

THE HIGH COURT OF MEGHALAYA

W.P. (C) No.266/2014

Shri. Niwanki Challam,
S/o Shri. Marjan War,
R/o Nongthymmai, Shillong,
East Khasi Hills District,
Meghalaya.

:::: Petitioner

-Vs-

1. The State of Meghalaya represented by its Chief Secretary.
2. The Commissioner & Secretary, Soil & Water Conservation Department,
Meghalaya, Shillong.
3. The Director, Soil & Water Conservation Department, Govt. of
Meghalaya, Shillong.
4. The Divisional Officer, Soil & Water Conservation Department,
Shillong (Territorial) Division, Shillong, East Khasi Hills District,
Meghalaya.
5. The Divisional Soil & Water Conservation Officer,
Engineering Division, Shillong.
6. Shri. Strong Pilar Nongrum,
C/o Divisional Officer, Soil & Water Conservation Engineering Division,
Meghalaya, Shillong.

:::: Respondents

BEFORE THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH

For the petitioner	:	Mr. KC Gautam, Adv,
For the respondents	:	Mr. KP Bhattacharjee, GA
Date of hearing	:	27.08.2015
Date of Judgment	:	27.08.2015

JUDGMENT AND ORDER(ORAL)

Heard Mr. KC Gautam, learned counsel for the petitioner and Mr. KP Bhattacharjee, learned GA appearing for the State respondents. None appears for the respondent No.6 inspite of proper service of notice of the present writ petition to him.

2. By this writ petition, the petitioner is assailing the order of the Divisional Officer Soil & Water Conservation Shillong (Territorial) Division, Shillong dated 16.05.2014 for discontinuing the officiating service of the petitioner as Mechanic vide O.O. No.97 dated 23.12.2009 (*Annexure-IX to the writ petition*). The concise fact of the case leading to the filing of the present writ petition which will be sufficient for deciding the matter in issue is noted. The petitioner is a qualified Mechanic (Motor Vehicle) and holds a Provisional National Trade Certificate issued by the Don Bosco Technical School, Shillong. By an order dated 23.12.2009 issued by the Divisional Officer Soil & Water Conservation Shillong (T) Division, Shillong the petitioner was allowed to officiate temporarily in the vacant post of Mechanic on the scale of pay of Rs.8300-10270/- PM plus other allowances as admissible w.e.f. the date of joining to the post and until further orders (*Annexure-IV-A to the writ petition*) which reads as follows:-

“GOVERNMENT OF MEGHALAYA
Office of the Divisional Soil & Water Conservation Officer Shillong
(Territorial Division) Shillong

O.O. No.97 Dated

Shillong, the 23rd Dec/2009

In the interest of public service and in pursuance to the Director's orders letter No.Meg/Soil-14/269/5650, dt.22nd Dec. 2009, Shri. Niwanki Challam a resident of Nongthymmai, Nongkhynriam, Shillong is hereby allowed to officiate temporarily to the vacant post of mechanic on the scale of pay of Rs.8300-210-0779-EB-270-12200-10270/- p.m. plus other allowances as admissible with effect from the date of joining to the post and until further order.

The above officiating arrangement is purely temporary basis until the post is recruited in a regular manner/the officiating appointment is regularized by the concerned recommending Authority. Pay and allowances will be made from the Head of Account 2002 S&WC-001(02) (01) – Salaries Non Plan.

Sd/-
Divisional Officer,
Soil & Water Conservation
Shillong (T) Division,
Shillong.

Memo No. Est/3-C(a)/2009-10/2093-98 Dated Shillong, the 23rd Dec. 2009.

Copy to:-

- 1. The Director of Soil & Water Conservation, Meghalaya, Shillong with reference to his letter No.Meg/Soil/14/269/5650 dated 22/12/2009 for favour of his information.***
- 2. The Divisional Soil & Water Conservation Officer, Engineering Division, Shillong for information.***
- 3. The Accountant.***
- 4. The Dealing Asstt. Incharge pay bill of this Division for information and necessary action.***
- 5. Shri. Niwanki Challam, muster roll in the office of the Division Soil and Water Conservation Officer, Engineering Division, Shillong.***
- 6. O.O. Book for record.***

***Sd/-
Divisional Officer,
Soil & Water Conservation
Shillong (T) Division,
Shillong"***

3. It is the submission of Mr. KC Gautam, learned counsel for the petitioner that the petitioner had been appointed on officiating basis as Mechanic till the post is filled up in a regular manner/officiating appointment is regularized by the concerned recommending authority. Pursuant to the said appointment order i.e. 23.12.2009, the petitioner joined the service on officiating basis. The petitioner continued to serve as Mechanic on officiating basis till by an order dated 16.09.2013, the service of the petitioner as officiating Mechanic had been discontinued w.e.f. 16.09.2013, but on the representation filed by the petitioner, he had been allowed to serve as Mechanic on officiating basis. It is the further case of the petitioner that the Govt. of Meghalaya, Personnel & Administrative Reforms (B) Department, Shillong, issued an Office Memorandum dated 03.07.1982 regarding the composition, functions etc. of the District Selection Committee for the Districts in the State of Meghalaya and the procedure for direct recruitment to various categories of posts which come under the purview of the Committee.

4. It is the further case of the petitioner that vide Para 3.3, of the said Office Memorandum dated 03.07.1982, the recruitment to Grade IV posts and posts of driver, mechanic etc. in the Secretariat or offices of the Heads of Departments, shall continue to be made through Departmental Selection Committee. The petitioner was not given the chance to appear before the Selection Committee for regularizing his officiating appointment in the post of Mechanic against which the petitioner had been allowed to serve as Mechanic on officiating basis. To the utter surprise of the petitioner, the respondents had issued the impugned order dated 16.05.2014 for discontinuing the officiating service of the petitioner as Mechanic w.e.f. 16.05.2014 (*Annexure-IX to the writ petition*). In the writ petition, the petitioner had categorically pleaded that he had been removed from the said post of Mechanic in order to accommodate the private respondent i.e. respondent No.6 as Mechanic. In the writ petition, the petitioner neither annexed the copy of the order for appointing the respondent No.6 in the post of Mechanic against which the petitioner had been allowed to serve as Mechanic on officiating basis nor there is a prayer in the present writ petition for quashing the appointment order of the respondent No.6 as Mechanic.

5. The respondents No.1-5 had filed their joint affidavit-in-opposition wherein, it is categorically stated that in order to streamline the method of appointment and promotion of the subordinate field staff of the department, the Director of Soil & Water Conservation during the year 1996 had submitted a Draft Meghalaya Soil Conservation (Subordinate) Service Rules to the Govt. Pending finalization of the Service Rules in the Soil & Water Conservation Department, Govt. of Meghalaya, the Govt. of Meghalaya, Soil & Water Conservation Department vide order No.SCD.54/93/pt-I/77 dated 20.11.2003 had issued a notification regarding the procedure to be followed in the matter of filling up the post of A-Cadre-I General, B-Cadre-II of the Meghalaya Soil Conservation (Subordinate) services under the control of the Soil Conservation Department,

Meghalaya. Under the said notification, the vacancies in the post of Cadre B-Cadre-II (other) II Mechanical are to be filled up by direct recruitment and promotion at the ratio of 50%:50%. The modes of filling up the post in B-Cadre-II (other) II Mechanical are provided in the said notification dated 20.11.2003 and read as follows:-

“B-Cadre-II (Other) – II – Mechanical:-

1. Soil Conservation Ranger (foreman):- The method of promotion will be from Foreman Mechanic/Foreman/Sub Engineer Grade-I. Those eligible must have rendered at least 3 years service on the first day of the year in which selection is made for promotion.

Ratio of direct recruitment to promotion in any year shall be 1:1 or 50%:50%.

2. Foreman Mechanic/Foreman/Sub-Engineer Grade-I (Mech):- The method of appointment will be 100% promotion from Soil Conservation Demonstrator (Senior) Mechanical/Auto-electrical. Those eligible must have rendered at least 7 years of qualifying service in the post of Soil Conservation Demonstrator Senior, Mechanical/Auto Electrical.

3. Soil Conservator Demonstrator Senior (Mechanical/Auto-Electrical):- The methods of appointment will be 100% by promotion from Mechanic. Those eligible must have rendered at least 7 years of continuous service and must be physically fit.

Mechanic:- The methods of promotion will be from amongst Mechanic cleaner or mechanic helper. Those eligible must have rendered at least 7 years of continuous service and must be physically fit.

Ratio of direct recruitment to promotion in any year shall be 1:1 or 50%:50%.

5. Mechanic cleaner/Helper:- Appointment will be 100% by direct recruitment only on the result/recommendation of the Selection Committee.”

6. On perusal of the portion of the said notification dated 20.11.2003 i.e. method of recruitment to the B-Cadre-II (other) – II – Mechanical, it is clear that the promotion to the post of Mechanic will be from Mechanic cleaner or Mechanic helper. Those eligible must have rendered at least 7 years of continuous service and must be physically fit. The ratio of direct recruitment and promotion in any

year shall be 1:1 or 50%:50%. In the joint affidavit-in-opposition filed by the respondents No.1-5, it is also stated that the post of Mechanic against which the petitioner had been allowed to officiate as Mechanic belongs to the promotion quota. In order to fill up the said post which belongs to the promotion quota, the Departmental Promotion Committee was convened on 26.03.2014 and the Committee recommended the name of the respondent No.6, Mechanic helper for promotion to the post of Mechanic. Accordingly, the Director of Soil & Water Conservation respondent-No.3 vide O.O. No.38 dated 16.05.2014 and Memo No.Meg/Soil-14/373/754 dated 16.05.2014 promoted the respondent No.6, Mechanic helper to the post of Mechanic. Consequent to the said Office Order of the respondent No.3, the Divisional Soil & Water Conservation Officer, Shillong Soil & Water Conservation (T) Division respondent-No.4 vide letter Est/3-C(a)/2014-2015/567 (A-G) dated 16.05.2014 informed the petitioner that the officiating arrangement had been ceased w.e.f. 16.05.2014.

7. It is also stated that the petitioner through an application under RTI Act, 2005 got the information that the respondent No.6 was initially appointed to the post of Mechanic (officiating) on 16.12.1991 and also that the status of the respondent No.6 was Mechanic helper and he was appointed temporarily on officiating arrangement and the service of the respondent No.6 (Mechanic helper) was regularized w.e.f. 28.11.2008 vide letter No.DSC.28/2007/210 dated 01.05.2009. The information so far received by the petitioner through the said application under the RTI Act, 2005 reads as follows:-

“No. 1:- The initial date of appointment of Shri. Strong Pillar Nongrum (Mechanic Helper) in the office of the Soil & Water Conservation Department.

:The initial date of appointment of Shri Strong Pillar Nongrum to the post of Mechanic (officiating) was on 16-12-1991

No. 2:- What was the status of Shri Strong Pillar Nongrum (Mechanic Helper) appointment on the date of his first appointment? Whether he was appointed on temporary basis or he was appointed on regular basis against a sanction post after due process as prescribed by law?

:-Shri. Strong Pillar Nongrum, Mechanic was appointed temporarily on officiating arrangement.

No. 3:- Whether Shri Strong Pillar Nongrum (Mechanic Helper) was a regular employee on 26-03-2014 the date of sitting of the Departmental Promotion Committee (DPC) for promotion from Mechanic Helper to Mechanic.

:-Yes, Shri. Strong Pillar Nongrum (Mechanic Helper) was a regular employee on 26-03-2014 the date of sitting of the Departmental Promotion Committee (DPC).

No. 4 :- Whether Shri Niwanki Challam (Mechanic) was reinstated as Mechanic after suspension of impugned order dated 16-05-2014 passed by the High Court of Meghalaya in W.P (C) No. 266 of 2014 in its order dated 13-08-2014?

:-No, Shri Niwanki Challam (Mechanic) was not reinstated as Mechanic. Since the post had been filled up by promote i.e Shri Strong Pillar Nongrum, Mechanic vide Departmental promotion Committee held on 26-03-2014.

No. 5 :- When was the Services of Shri. Strong Pillar Nongrum (Mechanic helper) regularized?

:-The Services of Shri. Strong Pillar Nongrum (Mechanic Helper) was regularized w.e.f. 28-11-2008, vide Letter No. DSC. 28/2007/210 Dt. 1st May, 2009
Name & Address of the Appellate Authority

*Shri. D. Langstieh
Director Soil & Water Conservation
Meghalaya, Shillong*

*Sd/-
(D.K. Khonglah)
Divisional Officer
Soil & Water Conservation
Shillong (T) Division
Shillong"*

8. From the above factual backdrop, it is clear that the petitioner had been appointed on officiating basis against the post of Mechanic which belongs to the promotion quota and also that the respondent No.6 who was working as Mechanic helper was promoted against that post through regular DPC. It is also

clear from the above fact that the petitioner had joined the service with open eyes that his officiating appointment as Mechanic will be continued till the post is filling up on regular basis. As stated above, the post against which the petitioner had been appointed as Mechanic on temporarily basis had already been filled up by the respondent No.6 inasmuch as, the said post belongs to the promotion quota. This being the situation, this Court is of the considered view that this writ petition is devoid of merit. However, taking into consideration of the past service of the petitioner as Mechanic for a considerable number of years the case of the petitioner shall be considered for appointment as Mechanic if there be any exigency of service of Mechanic in the Soil & Water Conservation Department. However, it is also made clear that without considering the case of the petitioner for appointment as Mechanic in case of any exigency of service of Mechanic there shall not be adhoc/officiating appointment and also that the upper age limit for appointment of Mechanic so far petitioner is concerned may be relaxed.

9. With the above observations and directions, this writ petition is disposed of.

JUDGE

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