

THE HIGH COURT OF MEGHALAYA

WP(C)No.84/2014

Shri. Rodrick Wanbok Lyngdoh Duia,
S/o (L) Stevenson Duia,
R/o Laitkor, Nongdaneng,
Shillong, East Khasi Hills District.

:::: Petitioner

-Vs-

1. Meghalaya Energy Corporation Ltd.
Lumjingshai, Shillong, represented by its Chairman.
2. The Chief Engineer (D),
MeECL, Lumjingshai, Shillong.
Meghalaya.
3. The Area Manager, Area VI, Shillong,
Distribution Circle, MeECL, Jingkieng Nongthymmai,
Shillong. :::: Respondents

BEFORE THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. P Nongbri, Adv
For the Respondents	:	Mr. H Kharmih, Adv
Date of hearing	:	30.09.2014
Date of Judgment & Order	:	30.09.2014

JUDGMENT AND ORDER(ORAL)

Heard Mr. P Nongbri, learned counsel for the petitioner and Mr.
H Kharmih, learned counsel for the respondents.

2. It is not required to delve deep into the factual matrix leading to
the filing of the present writ petition.

3. The petitioner was initially appointed as casual Jugali vide
order No. II (F) vide Memo No. MSEB/SD/AR-VI/T-16/2009-10 dated

11.01.2008, and he was placed on duty under the Area Manager, Area VI, Shillong Distribution, MeECL (formerly MeSEB), Jingkieng, Nongthymmai. While the petitioner was on duty on 18.12.2009 for replacement of the damaged 25 KVA, 11/0.4 KV Distribution Transformer at about 15:20 hours, he met with a very serious accident and suffered a high voltage electrical shock and fell down from a height approximately 10 (ten) feet. The said accident was reported to the Officer-in-Charge Madanriting Police Station, Shillong by the Area Manager, Shillong Distribution, MeSEB. The said accident caused grievous injury to the right arm of the petitioner apart from other injuries and the petitioner was treated at Nazareth Hospital, Shillong and also the petitioner was admitted in the Intensive Care Unit (ICU). The injury to the right arm of the petitioner was so grievous that the Doctor attending the petitioner at Nazareth Hospital in order to save his life had to amputate the petitioner's right arm. As there were complications even after the amputation of his right arm, the petitioner had to undergo further medical treatment at Christian Medical College, Vellore. The Chairman-cum-Managing Director of Meghalaya Energy Corporation Ltd. (for short 'MeECL') accorded approval for further medical treatment of the petitioner and also sanctioned Rs.1,60,000/- (Rupees one lakh sixty thousand) only for the said treatment. The District Medical Board vide Disability Certificate dated 13.03.2010 certified that the petitioner has 75% permanent physical impairment and his condition is not likely to improve. The area Manager, Area VI, Shillong Distribution MeECL also certified that the petitioner was very regular, sincere and capable worker and he met with an accident while working on Transformer DO Fuse unit at Rngi, Shillong and as a consequence of which, his right arm was amputated.

4. The petitioner is now employed as a Computer Data Entry Operator on daily wages in the MeECL. It is admitted case of the parties that

the MeECL issued an advertisement dated 15.06.2011 inviting applications in a Standard Form for appointment to the post of Jugali. In the said advertisement dated 15.06.2011, number of posts of Jugali for which advertisement had been made is not mentioned and also there was no indication in the said advertisement dated 15.06.2011 for reservation of physically handicapped persons. A copy of the said advertisement dated 15.06.2011 is also placed before this Court by Mr. H Kharmih, learned counsel for the respondents and for easy reference, it is quoted hereunder:-

**“MEGHALAYA ENERGY CORPORATION LIMITED
CORPORATE AFFAIRS
Lumjingshai, Short Round Road, Shillong-1**

No. MeECL/RC/CA/137/2011/2 Dated Shillong, the 15th June, 2011.

ADVERTISEMENT

Applications in Standard Form as notified in the Meghalaya Gazette are invited from Indian Citizens for some posts of Jugali in the scale of pay of Rs.4850-110(5)-5400-125(10)-6650-145(15)-8825/- p.m. plus usual allowances as admissible under Corporation rules from time to time. The last date for receipt of application is 15th July, 2011.

AGE:- *Candidates should not be less than 18 years or more than 27 years of age as on 01.01.2011 (relaxable by 5 years in the case of SC/ST candidates).*

Qualification: *(i) should possess a valid LT/HT Overhead Licence issued by the Electrical Licencing Board, Government of Meghalaya.*

(ii) should read upto Class-VI

(iii) should be physically fit.

The applicants should attach with their application form the following:-

(a) Attested copy of valid LT/HT Overhead Licence.

(b) Medical fitness Certificate issued by a registered government doctor.

(c) A crossed Indian Postal Order of Rs.40 (Rupees Forty) for general candidates and Rs. 20/- (Rupees Twenty) for ST/SC candidates only endorsed in favour of the Chief Accounts Officer, MeECL, Shillong. I.P.O. issued prior to the date of publication of the Advertisement, overwriting & wrong entries will not be acceptable and the application bearing such I.P.O. will stand rejected.

(d) Attested copy of Age Certificate.

(e) Attested copy of Educational Certificate.

(f) Attested copy of Scheduled Tribe/ Caste Certificate.

(g) 2 (two) recent passport size photographs duly attested by a Gazetted Officer.

(h) Other testimonials, if any.

Eligible candidates will be required to appear for a Physical Test & Personal Interview on the date or dates to be notified subsequently.

Please Note the following:

A. For candidates from East Khasi Hills, Jaintia Hills & West Khasi Hills District, the applications are to be submitted to the Director Corporate Affairs, MeCEL, Lumjingshai, Short Round Road, Shillong-793001.

B. For candidates from Garo Hills, applications are to be submitted in the office of the Additional Chief Engineer (Western Zone), MeECL, Hawakhana, Tura.

C. Applications without a valid HT/LT Overhead Licence will be outrightly rejected.

Reservation policy of the State Government of Meghalaya will apply.

No TA/DA will be admissible to candidates for appearing in the physical Test and Personal Interview on the date to be intimated later on.

Candidates who are allowed to appear the Physical Test will have to pay an examination fees as prescribed when called for.

Incomplete application or applications received after the closing date will not be entertained.

Canvassing directly or indirectly shall disqualify the candidate.

Sd/-
(M.R. Synrem)
Director Corporate Affairs”

5. It is stated in the writ petition that the petitioner received a call letter dated 06.08.2012 asking him to appear for physical test (long distance running) and personal interview for the said posts of Jugali advertised in the said advertisement dated 15.06.2011. It is reiterated that the number of posts of Jugali is not mentioned in the said advertisement nor the number of posts reserved for the physically handicapped persons. Mr. P Nongbri, learned counsel for the petitioner by placing heavy reliance on the decision of the Apex Court in ***Union of India & Anr. v. National Federation of the Blind & Ors: (2013) 10 SCC 772*** contended that there should be reservation of posts for the physically handicapped persons in compliance with the provisions of “Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.” The Apex Court in ***National Federation of the Blind's*** case (*Supra*) had directed the State Governments and Corporations to compute the number of vacancies available in all the “establishments” and further identify the posts for disabled persons within a period of three months from the date of passing the order. It is further reiterated that the reservation of posts for persons with disabilities should be in accordance with “Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” (for short ‘the said Act 1995’). Sections 32, 33 & 34 of the said Act 1995 are quoted hereunder:-

“CHAPTER VI

EMPLOYMENT

32. Identification of posts which can be reserved for persons with disabilities. - *Appropriate Governments shall -*

- a. identify posts, in the establishments, which can be reserved for the persons with disability;*
- b. at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.*

33. Reservation of Posts - *Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of*

persons with disability of which one per cent. each shall be reserved for persons suffering from-

- i. blindness or low vision;
- ii. hearing impairment;
- iii. locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

34. Special Employment Exchange -

- (1) *The appropriate Government may, by notification require that from such date as may be specified, by notification, the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or are about or occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such requisition.*
- (2) *The form in which and the intervals of time for which information or returns shall be furnished and the particulars, they shall contain shall be such as may be prescribed.”*

6. The conclusion parts of the judgment in **National Federation of the Blind's** case (*Supra*) read as follows:-

“52. Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz “computing 3% reservation on total number of vacancies in the cadre strength” which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29-12-2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new office memorandum(s) consistent with the decision rendered by this Court.

*53. Further, the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, **Indra Sawhney v. Union of India: 1992 Supp (3) SCC 217: (1992 SCC (L&S) Supp 1: (1992) 22 ATC 385** is not applicable with respect to the disabled persons.*

*54. We also reiterate that the decision in **R.K. Sabharwal v. State of Punjab: (1995) 2 SCC 745: (1995 SCC (L&S) 548: (1995) 29 ATC 481** is not applicable to the reservation for the*

persons with disabilities because in the abovesaid case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST and OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.

Directions

55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

55.1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29-12-2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.

55.2. We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

55.3. The appellant herein shall issue instructions to all the departments/public sector undertakings/government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Nodal Officer in department/public sector undertakings/government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

56. Before parting with the case, we would like to place on record appreciation for Mr. S.K. Rungta, learned Senior Counsel for rendering commendable assistance to the Court. The appeal is disposed of with the above terms."

7. Mr. H Kharmih, learned counsel for the respondents submits at the Bar that the scheme for reservation of posts for the physically handicapped persons prepared by the Govt. of Meghalaya is also extended to the MeECL and under that scheme, the Board decided to reserve 3% (one percent each for person suffering from blindness or low vision, hearing impairment, locomotors disability or Cerebral Palsy) of vacancies of various posts. The Member Secretary of the Board under his letter dated 20.01.2004, intimated to the Govt. of Meghalaya, Power Department that the Board

decided to reserve 3% of vacancies of various posts for the physically handicapped persons. The letter dated 20.01.2004 reads as follows:-

**“MEGHALAYA STATE ELECTRICITY BOARD
BOARD’S SECRETARIAT**

No.GA(I)530/75/144 Dtd. The 20th January, 2004.

*From:- Shri. K.K. Wahlang, MCS,
Member Secretary.*

*To,
The Under Secretary to the Govt. of Meghalaya,
Power Department, Shillong.*

Sub: Reservation of posts for the disabled.

Ref: Your letter No.PE.63/2001/341 dt. 29.07.2003

Sir,

With reference to the above, I am directed to inform you that the Board decided that 3% (one percent each for person suffering from blindness or low vision, hearing impairment, locomotors disability or Cerebral Palsy) of vacancies are reserved for person with the aforesaid disabilities against vacancies such as peon, helper etc. provided that the posts of technical nature are excluded from such reservation.

This is for favour of your kind information.

*Yours faithfully,
Sd/-
(K.K. Wahlang)
Member Secretary”*

8. Mr. P Nongbri, learned counsel for the petitioner also contended that the Apex Court in a case similar with the case of the present writ petitioner in **Narendra Kumar Chandla v. State of Haryana & Ors.:** (1994) 4 SCC 460 had directed the State Electricity Board for reserving the post for the employee who suffered physically handicapped while in service in a post carrying a pay scale equal to that of his original post. The fact of that case is similar with that of the present writ petitioner and in that case, the employee had suffered from cancer while he was in service and his right arm was amputated because of effect of cancer and he cannot perform efficiently

as a Sub-Station Attendant i.e. his original post and because of his physical handicapped, he had been appointed to a lower post. Further in this factual context, the Apex Court had directed the State Electricity Board to appoint the said physically handicapped employee to a post carrying the pay scale equal to that of his original post. The facts of that case are mentioned in Paras 2, 3 & 4 of the SCC in **Narendra Kumar Chandla's** case (*Supra*) and the directions of the Apex Court are mentioned in Paras 6 & 7 of the SCC in **Narendra Kumar Chandla's** case (*Supra*). For easy reference, Para 2, 3, 4, 6, 7 & 8 of the SCC in **Narendra Kumar Chandla's** case (*Supra*) are quoted hereunder:-

"2. The appellant while working as a Sub-Station Attendant in the pay scale of Rs 1400-2300, unfortunately had to be operated on February 13, 1984 for Chondrosarcoma and ever since he was treated in Tata Memorial Hospital, Bombay up to March 18, 1985 and thereafter he was discharged and his right arm was completely amputated due to the said Sarcoma. It is a cancer affect but it was arrested. The Doctor in his letter dated May 3, 1985 recommended that he can assume his normal duties. The bone of his right arm is completely missing. He shall work properly with his left arm. Subsequently, the respondents have absorbed him as Carrier Attendant in the pay scale of Rs 825-1300. Feeling dissatisfied, the appellant approached the High Court and the High Court In the impugned order dismissed the writ petition on October 10, 1990 in limine. Thus this appeal by special leave.

3. On September 24, 1993, we directed the State Electricity Board, hereafter the 'Board', to constitute three members' Board of Doctors to examine the appellant whether he can discharge the duties of Sub-Station Attendant or any other equivalent post carrying the pay scale of Rs 1400-2300. We had also directed to associate any Engineer of the rank of Executive Engineer working in the office of the respondents to assist the Medical Board in giving proper advice to the Board to come to its conclusion on the point noted above. The three members' Board was accordingly constituted and the Chief Medical Officer in his letter dated October 19, 1993 has submitted the report of the three members' Board. They have stated that two Engineers assisted them. They had taken the appellant to 66 KV Sub-Station at Panchkula to assess his capability in the operation of some installations. The report states: "He was unable to align the trolley let alone take it in position. He also failed to raise it and had a great difficulty in lowering it. He was then taken to switch yard and was asked to operate the Isolator which he could not perform efficiently. The Medical Board feels that such handling of equipment can be

risky not only to the installations but even to the person himself and as such the appellant cannot perform the duties of Sub-Station Attendant."

4. The Medical Board also attempted to find whether he can be posted as Sub-Station A.F.M., Foreman, Grade III, Chargeman, Rigger, Crane Driver, Welder, etc. It recommended that the duties to those posts are similar to the Sub-Station Attendant. Under these circumstances, the Medical Board felt that the appellant who failed to perform his duties as Sub-Station Attendant cannot also discharge the duties of alternative posts as mentioned above. They have also stated that the appellant has been able to write English and Hindi with his left hand and if the Board feels, he can be considered for clerical or non-technical post subject to his meeting educational administrative requirements of the Board.

6. However, we have considered the material placed before us by the respondents relating to qualifications etc., for working on the clerical or non-technical side as suggested by the Medical Board. Though, Shri M.C. Bhandare, learned counsel for the appellant has attempted to argue for directing the respondents to appoint the appellant as UDC which carry equal pay scale, we think that we cannot give such directions. The reasons are that there are two channels of appointment to the post of UDC. One is promotion and another is direct recruitment in the ratio prescribed at 75% and 25%. For a direct recruit, graduation or post-graduation or law graduation is the minimum educational qualification required apart from other requirements mentioned therein. Admittedly, the appellant is not possessed of the qualifications. He is only matriculate. As a result we cannot give any direction to appoint him as UDC.

7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs 1400-2300 and direct to pay all the arrears of salary.

8. The appeal is accordingly allowed. No costs."

9. The petitioner whose right arm had been amputated because of the accident while he was on duty is to be considered for regular appointment against the reserved vacancies for the physically handicapped persons. As stated above, in the said advertisement dated 15.06.2011 for the posts of Jugali, there were no reservation for the physically handicapped persons but the petitioner had been called for physical test i.e. long distance running and personal interview for the posts of Jugali advertised in the said advertisement dated 15.06.2011, which did not mention the number of the posts of Jugali reserved for the physically handicapped persons.

10. In the above factual backdrop, this Court, keeping in view of the ratio laid down by the Apex Court in the cases discussed above and also the fact that the MeECL had adopted the scheme for employment of the physically handicapped persons prepared by the Govt. of Meghalaya is of the considered view that the petitioner should be considered for regular appointment in the post reserved for the physically handicapped persons equivalent to the original post of the petitioner, after calculating the number of posts to be reserved for the physically handicapped persons, keeping in view of Sections 32, 33 & 34 of the said Act 1995 and the scheme for appointment of the physically handicapped persons prepared by the Govt. of Meghalaya and the judgment of the Apex Court in **Narendra Kumar Chandla's** case (*Supra*) as expeditiously as possible, and the respondents are directed accordingly. It is made clear that the petitioner shall not be terminated from service while his case is under consideration for regular appointment.

11. Writ petition is allowed.

JUDGE

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