the MPSC Examination and his name was placed at Sl. No. 76 of the successful candidates.

4. The learned counsel further contended that, in spite of being qualified and selected by MPSC, the service of the petitioner has not been regularized on the ground that his position does not fall within the zone of General quota. The learned counsel also contended that, out of the 99 successful candidates, 85 candidates have already been given appointment that means, those candidates who are below than the petitioner have also been regularized. Being aggrieved by the act of the respondent, the petitioner approached this Court by way of this instant writ petition and prayed that necessary order may be passed as this Court deemed fit and proper. In support of his submissions, the learned counsel relied on **(2003) 10SCC 136 (Para-8), (2009) 4GLT 619 (Para-**

12 & 13), (2002) 1GLT 415, (Para-4, 6 & 7), (2006) 4SCC 1 (Para-53) and (2010) 9SCC (Para, 11, 12 & 13).

5. In reply, Mr. R Gurung, the learned counsel for the respondents submitted that, the initial appointment of the petitioner was illegal, as such; he is not entitled for regularization. The learned State counsel further contended that, though the petitioner has qualified in the MPSC Examination but his position was not within the zone of General quota as per the Reservation Policy of the State of Meghalaya, hence, this instant writ petition is not maintainable.

6. I have perused the petition on record, the selection list recommended by the MPSC, affidavit-in-opposition as well as the reply of the respondent against the representation filed by the petitioner. On perusal of the record specifically the initial appointment dated 1.08.1988 (Annexure-III-A), it appears to me that, 5 persons were recruited by way of campus recruitment. Further, on perusal of the contents of the said appointment letter, I do not find that appointment has been done through back door, as such; there is no illegality in the said order. On perusal to the reply of the representation (Annexure-XII), it appears that regularization of service of the petitioner to post of Junior Engineer can only be made after he qualified the Examination conducted by the MPSC. Since the petitioner did not qualify the Examination conducted by the MPSC, his case could not be considered, hence, his representation has been rejected. As per Annexure-XIX, it appears that the petitioner was informed by the respondent against his petition by stating that his position in the merit list of MPSC was not within the zone of the General quota as per the Reservation Policy of the State. However, in the case for regularization of Work Charged employees under PWD (R&B) are under process and his case will be taken-up along with the other Work Charges of the department as a whole for consideration.

7. On further perusal of the affidavit-in-opposition at Para-12, it is clear that, as per the recommendation of the MPSC, 85 candidates out

of 99 candidates have already been filled-up against the vacant posts of Junior Engineer taking into consideration the Reservation Policy of the State, hence, in this instant case, it is worked out as 13 posts for General Quota, 34 posts for Khasi & Jaintia, 34 post for Garo and 4 posts for Others. In the same Paragraph, it is also found mentioned that as far as the General quota is concerned, the department has considered the first 13 candidates (Sl. No. 1 to 13) of the Recommended List prepared by the MPSC. On perusal of the Notification dated 10.11.10, i.e. the result of the interview conducted by the MPSC where the names of 99 successful candidates have been declared in order of merit and the name of the petitioner was placed at Sl. No. 76.

8. As per the submissions of the learned counsel at bar as well as after scrutiny of the documents, petitions as well as affidavit-in-opposition, one thing is not clear to me; where the respondent themselves have admitted that 13 vacancies are allotted for the General candidates, in such a circumstances, it appears that the petitioner is the only candidate who falls within the purview of the General quota, how the respondent filled-up the posts by taking Sl. No. 1 to 13. It is also clear that, out of the 99 successful candidates 85 candidates have already been regularized by filling-up the post of Junior Engineers, in such a circumstances, what was the fault of the petitioner and that remained unanswered.

9. Therefore, I am of the considered view that the whole process of filling-up the posts of Junior Engineer, the respondent has adopted a pick and choose policy, hence, such arbitrary act on the part of the respondent is highly illegal and discriminatory as well as against the basic principle of the Constitution of India. In the case of ***State of Karnataka & Others vrs M.L. Kesari & Others reported in (2010) 9SCC 247***, Para- 11, 12 & 13 are reproduced herein under :

“11. The object behind the said direction in para 53 of Umadevi (3)¹ is twofold. First is to ensure those who have put in more than ten years of

continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3)¹ was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments / instrumentalities do not perpetuate the practice of employing persons on daily – wage / ad hoc / casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the directions is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3)¹] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3)¹ or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3)¹ as one – time measure.

12. These appeals have been pending for more than four years after the decision in Umadevi (3)¹. The appellant (Zila Panchayat, Gadag) has not considered the cases of the respondents for regularization within six months of the decision in Umadevi (3)¹ or thereafter.

13. The Decision Bench of the High Court has directed that the cases of the respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi (3)¹, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, as a general one – time regularization exercise, to find out whether there are any daily – wage/ casual/ ad hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfil the requirements mentioned in para 53 of Umadevi (3)¹. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of Respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one – time exercise within three months. It is needless to say that if the respondents do not fulfil requirements of para 53 of Umadevi (3)¹, their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts.”

10. After considering the submissions advanced by the learned counsel and after taking into consideration the facts and circumstances of the case keeping in mind the guidelines given by the Hon'ble Apex Court as referred to above, I hereby direct the respondent to regularize the service of the petitioner within a month from the date of receipt of this order.

11. With these observations and directions, this instant petition is allowed and the matter stands disposed of.

JUDGE

V. Lyndem