

**IN THE HIGH COURT OF MEGHALAYA AT
SHILLONG**

: ORDER :

WRIT APPEAL No.1 of 2016

Union of India and Others Appellants

-Versus-

Manzil Thapa Respondent

Date of Order: :: **30.03.2016**

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE
HON'BLE SHRI JUSTICE S.R. SEN

Mr. K. Paul, for the appellants

Ms. L. Khiangte, for the respondent

BY THE COURT: (per Hon'ble the Chief Justice) (Oral)

By way of this intra-court appeal, the respondents of WP(C) No.337 of 2014 seek to question the order dated 26.08.2015 whereby, the learned Single Judge of this Court has allowed the writ petition filed by the present respondent (the writ petitioner) assailing the order dated 12.07.2014, as passed by the Deputy Inspector General Assam, Rifles Training Centre and School, P.O. Dimapur (Nagaland) dismissing him from service on the alleged ground of submission of false information at the time of enrollment.

Put in a nutshell, the relevant background aspects of the matter are that in response to the advertisement issued by the appellants inviting applications for recruitment in Assam Rifles, the writ petitioner offered his candidature for the post of Nursing

Assistant. The particulars as stated by the writ petitioner in the application for recruitment, particularly those relating to the aspects of domicile and address, have a bearing on the subject matter of this appeal. These particulars have been taken note of by the learned Single Judge and are reproduced for ready reference as under:-

“APPLICATION FOR RECRUITMENT IN ASSAM RIFLES

<u>PARTICULARS</u>	<u>DETAILS</u>
1.NAME	:MR MANZIL THAPA
2.FATHER'S NAME	: SHRI MADAN THAPA
3.DATE OF BIRTH	: 12 AUG 1993
4.DOMICILE ADDRESS	:MANIPUR STATE
5.VILLAGE	:HAPPYVALLEY(AR BAZAR)
6.POST OFFICE	: HAPPY VALLEY
7.TEHSIL	: SHILLONG
8.DISTRICT	: EAST KHASI HILLS
9.STATE	: MEGHALAYA
10.PIN	: 793007
11.MOBILE TELEPHONE NO.	: 9089846826
12.CASTE TYPE (SC/ST/OBC/GEN)	: GEN
13.EDUCATION (10/10+2/GRADUATE)	: 10+2 PASSED
14.TRADE FOR WHICH APPLIED	: NURSING ASST
15.FOR RALLY AT	:DIMAPUR(NAGALAND)
16.DD NO	: 215946
17.DD DATE	: 27-08-2012

(LEFT HAND THUMB IMPRESSION) APPLICANTS SIGNATURE

DATED: 28 AUG 2012”

The writ petitioner successfully participated in the recruitment process and was ultimately issued the appointment letter on 25.03.2013. In compliance of the directions in the appointment letter dated 25.03.2013, the writ petitioner produced the documents in original including domicile certificate and permanent residential certificate mentioning that he was a domicile of the State of Manipur with his permanent residence being at Kanglatongbi, Vijaynagar, Lamsang within Imphal West District. However, it appears that the

writ petitioner was allotted the vacancy in the State of Meghalaya and, therefore, he made an application on 16.02.2014 seeking allotment of vacancy of the State of Manipur while asserting that he was a permanent resident of the said State of Manipur. The contents of the application so made by the writ petitioner have also been taken note of by the learned Single Judge and the same are reproduced for ready reference as under:-

*"M/50244991M
Rect/N.A.
Manzil Thapa
No.3 Trg Bn
Shukhoni, Dimapur,
797115*

*To,
Assam Rifles Training Centre and School,
Record Office, Dimapur, Nagaland.*

*Sub: Requesting for changing of my home
address and to allotted the vacancy of
Manipur State instead of Meghalaya State.*

Respected Sir,

*I would like to state the following lines for your kind
consideration and favourable action please.*

That Sir,

I No. M/5024991M, Rect/NA, Manzil Thapa of Kohima Company, No. 3 Training Battalion, with an I.D. No.:- 0944 was being appointed as a Nursing Assistant in Assam Rifles, joined on 01 May, 2013. At the time of post apply the correspondence address was mentioned as Assam Bazar, Happy Valley, Shillong – 793007, as my dad, serving at Assam Rifles, was being posted at UPAO branch (Pension section) HQ DGAR Shillong, attached with pay & Account office Assam Rifles, that the call letter would come on to his hand applied this post for me by him. At the time of application applied by me for recruitment, my domicile Certificate was mentioned of Manipur state but my vacancy has been allotted of Meghalaya state which is clerical mistake. Sir, all document of mine is being produced of Manipur State at the time of checking of my document by board Officer.

Therefore, With due respect I request you to consider my case sympathically being a serving soldier.

For this act of your kindness, I shall be ever greatful to you.

Dated: 16.02.2014

*Sd/-
Your faithfully (R.T.I)
No:-M/5024991M
Rect of Nursing Assistant
Manzil Thapa
Kohima Coy 5 Platoon
Shukoni, Dimapur*

After moving the application aforesaid, the writ petitioner completed the probation period on 24.03.2014. However, after the expiry of probation period, the present appellants issued a notice dated 26.05.2014 to the writ petitioner, calling upon him to show cause as to why he should not be removed from service on the ground of furnishing false and incorrect information at the time of appointment and enrollment as regards his place of residence. The writ petitioner responded to the said notice with the documents showing himself being a domicile of the State of Manipur. The writ petitioner also stated that at the time of filing the application form, he was residing at Happy Valley, Shillong and filled up his address accordingly. The appellants were, however, not satisfied with the submissions of the writ petitioner and hence, the order impugned came to be issued dismissing him from service with effect from 15.07.2014. Aggrieved, the writ petitioner preferred the writ petition leading to this appeal.

In the order impugned, after taking note of all the relevant factual aspects of the matter, the learned Single Judge rejected the submissions of the present appellants that it was a case of furnishing

false or incorrect information by the writ petitioner; and found no justification for dismissal of the writ petitioner from service. The learned Single Judge specifically found that the writ petitioner had clearly disclosed in the application itself that he was a domicile of the State of Manipur and the address of Shillong in the State of Meghalaya was stated only for the purpose of communication. The learned Single Judge proceeded to allow the writ petition while observing, inter alia, as under:-

“.....It is a matter of common sense and basic logic that the address is meant for communication and it is to be mentioned where the person is actually staying at the particular time and as such as the petitioner was staying at Shillong at the time of filing the application form, the petitioner had mentioned his address as AR Bazar, Happy Valley.

9. On conjoint reading of the said application dated 28-08-2012 for recruitment in Assam Rifles and also the appointment letter dated 25-03-2013, it is clear that the permanent residential certificate of a person of a particular place is nothing but domicile certificate of the person concerned of that place. Therefore, in other words, the Domicile Certificate is nothing but the Permanent Residential Certificate. Therefore, in the said application for recruitment dated 28-08-2012, the petitioner had clearly disclosed that the petitioner is a domicile of the State of Manipur and for communication the petitioner had mentioned his address i.e. temporary address as AR Bazar, Happy Valley, P.O: Happy Valley, Tehsil: Shillong and District: East Khasi Hills. Therefore, it appears that there is no question of giving false information regarding the domicile of the petitioner at the time of filing the application for recruitment to the post of Nursing Assistant for the State of Manipur in response to the said advertisement issued through the Public Employment News.

*10. The Apex Court in **Kamal Nayan Mishra vrs State of Madhya Pradesh and Ors : (2010) 2 SCC 169**, para 18 held that:*

*“18. There are also several other features in this case which distinguish it from **Ram Ratan Yadav: (2003) 3SCC 437: 2003 SCC (L&S) 306**. First is that Ram Ratan Yadav (Supra) related to an employee of Kendriya Vidyalaya Sangathan, who did not have the protection of Article 311 of the Constitution of India, whereas in this case we are concerned with a*

government servant protected by Article 311. Second is that the attestation form in this case, was required to be furnished by the employee, not when he was appointed, but after fourteen years of service. The third is that while action was promptly taken against the probationer in Ram Ratan Yadav (Supra), within the period of probation, in this case even after knowing that the appellant had furnished wrong information, the respondents did not take any action for seven long years, which indicated that the Department proceeded for a long time on the assumption that the wrong information did not call for any disciplinary or punitive action. The belated decision to terminate him, seven years later was unjustified and violative of Article 311”.

11. From the above factual backdrop, this Court is not persuaded by the case of the respondents that the petitioner had submitted false or incorrect information regarding his domicile at the time of appointment or recruitment to the post of Nursing Assistant. Over and above, the probation period had already expired at the time of issuing the show cause notice dated 26-05-2014.

12. For the foregoing discussions, this Court is of the considered view that the petitioner could make out sufficient materials for interfering with the impugned order dated 12-07-2014 and 26-08-2014. Accordingly, the impugned order dated 12-07-2014 and 26-08-2014 are hereby quashed. The corollary of this order is that the petitioner should be reinstated in service within 2(two) months from the date of receipt of certified copy of the judgment and order.

12. Writ petition is allowed to the extent indicated above.”

Seeking to challenge the order aforesaid, it is strenuously argued by the learned counsel for the appellants that the writ petitioner willingly misguided the appellants to take him as a domicile of the State of Meghalaya and to select him against the quota of the same State. It is submitted that the writ petitioner got selected from the Meghalaya State only due to the false information provided by him and else, as against the vacancy of Manipur State, he was not standing in merit and could not have been selected as he had secured 48% marks in the written examination, which were well below the cut off marks of 63% for Manipur State.

Having given a thoughtful consideration to the submissions made and having examined the record, we are not persuaded to consider interference in this appeal.

A bare look at the indisputable facts of the present case makes it clear that in the application for recruitment, the writ petitioner clearly stated himself to be a domicile of the State of Manipur. The writ petitioner, of course, gave his address as that of Happy Valley, AR Bazar, Shillong of East Khasi Hills District in the State of Meghalaya but then, even pursuant to the appointment letter dated 25.03.2013, he produced the domicile certificate as also permanent residence certificate, showing himself to be a domicile of the State of Manipur. The appellants, however, not only appointed him against the vacancy of the State of Meghalaya but even continued with him for about one year before the writ petitioner made the application on 16.02.2014 seeking allotment of the vacancy of the State of Manipur. Moreover, and even after such application by the petitioner, he was continued beyond the period of probation; and the appellants chose to serve him a show cause notice only on 26.05.2014.

In the totality of circumstances of the present case, we are unable to disagree with the view taken by the learned Single Judge of this Court. When the writ petitioner had disclosed all the facts with reasonable specifications and clarity, if the appellants yet chose to admit him to the recruitment process and then, to appoint him and then, even to continue with him in the vacancy of the State of Meghalaya, they cannot be acceded the right to dispense with his

service after the period of probation on the alleged ground of submitting false and incorrect information. The fault, if any, had been in the process of scrutiny by the appellants at the every stage; and the appellants cannot be considered justified in seeking to impute falsehood on the writ petitioner. Moreover, the present one does not appear to be a case of want of basic eligibility and, in the given set of facts and circumstances, the learned Single Judge cannot be faulted in disapproving the dismissal of the writ petitioner.

Accordingly and view of the above, this appeal stands dismissed.

JUDGE

CHIEF JUSTICE

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Item No.1