



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 32 of 2023

Date of Decision: 31.07.2024

Smti Daritimai Lyngdoh

... Petitioner(s)

- Versus -

1. State of Meghalaya
Represented by the Secretary to the
Government of Meghalaya,
PWD (R&B), Shillong.
2. Chief Engineer,
PWD (Roads), Meghalaya,
Shillong.
3. Assistant Chief Engineer,
PWD (Roads), Meghalaya,
Shillong.

... Respondent(s)

Coram:

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

Appearance:

For the Petitioner(s) : Mr. E. Nongbri, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. Z.E. Nongkynrih, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

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



JUDGMENT AND ORDER

1. The facts in brief are that the petitioner was initially appointed as Typist (Grade-III) on regular basis through the Meghalaya Public Service Commission (MPSC) and joined her service on 01.12.1989 in the Office of the Chief Engineer, PWD (Roads) Meghalaya, Shillong. After serving for nearly 25 years, the petitioner had appeared for a Speed Test for promotion to Grade-II, but however failed to qualify. The petitioner thereafter, on being considered by a Departmental Promotion Committee held on 30.11.2020, was promoted to the post of Lower Division Assistant (LDA) vide order dated 10.12.2020, to which she immediately joined. However, vide an impugned office order dated 02.07.2021, the petitioner was reverted to the post of Typist on the ground that the promotion granted was erroneous, as the respondents had not taken into account the Office Memorandum dated 16.03.2006, that provided that a Typist who opts for the Grade System would not be eligible for the post of LDA. The petitioner being aggrieved thereby, had approached this Court by way of WP(C) No. 240 of 2021, wherein vide order dated 27.05.2022, this Court disposed the matter by directing that the representation of the petitioner



be disposed of within 2(two) months. The respondents thereafter, by the impugned order dated 14.06.2022, upheld the earlier order of reversion, hence the instant writ petition.

2. Mr. E. Nongbri, learned counsel for the petitioner submits that the promotion of the petitioner to the post of LDA from the quota of the Typists had been carried out as per Rule 9 (4) of the Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010 by the DPC held on 30.11.2020, and with regard to the option of the Grade System and undergoing the Speed Test by the petitioner to qualify for promotion from Grade-III to Grade-II, it is contended that the exercise of this option cannot be considered a bar for promotion to LDA, inasmuch as, the Speed Test notice dated 11.08.2015, had indicated that the same was to be conducted by the MPSC as per Rule 11(2) of the Rules as amended in 2012. He submits that this Rule, is silent about what is stipulated in the Office Memorandum dated 16.03.2006, referred to by the respondents in their impugned order, which provides that once a person has opted for the Grade System will no longer be eligible for promotion to the post of LDA. The stipulation in the Office memorandum he contends not having been incorporated in the Original Rules of 2010 and in the amended



Rules of 2012, the same cannot override the provisions of the Rules which have been made under the powers conferred by the proviso to Article 309 of the Constitution of India.

3. The learned counsel further submits that even the Office Memorandum at Para 2(b) thereof, has clearly laid down that Typists appearing in a Speed Test conducted by the MPSC, the placement in the Grade was subject to passing the Speed Test. As such, he submits the petitioner having not qualified in the Speed Test cannot be considered to be in the Grade System. It is also submitted that in Para 5(b) thereof, it has also been provided that the appointment to the LDA cadre was open to the cadre of Grade-III Typist and on such promotion to LDA, shall continue as such, and shall not be eligible to the Grade Scales in future. The petitioner being in Grade-III, he asserts, was therefore eligible to be considered for promotion to the post of LDA, as this would be in consonance, and as per the Rules.

4. The learned counsel then argued that the recourse taken to Clause 5(a) and 5(c) of the Memorandum to justify the reversion of the petitioner is incorrect and arbitrary. He contends that though Clause 5(a)



provides that a Typist who opts for the Grade System shall continue as such and not be eligible for promotion to LDA, and 5(c) provides that the option once exercised is final, both these situations are not applicable to the petitioner, who as by the operation of Clause 2(b) cannot be considered to be in the Grade System as she had failed the Speed Test. It is also submitted that the recourse taken to the Office Memorandum to revert the petitioner is therefore illegal, more so considering that the petitioner having been granted the promotion, natural justice demands that she be heard before any orders are passed reverting her to the lower post. The impugned reversion order, he submits is prima facie illegal and, on the ground that the same is violative of the principles of natural justice, is liable to be set aside and quashed.

5. The learned counsel in support of his arguments, has placed reliance on the following cases given hereinbelow:-

- i) ***Paluru Ramkrishnaiah & Ors. vs. Union of India & Anr.*** reported in ***AIR 1990 SC 166***
- ii) ***Dr. Rajinder Singh vs. State of Punjab & Ors.*** reported in ***(2001) 5 SCC 482***
- iii) ***Ashok Ram Parhad & Ors. vs. State of Maharashtra & Ors.*** ***2023 SCC OnLine SC 265***



6. Mr. N.D. Chullai, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA in reply has submitted that the petitioner is estopped from challenging the reversion order, inasmuch as, she voluntarily having opted for promotion to Typist Grade-II by way of the Speed Test, though having failed the Test has been placed in the Grade System, and the promotion granted to LDA which was not open to Typists who had opted for the Grade System was erroneous, and as such she was reverted to her substantial post with immediate effect. It is also submitted that the petitioner can once more opt for the Grade System by taking part in the Speed Test as and when the same is conducted by the MPSC.

7. The learned AAG in support of the Office memorandum dated 16.03.2006, submitted that the placement of Typist into 3 Grades i.e. Grade-I, II & III, had been made to allow the option to typists to appear for the Speed Test in furtherance of their career and therefore the Memorandum had provided that, a typist who opts for the Grade System shall continue as such and not be eligible for promotion to the post of LDA irrespective of their seniority in the cadre. The Departmental Promotion Committee held on 30.11.2020, he submits had failed to take



into account that the petitioner had exercised the option for the Grade System, thus making her ineligible for promotion to LDA, and as such, on the same being noticed, a review DPC held on 23.06.2021, decided to revert back the services of the petitioner to that of a Typist. It is further submitted that the reversion of the petitioner is not in any way punitive or penal in nature, and that the temporary promotion of an employee done in contradiction of Rules or provisions in force will not confer any vested right upon the said employee. He lastly submits that executive instructions, such as the Office Memorandum had been made to supplement the Rules as the Rules are silent on this particular point. The learned AAG has placed the decision in the case of ***Union of India vs. Ashok Kumar Aggarwal*** reported in ***(2013) 16 SCC 147***, in support of this point, and reiterates his submission that the writ petition being barred by principles of waiver, estoppel and acquiescence is liable to be dismissed.

8. Having heard the learned counsel for the parties, two issues have arisen for consideration i.e. whether the reversion of the petitioner was justified in the circumstances and whether the Office Memorandum supplements the Rules rather than supplant it. Before embarking upon the



determination of the issues noted above, it would be expedient to first examine the *Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010* as amended as applicable to the case which are quoted hereinbelow: -

Rule-9 (unamended)

“9. Lower Division Assistant: Appointment to the post of L.D. Assistants shall be made:

(1) By direct recruitment on the result of the competitive examination conducted by the Commission.

(2) By selection on the basis of merit from amongst Typists of the respective Directorate who have rendered not less than 4 years of continuous service on the first day of the year in which the selection is made.

(3) By selection on the basis of merit from amongst the Grade IV staff of the respective office who have passed the H.S.L.C. examination or any examination declared equivalent thereto and have rendered not less than 7 years of continuous service on the first day of the year in which selection is made.

(4) The quota to be filled up in the cadre of Lower Division Assistant in any year accordingly to sub-rules (1), (2) and (3) above shall be in the ratio of 8:1:1 respectively. This means that 80 percent of recruitment of Lower Division Assistants shall be by direct recruitment, 10 percent by selection from amongst the Typists and 10 percent by selection from amongst the Grade IV staff. In the event of sufficient qualified or suitable persons not being available in either of categories (2) or (3), the balance shall be made up from category (1), i.e., through direct recruitment. The quota shall be determined on the basis of strength of staff both permanent and temporary in the Lower Division Assistant's cadre.”

Rule 11 as amended on 05.12.2012



“Rule 11. (1) Typist (Grade III) – Appointment to the post of Typist (Grade III) shall be made by direct recruitment on the result of the competitive examination conducted by the Commission.

“(2) Typist (Grade II) – Typist with minimum 3 (three) years of qualifying service in Grade III shall be eligible for appearing the Speed Test of 45 words per minute to be conducted by the Meghalaya Public Service Commission and their placement in the Grade shall be subject to passing the Speed Test.

“(3) Typist (Grade I) - Typist with minimum 3 (three) years of qualifying service in Grade II shall be eligible for appearing the Speed Test of 60 words per minute to be conducted by the Meghalaya Public Service Commission and their placement in the Grade shall be subject to passing the Speed Test

9. The Office Memorandum dated 16.03.2006, for the sake of convenience is reproduced hereinbelow: -

**“GOVERNMENT OF MEGHALAYA
SECRETARIAT ADMINISTRATION DEPARTMENT ESTABLISHMENT
BRANCH**

No. SAE. 178/86/211

Dated Shillong, the 16th March, 2006.

OFFICE MEMORANDUM

Subject:- Promotion Scheme for Typist.

The undersigned is directed to say that in pursuance of the Government decision on the Recommendation of the 3rd Meghalaya Pay Commission, announce in Resolution No. F(PR150/98/7, dated 21.12.1998, the Governor of Meghalaya is pleased to decide placement of Typist into 3(three) grades as indicated below:

1. (a) Typist Grade-I :-Rs.4250-110-4910-EB-120-5870-130-7170/- P. M.
- (b) Typist Grade - II :-Rs.3725-90-4265-EB-100-5065-110-6165/- P. M.
- (c) Typist Grade - III :- Rs. 3100-70-3520-EB-80-4160-90-5060/- P. M.
2. The placement of the Typists in the three grades on their options shall be



subject to the following conditions :-

- (a) Grade - I :- Typists with a minimum of 3 (three) years of qualifying service in Grade - II shall be eligible for appearing the Speed Test of 60 words per minute, to be conducted by Meghalaya Public Service Commission and their placement in the grade shall be subject to passing the Speed Test.*
 - (b) Grade - II :- Typists with a minimum of 3 years qualifying service in Grade - III shall be eligible for appearing the Speed Test of 45 words per minute to be conducted by Meghalaya Public Service Commission and their placement in the Grade shall be subject to passing the Speed Test.*
 - (c) The existing Ordinary Grade Typist shall henceforth be categorized as Grade - III Typists.*
- 3. Existing ordinary Grade Typists who have already passed the Speed Test of 45 w. p. m. shall be eligible to be placed directly in Grade - II and those who have already passed the Speed Test of 60 w. p. m. shall be eligible to be placed directly in Grade - I provided that they have rendered a minimum of 3 years of qualifying and satisfactory service in the Ordinary Grade.*
- 4. With the introduction of the three tier system in the Typist Grade the advance increment(s) hitherto admissible shall cease to operate.
The existing system of having Selection Grade Typists shall henceforth stand abolished. However, the existing Selection Grade Typists shall remain categorized as such and shall be allowed to draw the corresponding Revised Scale of pay as personal to them until they vacate the post or cease to draw pay in the scale.*
- 5. (a) A Typist who opts for the Grade System shall continued as such and he/she shall not be eligible for promotion to the post of L. D. Assistant irrespective of his/her Seniority in the Cadre/Service.*
- (b) The appointment to L. D. Cadre shall be open only to the Cadre of Grade - III Typists until he/she is eligible for such promotion as per the Provision of the Service Rules and on promotion to the post of L. D. Assistant shall continue as such and shall not be eligible to the Grade Scales in future.*
- (c) The Option once exercised in final.”*

10. From the above quoted Rules, it is seen that Rule 9(4) provides for 10% of LDA's to be selected from amongst Typists and by application of this provision, the writ petitioner was granted promotion to



the post of LDA on 10.12.2020 on the recommendation by the DPC, but however was reverted due to the stipulation contained in the Office Memorandum dated 16.03.2006, which at 5(a) above provides that a Typist who opts the Grade System shall continue as such and not be eligible for promotion to the post of LDA, and further 5(c) providing that an option once exercised is final. As noted earlier the petitioner had undergone a Speed Test for promotion to Typist Grade-II as provided by Rule 11(2) quoted above, but did not qualify and as such remained as Typist Grade-III. A plain reading of Rule 11(2) clearly states that placement in the Grade System as per Rule 11 was subject to passing the Speed Test, and as such therefore the petitioner having not passed the Speed Test cannot be said to have been placed in the Grade System. This is further fortified by the Speed Test Notice dated 11.08.2015, wherein it had been indicated that the same was to be conducted by the MPSC as per Rule 11(2) of the Rules as amended in 2012.

11. Coming to the Memorandum in question as mentioned above, though Clause 2(b) is in line with Section 11(2) of the Rules, Clause 5(a), however speaks of an option and stipulates that a Typist who opts for the Grade System shall continue as such and not be eligible for promotion to



the post of LDA and by 5(c) makes the option exercised final. By juxtaposing the *Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010* as amended and the *Office Memorandum dated 16.03.2006*, in their application to the facts of the instant case, a clear conflict has arisen, inasmuch as, Rule 11(2) stipulates that placement in the Grade System shall be subject to passing the Speed Test whereas, the Office Memorandum at Clauses 5(a) and 5(c) thereof, mandates that once an option is exercised the same is final. To the mind of the Court, the Rules nowhere have contemplated the aspect of an option being exercised to take a Speed Test and being unsuccessful thereon, a Typist would be considered to be in the Grade System, but the Rules have only provided that placement in the Grade shall be subject to passing the Speed Test. The conditions in the Office Memorandum, though stated to be supplemental in nature on matters that are silent in the Rules, in fact militates against the same, as instead of supplementing the Rules has supplanted them. It is also important to note that the conditions in the Office Memorandum as given in Clauses 5(a) & (c) except for Clause 2(b) though made in 2006, were never incorporated in the Rules in 2010, or in the amendment thereto, made in 2012.



12. As the *Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010* as amended, are statutory Rules made under Article 309, though executive instructions such as the impugned Office Memorandum can contain provisions not covered by the Rules, they however, cannot override, supplant or substitute statutory Rules. The judgments placed by the counsel for the petitioner lays down this settled position of law and need no further elaboration or discussion. The judgment placed by the learned AAG i.e. *Union of India vs. Ashok Kumar Aggarwal (supra)* in fact, supports the case of the petitioner, as it has been held that the Government can fill up gaps and supplement the Rules, but the same should not be inconsistent with the Rules already framed, and that the law laid down that has consistently been followed, is that an authority cannot issue orders or executive instructions in contravention of the statutory Rules.

13. Clause 5(a) & 5(c) of the Office Memorandum as seen from the discussions above being offensive to the statutory Rules as framed therefore, are unsustainable in law, and as such are accordingly struck down.



14. Consequently, the other orders also impugned in the writ petition namely; DPC dated 23.06.2021 as far as it relates to the petitioner at Agenda No. 3 thereof, reversion order dated 02.07.2021 and Office Order dated 14.06.2022, are also hereby set aside and quashed. It is further directed that the petitioner be restored to the promotional post of LDA forthwith and her service in the said post of LDA be counted from the date of joining i.e. 10.12.2020, and further be allowed all consequential benefits as admissible.

15. In view of the findings hereinabove, and the reliefs allowed to the petitioner, no other issue such as the respondents not affording the petitioner any opportunity of hearing before being reverted is necessary to be gone into, and the writ petition as ordered above is allowed and disposed of.

16. No order as to costs.

JUDGE

Meghalaya



31.07.2024
"V. Lyndem PS"