

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(WA) No. 1 of 2023 in
WA No.3 of 2023

Date of order: 13.02.2023

E.B. Khyriem vs The State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Applicant/Appellant : Mr N. Syngkon, Adv.

For the Respondents : Mr B. Bhattacharjee, AAG with
Ms R. Colney, GA
Dr N. Mozika, Sr Adv. with
Ms A. Pradhan, Adv.

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

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

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

Considering the good grounds shown, the delay of about 198 days in preferring the appeal is condoned and the appeal is taken on board.

2. The appeal is taken up for immediate consideration.

3. The appeal arises out of an order dated May 25, 2022 by which a writ petition instituted by the respondent Nos. 3 and 4 was allowed and a seniority list published by the Public Health Engineering Department of

the State, insofar as it was at variance with the inter se seniority between the writ petitioners and the private respondents to the writ petition as published in the year 2017, was set aside.

4. The facts are admitted. The writ petitioners in this case were recruited in the year 2003 but, as per the terms of their initial employment, they were subject to discharge without notice. The writ court held that the writ petitioners were appointed on purely temporary basis and under authority of Regulation 3(f) of the Meghalaya Public Service Commission (Limitation of Functions) Regulation, 1972. The writ court appropriately concluded that the relevant Regulation could be resorted to for immediate appointments to be made in public interest as any reference to the public service commission would cause delay.

5. It is also the undisputed position that it was on June 8, 2006 that the writ petitioners were recommended for absorption and became regular appointees as Assistant Engineers (Electrical) in the PHE Department. The veracity of the writ petitioners' regularisation was not questioned and, in any event, such regularisation was found to be in accordance with a memorandum of April 30, 1974.

6. The private respondents to the writ petition, including the appellant herein, were promoted on the recommendation of a departmental promotion committee by virtue of a notification dated October 13, 2006. Such promotion was, however, temporary under Regulation 4(d) of the said Regulation of 1972. It was only by a subsequent notification of October 29, 2007 that the services of the private respondents to the writ petition were regularised with effect from October 13, 2006.

7. Thus, what is the undisputed position is that the services of the writ petitioners stood regularised on June 8, 2006 whereas the promotion of the private respondents to the writ petition as Assistant Engineers in the PHE Department came to be with effect from October 13, 2006.

8. It appears that the first seniority list that was published reflecting the names of both the writ petitioners and the private respondents to the writ petition was in the year 2009. In the relevant notification, the writ petitioners were indicated to be senior to the private respondents to the writ petition. The same seniority position was maintained in further publications made in the years 2010, 2013, 2014, 2016 and 2017. It appears that subsequent to the publication of the seniority list in 2017, the

private respondents to the writ petition made a representation to the employer, following which the applet was upset and the notification indicating the seniority position published on May 23, 2018 showed the writ petitioners to be below the private respondents to the writ petition in the seniority list.

9. Only one of the private respondents to the writ petition has carried this appeal since one of the others has died and the third has attained superannuation.

10. Several issues were framed by the writ court, inter alia, as to the merits of the rival claims of the writ petitioners and the private respondents to the writ petition on basis of the rules that governed them. However, ultimately, some of such issues were not answered as they were not necessary to be gone into. The matter turned on a sound legal principle that a settled position that had been accepted for several years could not be unsettled by a subsequent objection or representation. The ancillary ground that weighed with the writ court was that the modification to the seniority list and the departure from what was indicated in at least six previous lists was without affording the writ petitioners any opportunity of being heard. The third factor that may have

been taken into account by the writ court was the fact that the writ petitioners' services were regularised in June, 2006 whereas the private respondents to the writ petition stood promoted to the same post as the writ petitioners – Assistant Engineers – only in October, 2006 upon being given retrospective effect pursuant to a notification issued in 2007.

11. With respect, the second and third aspects taken into consideration by the writ court need not have been adverted to at all. Once it is evident that a particular position has been accepted by a person not for a few months or a few years but for seven long years with repeated publications being made in the interregnum, such person has no further right to object to the position consistently indicated for such a long period of time. In other words, even if the private respondents to the writ petition could demonstrate that they had been wronged in the seniority list having been erroneously published in the year 2009 and the error being repeated down the years till 2017, the private respondents could not have obtained a modification to the settled seniority list. Indeed, the applicable rules of the employer permitted a representation or an objection to be raised against a published seniority list within 30 days of its notification. Upon a person having a grievance but choosing not to assert the same within

the stipulated time, the person is deemed to have acquiesced in the position shown in the notification and in consciously not availing of the right to object there to, waived the same. Such waiver was not limited to the list published in 2009 but continued over the years in 2010, 2013, 2014, 2016 and 2017. Whatever may have been the grievance and however justified the appellant or others of his ilk may have been, upon the appellant and the similarly situated persons having consciously waived their right to object to the seniority list published at least six times before till 2017, a belated objection made in the year 2017 could not have been entertained.

12. At any rate, there is some solace in the fact that the writ petitioners' entry into the Assistant Engineer cadre was in June, 2006 which was a few months before the deemed entry of the private respondents to the writ petition into the same cadre in October, 2006.

13. Two special grounds have been urged by the appellant herein. The appellant claims that at the time that the original seniority list was published in the year 2009 and for a few years thereafter, the Superintending Engineer, the person who was to take a decision in the matter, was a close relative of the writ petitioners and, as such, inimical

to the private respondents to the writ petition and the private respondents to the writ petition perceived such person to be unlikely to accept any objection raised by the private respondents to the writ petition. A more specious ground could not have been urged as an excuse for the abject failure, despite due opportunity, on the part of the appellant and the similarly placed persons in failing to object to the seniority list repeatedly published in the same form over a period of eight years.

14. The second ground taken by the appellant is that the proviso to Rule 20(4) of the Meghalaya PHE Service Rules, 1996 is in favour of the appellant and such aspect of the matter was not taken into consideration. In the light of the basis of the decision being the failure on the part of the appellant herein to object to the seniority list at the first available opportunity and for a period of eight years, the merits of the matter need no longer be gone into. Indeed, even if it is demonstrated to the hilt that the original seniority list published in the year 2009 was erroneous and the appellant deserved the place ahead of the writ petitioners therein, the same cannot be corrected at this stage in view of the inaction on the part of the appellant herein till the year 2017 and the waiver to object and consequent acceptance on his part of the seniority position.

15. The judgment and order impugned dated May 25, 2022 do not call for any interference.
16. MC (WA) No. 1 of 2023 is disposed of.
17. WA No. 3 of 2023 is dismissed.
18. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
13.02.2023
"Sylvana PS"

