

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.A.No.47 of 2023

Reserved on: 29.02.2024
Pronounced on: 26.04.2024

Shri. Iajiedlang Rynjah

... Appellant

-vs-

1. The Union of India, represented by the
Secretary, Ministry of Health and Family Welfare,
Government of India.
 2. The North Eastern Indira Gandhi Regional
Institute of Health and Medical Science, represented by
the Director, P.O-Mawdiangdiang, Shillong-793018,
Meghalaya.
 3. The Assistant Administrative Officer,
General Administration, NEIGRIHMS,
P.O-Mawdiangdiang, Shillong-793018,
Meghalaya.
 4. The Assistant Administrative Officer,
Establishment-I/GAD, NEIGRIHMS,
P.O-Mawdiangdiang, Shillong-793018,
Meghalaya.
 5. The Assistant Administrative Officer,
Establishment-I & III, NEIGRIHMS,
P.O-Mawdiangdiang, Shillong-793018,
Meghalaya.
 6. The Anatomy Department, NEIGRIHMS,
Represented by the Head of Department,
P.O-Mawdiangdiang, Shillong-793018,
Meghalaya.
 7. The Chairman,
Ranger Security & Service Organisation,
Mawlai, Shillong.
- ... Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W.Diengdoh, Judge

For the Appellant : Mr.N.Syngkon, Adv.
Ms.L.Phanjom, Adv.

For the Respondents : Dr.N.Mozika, DSG with
Ms.A.Pradhan, Adv.
Mr.S.Pandy, Adv.

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

J U D G M E N T

(Made by the Hon'ble Chief Justice)

This Writ Appeal has been filed, seeking a) to set aside the order dated 15.09.2023 passed by the learned Single Judge in W.P(C) No.424 of 2019, b) to set aside the office order dated 03.09.2019 and letter dated 23.09.2019, c) to direct the respondents to allow the petitioner to continue with his service in the post of Technical Assistant in the Department of Anatomy at NEIGRIHMS and d) to direct the respondents to regularize / absorb the service of the appellant.

Brief Facts as put forth by the Appellant:

2. The Appellant was employed in the Department of Anatomy, NEIGRIHMS as Technical Assistant in the year 2013 and was selected by means of selection process pursuant to the notification dated

01.10.2012. In the year 2019, an announcement was made that the employees, who were earlier appointed on contract basis would be engaged through outsourcing under the terms and contract in existence;

2.1. Being aggrieved by such communication dated 02.07.2019, terming it to be violative of Articles 14, 16 and 21 of the Constitution of India, the appellant had filed a Writ Petition in W.P(C) No.253 of 2019, challenging the letter dated 02.07.2019 with a prayer of equal pay for equal work and also sought for regularization of the services of the appellant;

2.2. The Writ Petition was disposed of on 15.07.2019, permitting the appellant to file a comprehensive representation to the respondents within 15 days and the concerned authority was directed to pass a speaking order within six weeks after affording an opportunity of being heard to the petitioner and R7. In obedience to the order dated 15.07.2019, the appellant also made a representation on 30.07.2019 and the appellant received an Office Order dated 03.09.2019, releasing him from service with effect from 30.06.2019. However, in the subsequent letter dated 23.09.2019, it was stated that he would be allowed to continue his service till 30.09.2019;

2.3. Against the Office Order dated 03.09.2019 and the Letter dated 23.09.2019, the appellant filed W.P(C) No.424 of 2019 with an interim prayer that the respondents shall not disturb the service of the appellant or replace him and also sought for regularization and absorption in the service with equal pay for equal work;

2.4. Learned Single Judge, vide order dated 15.09.2023 disposed of the case with the following observation:

“2. During the course of hearing of the matter, the learned counsel for the petitioner somehow curtailed this challenge with regard to the aforesaid impugned letter but raised grievance against the order No. NEIGR-GAD/1/2017/42, dated Shillong the 02.07.2019, by which appointment on contract basis in the institute was ordered to be made through outsourcing. Learned counsel submits that the said order is not in accordance with law and the respondent authority cannot do the contractual appointment by outsourcing their authority.

3. Dr.N.Mozika, learned Sr. counsel appearing for the respondent submits that the post held by the petitioner stood abolished in terms of office memorandum dated 12.06.2017, issued by the Ministry of Finance Department Expenditure, Govt. of India, in which at Clause 5.1, it was provided that all posts, except newly created posts, kept in abeyance or remaining vacant for a period of more than two years in the ministry/ department/ attached office/ subordinate office/ statutory body will be considered as “deemed abolished”. He further submits that the post abolished cannot be filled up without obtaining prior revival of post from the Department of Expenditures. The learned Sr. counsel also produces a communication made bearing No. NEIGR-GAD (RC)/08/2022/Pt. dated Shillong the 26.06.2023, whereby, a proposal for revival of deemed abolished Group-C posts in NEIGRIHMS was made by the Deputy Director Administration, NEIGRIHMS, Shillong. The said proposal

also includes the post which was held by the petitioner. It is submitted by the learned Sr. counsel that in the event the proposal for revival is accepted and the post in question is required to be filled up, the same will be done by a regular advertisement and selection process.

4. Mr.Syngkon, learned counsel for the petitioner in his usual frankness submits that in the event the post in question is filled up in future by adopting a regular process, the petitioner would not have any further grievance to be redressed in this matter. He however, he prays that in the event if any advertisement is made, the petitioner's case for age relaxation may be considered by the department.

5. In view of the submissions made, there survives nothing to be adjudicated by this Court. However, in the event of any advertisement made with regard to the post in question, the department would be at liberty to consider the claim of age relaxation by the petitioner in case he offers himself to be a candidate.

6. With the aforesaid submissions, this writ petition is accordingly disposed of.”

2.5. According to the appellant, the respondents have come forward with an incorrect statement before the learned Single Judge that there was abolition of post, whereas the post still exists and the same has been filled in through outsourcing method and contractual employee cannot be removed from service by way of appointing some other contractual employee, as a contractual employee can be replaced only by way of regular employee. Thus, it was pleaded that the act of the respondents in relieving him service vide Office Order dated 03.09.2019 is illegal, unconstitutional and sought for interference by this Court.

3. The case of the respondents was that recruitment had taken place to fill up the post on contract basis only, as could be seen from the advertisement dated 26.02.2019. There was a deed of agreement, which enabled the appellant to continue in service for a period of six months and that by giving one month notice either by the employee concerned or Institution, services could be disengaged. The further case of the respondents was that the post held by the appellant stood abolished by the Ministry of Finance Department Expenditure, Govt. of India, stating that all posts, except newly created posts, are kept in abeyance or remaining vacant for a period of more than two years in the ministry/ department/ attached office/ subordinate office/ statutory body will be considered as deemed abolition.

3.1. It was stated by the respondents that NEIGRIHMS has made a representation and sent a proposal for revival of deemed abolished Group-C posts by the Deputy Director Administration, NEIGRIHMS, Shillong. Before the learned Single Judge, a plea was taken by the appellant that in case the proposal for revival of the post in question is accepted and the post in question is filled up in future by adopting regular process, the petitioner's case for age relaxation may be considered by the department. Based on the said submission, the Writ Petition was disposed of with a direction that in the event of any

advertisement being made, the appellant's case for age relaxation may be considered.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The appellant applied for the post of Technical Assistant based on the advertisement dated 26.02.2019 and he was duly selected in the recruitment. It was averred by the appellant that it has been advertised that it was proposed to fill up the vacancy, which arose against the sanctioned post. However, the stand of the respondents was that even though the appellant was employed on contract basis, there was a direct payment system and as the post itself got abolished, the case of the appellant cannot be considered. It was stated by the respondents that in case the post is revived in future, the appellant would be entitled to the relief.

6. From the above submissions, it is clear that there were two posts of Technical Assistant and one post got filled up in the year 2016 and in another post, the appellant was appointed on contract basis. The Central Government has taken a decision to abolish the post, if it is lying vacant for more than two years. It is very unfortunate that in a

sanctioned post, the appellant has been asked to work on contract basis and thereafter through outsourcing and there was a contract system as admitted by the respondents. Admittedly, the post has not been revived. It is seen that the appellant has confined the relief before the learned Single Judge. This Court is of the view that in the light of the judgments of the Apex Court in the case of **Workmen of the Food Corporation of India vs. Food Corporation of India**, reported in **(1985) 2 SCC 136** and **Balbir Singh vs. Kurukshetra Central Co-operative Bank Ltd. and another**, reported in **(1990) 2 LLN 576**, employment should be provided, when the job is perennial in nature and the employees should be engaged directly. The aforesaid two judgments have been rendered in the context of industrial disputes to denote that no relief could be obtained, if the post itself ceases to exist. By extracting work in a sanctioned post and after direct recruitment, the appellant was employed through Contractor and thereafter, through outsourcing. In the case on hand, the respondents claim that the post of Technical Assistant ceases to exist.

7. We are of the view that the action of the respondents cannot be held to be fair, proper and bonafide. However, as the appellant has confined his prayer before the learned Single Judge, no relief can be granted in this appeal. It is open to the appellant to file a Review

Application before the learned Single Judge, if so advised. Whether the consent is made or not, it is for the learned Single Judge to decide if a Review is filed. Certainly, the Division bench cannot decide the issue as we are not aware whether there was an actual consent given or not. If any such Review Application is filed, it is for the learned Single Judge to decide, whether there is actual cessation or not and other related issues, including the maintainability of the Review Application.

8. In the result, W.A.No.47 of 2023 is dismissed.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
26.04.2024
"*Lam* DR-PS"

PRE-DELIVERY ORDER IN
W.A.No.47 of 2023