Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 510 of 2018

Date of Decision: 27.01.2021

Miss. Dahunshisha Rynjah & Ors. **Vs.** The Meghalaya Public Service Commission & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. P. Rai, Sr. Adv. with
Mr. P. Yobin, Adv.

For the Respondent(s) : Mr. K. Paul, Adv.

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

1. The brief facts of the case are that the Meghalaya Public Service Commission (MPSC) had issued an advertisement dated 24.07.2017 inviting applications from eligible candidates to sit for the Examination for Meghalaya Civil Service Junior Grade against approximately 38 vacancies. In the Preliminary Examination, 576 candidates out of 10,730 were declared to have qualified to sit for the Main Examinations. The petitioners herein being aggrieved with the method of selection and procedure adopted in declaring the successful candidates eligible to sit for the Main Examinations, are before this Court by way of the instant writ petition.

2. The prayer of the writ petitioners as made out is for setting aside the impugned notification dated 05.10.2018 whereby 576 candidates were declared to be qualified to sit for the Main Examinations, to call for the records of all the 576 selected candidates who were successful in the Preliminary Examination, to direct the respondents (MPSC) to prepare fresh selection list by adhering to the examination plan and to declare the resolution dated 22.10.2018 as illegal and arbitrary.

3. Before adverting to the issue in hand, it would be expedient to recount the events that have since transpired after the institution of the present petition which has led to a changed situation as far as adjudication of the competing rights of the parties are concerned. This Court by order dated 04.12.2019 passed in Misc. application being MC(WPC) No. 236 of 2019 had kept in abeyance the notification No. MPSC/D-103/2/2017-2018/200, dated 16.08.2019 whereby the Main Examinations of MCS 2018 had been publicized to be held in the month of January, 2020.

4. However, this Court in the Division Bench by order dated 10.12.2019 set aside the above noted interim order dated 04.12.2019, and allowed for the Main Examinations to be conducted which was to take place on 18.01.2020, while holding that the same would remain subject to the outcome of the writ petition. This order in turn, was assailed before the Hon'ble Supreme Court which by order dated 09.01.2020 dismissed the Special Leave Petition and directed that the writ petition be disposed of as expeditiously as possible. Situated thus, this matter is now placed before this Bench for final disposal.

5. I have heard learned counsels for the parties.

6. Mr. P. Rai, learned Senior counsel assisted by Mr. P. Yobin, learned counsel at the outset submits that the fundamental issue raised initially in the writ petition was, whether the rules of the game can be changed once the game has started; and whether any un-communicated order or resolution have any force and be held valid in the eye of law. He fairly concedes that the writ petition as it stood was directed against the declaration of preliminary results which he submits, is no longer res integra, in view of the order of the Division Bench dated 10.12.2019, whereby the scheduled Main Examinations was not interfered with. He however, submits that the additional affidavit which had been filed with the permission of this Court bringing on record further developments and assailing the process adopted, by the respondent No. 5, will suffice to enable this Court to adjudicate on all issues involved in the matter. To this end, learned Senior counsel submits that important questions of law, on the premises upon which the petitioners have filed the writ petition still survive, and that this Court can determine these questions of law which are unaffected by the orders of the Division Bench and of the Hon'ble Supreme Court passed in this matter.

7. Learned senior counsel submits that at the relevant point of time when the writ petition was filed the prayer of the petitioners, was indeed limited, but with the change in circumstances and more information being brought on record both by the petitioner and the respondents by way of additional affidavits, counter affidavits and rejoinders, this Court under Article 226 of the Constitution of India, can take cognizance of all this information to ensure that substantive justice is done. In this context, learned senior counsel has placed reliance on the

case of ***C.A. Galika Kotwala vs. Shri Kailasanan*** reported in ***(2015) SCC online Hyd. 547*** and the judgment of the Hon'ble Supreme Court in the case of ***Ramesh Kumar vs. Kesho Ram*** reported in ***(1992) Suppl. (2) SCC 623***. Learned senior counsel contends that the ratio of the case of ***C.A. Galika Kotwala vs. Shri Kailasanan*** (supra) will be applicable as the interpretations of additional pleadings as provided in Order 8 Rule 9 of the CPC given the judgment will include the additional plaint which can be either call as a rejoinder or a reply in its real consequences. He further submits that as laid down in the case of ***Ramesh Kumar vs. Kesho Ram*** (supra) subsequent events can be taken into consideration and that the Court can mould the relief taking cautious cognizance subsequent changes.

8. Learned senior counsel submits that new facts have been brought on record by the respondents to the effect that a different cutoff marks has been set for the Garo and Khasi-Jaintia and other categories, which is something unknown in the entire history of the MPSC and that such adoption of this procedure was never intimated to the petitioners nor to any candidate. Learned senior counsel submits that this information was brought to the notice of this Court only in August, 2020, whereas the writ petition had been filed since December, 2018 and the additional affidavit bringing on record certain developments had been filed on 16.03.2020. He argues therefore, that on these circumstances, in order to render substantive justice, this Court has ample jurisdiction to mould the relief accordingly. To support his contention reliance has been placed by the senior counsel on the case of ***Om Prakash Gupta vs. Ranbir B. Goyal*** reported in ***(2002) 2 SCC 256***.

9. On the issue whether the respondents have changed the rules of the game and if changed, whether the result dated 04.08.2018 can be sustained in the eye of law, the learned senior counsel has drawn the attention of this Court to Para-21 of the affidavit-in-opposition, which he submits that the respondents have admitted that the criteria was changed on the decision of the Commission which was not communicated to the petitioners. Learned senior counsel strongly contends that nowhere in the advertisement was it stated that different cutoff marks would be set for the different categories amongst the candidates, and in fact it had been clearly spelt out that the reservation of the vacancies would be as per the State Reservation Policy, but however it seems that the respondents had changed the modalities of the examination in a closed door meeting which is not permissible in the eye of law. Learned senior counsel submits that nowhere in the State Reservation Policy is there any provision that provides for the fixation of different cutoff marks for different categories but in fact, the policy mandates that if for a particular year the reserved category of seats could not be filled up the said vacancies reserved would be carried forward. Learned senior counsel on this point has placed reliance on the following judgments:

i) ***K. Manjusree vs. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841 at page 524***
ii) ***Smti Sengsime A Sangma & Anr. vs. The State of Meghalaya & Ors. on 7 May, 2014 WPC 341/2013***
iii) ***Umesh Chandra Shukla vs. Union of India & Ors. (1985) 3 SCC 721***
iv) ***Durgacharan Misra vs. State of Orissa & Ors. 1978 AIR 2267***
v) ***B.S. Yadav & Ors. vs. State of Haryana & Ors. 1981 AIR 561***
vi) ***Raj Kumar & Ors. vs. Shakti Ray & Ors. (1997) 9 SCC 527***

On the issue of the decision to change the modalities, which the learned senior counsel asserts have been admitted by the respondents, reliance has been placed on the following judgments to support the contention that the non-communication of the decision vitiates the entire selection process.

vii) ***State of West Bengal vs. Mr. Mondal & Ors. (2001) 8 SCC 443 Para 16***

viii) ***Tagin Litin, State of Arunachal … vs. State of Arunachal Pradesh & Ors. … on May, 1996, (1996) 5 SCC 83***

ix) ***Shri Adelbert Kharlyngdoh & Ors. vs. The State of Meghalaya & Ors. on 5 December, 2014 (2014) SCC online Megh 253***

10. While closing his submissions learned senior counsel submits that the grievance of the writ petitioners is with the entire selection process, for the change in the procedure and the deviation from the original plan of examination, and further submits that in such cases as laid down in the decision of ***Union of India & Ors. vs. O. Chakradhar*** reported in ***(2002) 3 SCC 146,*** when the selection process is tainted, there is no necessity to serve individual notices and that non-issuance of notice to individual selected candidates will not affect the correctness of the judgment.

11. Lastly, it is submitted that the last part of the prayer as made out in page 18 of the writ petition, will cover the scope of unexpected changes as has occurred in the present case, and that the contentions as raised still survive and can be adjudicated and that the impugned notification dated 05.10.2018 being arbitrary be interfered with and set

aside for deviating from the original plan and for exercise of powers by the respondents which are not authorized by law.

12. In reply to the submission and contentions as raised by the petitioners, Mr. K. Paul, learned counsel for the respondents submits that the petitioners challenge to the results of the MCS Preliminary Examinations on the ground that the same was done in contravention of the advertisement plan, has already been conclusively decided, and cannot be considered a subject in issue any longer. Learned counsel submits that the Division Bench of this Court vide order dated 10.12.2019 passed in Writ Appeal No. 30 of 2019 has held that the writ petitioners had not made out a prima facie case, and that this judgment was subsequently upheld by the Hon'ble Supreme Court in SLP (Civil) No. 30738 of 2019 on 09.01.2020. The learned counsel submits that therefore this issue no longer survives for consideration.

13. Mr. K. Paul, learned counsel submits that even though the petitioners seek to cancel the examinations, the successful candidates have not been arrayed as party respondents, and if the relief as sought for by the petitioners is granted by this Court, the same would prejudice them. Learned counsel submits that the instant writ petition is bad for non-joinder of necessary party and is liable to be dismissed on this ground alone.

14. Learned counsel further submits that the writ petitioners having participated in the selection process after having failed to qualify, cannot make a U-turn and challenge the same. To buttress his contention, learned counsel has placed reliance on the following decisions:-

i) ***(1986) Supp SCC 285 (Para 24) Om Prakash Shukla vs. Akhilesh Kr. Shukla***

ii) ***(2013) 11 SCC 309 (Para 24) Ramesh Ch. Shah vs. Anil Joshi & Ors.***

iii) ***(2011) 1 SCC 150 (Para 24) Vijendra Kr. Verma vs. Public Service Commission Uttarakhand & Ors.***

iv) ***(2010) 12 SCC (Para 16) Manish Kr. Shahi vs. State of Bihar & Ors.***

15. Mr. K. Paul, learned counsel submits that the writ application and the prayer contained therein cannot address the additional grievances raised by the writ petitioners though the additional affidavit. Learned counsel submits that though this Court by order dated 06.07.2020 had allowed the petitioners to file an application seeking re-cast of the writ petition, the same was not filed in proper form but on 14.07.2020, a prayer was made by the counsel for the petitioners that the re-cast petition so filed, be treated as an additional affidavit, and further that this Court, on their prayer, by order dated 14.07.2020 was pleased to allow the same, and further closed the opportunity allowed to the writ petitioners, for amending or re-casting the writ petition. Learned counsel submits that therefore, on these circumstances, the relief if any can be limited only to the pleadings and prayer as it stands on record in the writ petition and that the additional affidavit cannot be considered to be a part of the pleadings.

16. Learned counsel submits that in the given facts of the case there is no other ground for challenge of the selection process by the petitioners as the opportunity granted to them by this Court for amending

their position was also not availed of. Learned counsel contends that there being no alternative pleadings other than the challenge on the ground of deviation from the examination plan which has already been answered in the negative by the Division Bench of this Court and the Hon'ble Supreme Court, nothing survives for this Court to be decided. In this context, learned counsel relied on two decisions (i) ***AIR 1953 SC 235 = 1953 SCR 789 @ Pg 806 Trojan & Co. Ltd. vs. RM. N.N.Nagappa Chettiar*** (ii) ***(2006) 3 SCC 434 (Para 326) Bombay Dyeing & Mfg Co. Ltd. vs. Bombay Environmental Action Group & Ors.***

17. Mr. K. Paul, learned counsel then submits that in the absence of proper pleadings and any challenge to the implementation of the Reservation Policy, the same cannot be entered into by this Court at this stage of the proceedings, especially when the writ petitioners have decided not to amend the writ petition to incorporate an adequate challenge to the same, in spite of having an opportunity to do so. Learned counsel then submits that on the point of Courts taking note of subsequent events and moulding the relief, the decision relied upon by petitioners i.e. ***Om Prakash Gupta vs. Ranbir B. Goyal*** (supra) in fact helps the case of the respondents, inasmuch as, the said ruling provides that certain conditions need to be fulfilled i.e. (a) relief as claimed originally has by reason of subsequent events become inappropriate or cannot be granted (b) taking note of such subsequent events would shorten litigation and enable complete justice being done to the parties and (c) such subsequent events are brought to the notice of the Court promptly in accordance with the rules of procedural law so that the opposite party is not taken by surprise. Learned counsel submits that in the instant case, the above

mentioned conditions are not present, inasmuch as, the subsequent events and issues being sought to be introduced were very much in existence at the time of institution of the present proceedings. Learned counsel further avers, that the plea of separate cutoff marks, being sought now to be urged before this Court was very much within the knowledge of the petitioners at the time of filing of the writ petition, but no challenge was ever made then. Learned counsel submits that this fact is clearly apparent, as the petitioners at no point of time denied this in any of their affidavits filed in the course of the proceedings. As such he submits, there are no subsequent events and in terms of the decision relied upon, such events even though not subsequent, were not brought on record in accordance with the rules of procedural law, in spite of this Court giving the petitioners repeated opportunities to amend the writ petition, to incorporate the supplementary challenges. He submits the writ petitioners are therefore estopped from raising these issues in the instant proceedings.

18. The learned counsel while closing his submissions submits that in view of the above the writ petition as it stands, is unsustainable and liable to be dismissed.

19. I have heard the learned counsel for the parties. As indicated in the prelude to this judgment, the circumstances since the institution of the present writ proceedings have changed and the facts and points in issue though amplified, by the bringing on record of subsequent facts, the scope of adjudication on the basis of the original prayer and pleadings, contained in the writ petition however, have become severely limited. This observation is made in view of the fact that the challenge to the

preliminary examination results having been conclusively decided, that aspect, including other points as raised such as the non-communication of the modified modality for qualification for the Main Examinations are no longer open for further adjudication, or a finding called upon thereon in the present proceedings.

20. It is noted however that the petitioners have by the additional affidavit brought on record substantial issues which relates to and concerns the entire selection process that have been adopted by the respondents. Before delving into the same, it is noteworthy to recount that the writ petitioners though opportunity had been granted by this Court to amend and recast the writ petition in view of the changed circumstances, the same was not availed of, and instead an additional affidavit was placed bringing on record the subsequent facts.

21. In brief, the subsequent facts relate to the averments made in Para-16 of the additional affidavit that there was no official notification, that the respondents had decided to amend the method of selection, whereby they introduced minimum qualifying marks of 35% in Paper-II, and that the aggregate marks secured in Paper-I and Paper-II would be calculated and considered, for the purpose of cutoff marks and declaration of the result of the candidates to sit for the Main Examinations. In Para-17, an averment has been made that on scrutiny of the results, it has been found that 156 (One Hundred Fifty-Six) candidates whose total marks after tabulation of Paper-I and Paper-II, were less than the marks obtained by some of the writ petitioners, were permitted to sit for the Main Examinations held on 18.01.2020. It has also been brought on record that though the advertisement had proclaimed that the reservation of

vacancies would be as per Government Policy, separate cutoff marks to qualify for the Main Examinations for different categories was applied by the respondents, which they allege, amounts to the violation of the stated policy itself, and that the question setting a separate cutoff marks not being a part of the original plan of examination, is impermissible in law.

22. This Court at this stage will only look into the aspect of relief that can be claimed on the basis of the writ petition as it stands and whether the subsequent facts brought on record can be taken into consideration in determining the case and moulding the relief, if it so warrants. It is to be kept in mind that the Main Examinations has since been held and the outcome awaited. The challenge initially of the writ petitioners was, whether the rules of the game can be changed when the game has started and whether any un-communicated order or resolution can be valid in the eye of law.

23. The petitioners as noted earlier have placed heavy reliance in the judgment rendered in ***Om Prakash Gupta vs. Ranbir B. Goyal*** (supra) to maintain their stand that the Court has the power to take note of subsequent events and to mould the relief, but on the satisfaction of certain conditions i.e. (i) relief as originally claimed has become inappropriate or impossible to grant (ii) taking note of such events or changed circumstances would lead to early end of the litigation and would result in complete justice being done and (iii) subsequent events are brought to the notice of the Court promptly and to ensure that opposite party is not taken by surprise. Placing the facts of the instant case against the conditions aforementioned it is observed that firstly, the first condition is inapplicable in the present case, inasmuch as, the same had

been conclusively adjudicated upon, and finding rendered thereon by the Division Bench of this Court, secondly, the second condition is also not present, inasmuch as, taking note of the subsequent events will certainly not result in early end of litigation in this matter. On the third condition, the subsequent events were not brought on record in the manner to ensure that the same could be adjudicated fully and relief moulded thereon, in view of the fact that, the same was brought by way of additional affidavit, and not by an amendment of the writ petition. Paragraph 12 of the same judgment on the question of subsequent events for the purpose of determining the real questions in controversy between parties is relevant in this regard, and is quoted herein below:-

> ***"12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consist of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between parties. In Trojan & Co. v. RM. N.N. Nagappa Chettiar this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao v. Sita Ram Kesho Their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted."***

24. Similarly, on the question of subsequent events as reported in ***Ramesh Kumar vs. Kesho Ram*** (supra) it has been observed that the normal rule in any litigation is that the rights and obligations of the parties

are adjudicated upon as they obtained at the commencement of the *lis,* and that the Court is not precluded from taking a cautious cognizance of the subsequent changes of fact on law, to mould the relief. In the instant case, the subsequent events as put forward in the additional affidavit if taken into cognizance cautious or otherwise in the present proceedings, will not only be an instance of moulding the relief, but in fact will result in the determination of the matter, on a different cause of action which did not exist at the commencement of the instant writ proceedings.

25. The Hon'ble Supreme Court on the question of reliefs under Article 226 of the Constitution has held in the case of ***Bharat Amratlal Kothari & Arn. Vs. Dosukhan Samadkhan Sindhi & Ors***. reported in ***(2010) 1 SCC 234*** that where Court was exercising powers under Article 226, the writ petitioner must claim all reliefs he seeks as Court would, normally grant only the reliefs specifically sought and that the general principles of the CPC would be applicable to writ petitions. In ***Krishna Priya Gangula & Ors vs. University of Lucknow & Ors.*** reported in ***(1984) 1 SCC 307*** the ratio of the judgment is that the reliefs should be confined to those specifically prayed for in the petition. On the issue of pleadings it would be useful if the case of ***Bachhaj Nahar vs. Lilima Mandal & Anr.*** reported in ***(2008) 17 SCC 491*** is referred to especially as an analogy to the present case. Para 12 which is relevant is quoted herein below :-

> ***"12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has***

repeatedly held that the pleadings are meant to give each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take."

26. By the application of the settled law as it pertains to the instant case, the scope of taking effective cognizance of the subsequent facts is severely limited, more so, taking into account the fact that the challenge as it stood in the petition, i.e. to the preliminary results and the changed modality having been answered by the Division Bench of this Court, and upheld by the Hon'ble Supreme Court, these points, are therefore not open for re-appreciation at this juncture. Without doubt, the subsequent points raised such as *(i) there was no official notification that the respondents had decided to amend the method of selection whereby they introduced minimum qualifying marks of 35% in Paper-II and that the aggregate marks secured in Paper-I and Paper-II would be calculated and considered for the purpose of cutoff marks. (ii) 156 (One Hundred Fifty-Six) candidates whose total marks after tabulation of Paper-I and Paper-II, were less than the marks obtained by some of the writ petitioners, were permitted to sit for the Main Examinations held on 18.01.2020. (iii) though the advertisement had proclaimed that the reservation of vacancies would be as per Government Policy, separate cutoff marks to qualify for the Main Examinations for different categories was applied by the respondents*, are germane and vital in the larger perspective which governs the conduct of such selection processes, and beg for answers, but these issues cannot however, be taken cognizance of, and adjudicated upon in the present proceedings, as they were not part of the original pleadings or brought by amendment by adoption of proper

procedure, but had been brought on record by way of an additional affidavit.

27. With regard to the contention of the respondents that the writ petition is not maintainable as the writ petitioners have not impleaded the successful candidates as party respondents, it is observed however, that as the criteria adopted for qualification for the Main exams has been challenged in its entirety, i.e. the selection process, this question will have to be examined on the facts as they stand, as to whether the non-impleadment of all the successful candidates, will violate the principles of Natural Justice, but as the instant matter is not being entertained or adjudicated fully in these proceedings, this question is left open.

28. The other point raised that that once having taking part in the selection process and having failed to qualify one cannot turn around and challenge the same, in the opinion of this court, this cannot be a ground to disable the writ petition, inasmuch as, it can be taken that the cause of action had not arisen earlier, but when the Preliminary results were declared, leading to the grievance of the petitioners as to the procedure adopted for qualification by the respondents.

29. For the reasons aforestated as nothing remains for further consideration by this Court, the instant writ petition is disposed of accordingly.

30. No order as to costs.

(H.S. Thangkhiew)
Judge

Meghalaya
27.01.2021
"V. Lyndem PS"