

Serial No. 35
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 51 of 2022

Date of Decision: 04.05.2023

Smti Lukhimai Suchiang Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

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

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

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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. The grievance of the writ petitioner is that after serving for a period of 3 years in the post of Joint Director in the Meghalaya Urban Affairs Department, and in terms of the Notification No. UAU. 182/2007/49, dated 18.11.2008, the petitioner should have been considered for promotion to the post of Director, inasmuch as, the appointment to the post of Director is made by promotion from amongst

the members of the services holding the post of Joint Director, who have rendered not less than 3 years of continuous service. It has also been argued that despite the petitioner being qualified for promotion to the post of Director in the Urban Affairs Department, the respondents had appointed another person not from the cadre to the post of Director, which is alleged by the petitioner to be in violation of the Notification dated 18.11.2008.

2. Mr. Philemon Nongbri, learned counsel for the petitioner submits that the petitioner retired on February, 2022, and on the eve of retirement, the petitioner was promoted to a newly created post of Director (Urban Survey) only on 18.02.2022. It is further contended that grave prejudice has been caused to the petitioner, inasmuch as, if promotion was accorded in the usual course, on being eligible, the petitioner would have enjoyed a higher scale of pay w.e.f. May, 2020. He therefore prays that appropriate orders be passed granting the petitioner notional retrospective promotion from the date she was eligible, and for her placement in the correct pay band.

3. Mr. N.D. Chullai, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA on behalf of the respondents has firstly submitted that the petitioner cannot claim promotion as a matter of right or entitlement. Mention has also been made of the conduct of the petitioner who was found to have been in unauthorized absence for

extended periods of time, and against whom show cause notices had been issued. He further submits that the appointment of Director from outside the service was due to administrative exigency at that relevant point of time, and further that as the petitioner had been promoted before retirement and has been placed in the pay matrix of L-21, no cause of action survives any longer.

4. The learned AAG has further submitted that it is not a fact the respondents have not considered the petitioner for promotion at an earlier date, inasmuch as, a DPC was held on 18.10.2021, but the same was deferred, as at that relevant point of time the post of Director was not vacant. It is further submitted that as in the course of the hearing on an earlier date, in view of the fact that the DPC had been constituted, and directions were issued to obtain further instructions in the matter, he was ready with the said instructions today, in the form of a note sheet that showed that the deferred DPC was held on 25.10.2021.

5. Having heard the learned counsels for the parties, it is correct that promotion cannot be claimed as a matter of right, and a person cannot be said to be entitled to promotion on attaining qualifying service, if it is not a case of functional promotion. It is noted that the Meghalaya Urban Affairs Department, is yet to finalize the Service Rules, regulating the services conditions of the employees serving in that particular Department, and as referred to earlier, in the case of promotion from

Joint Director to the post of Director, the same is made under Clause 1 of the Notification No. UAU. 182/2007/49, dated 18.11.2008, which for easy reference is reproduced hereinbelow:-

“1. Director: Appointment to the post of Director shall be made by promotion from amongst members of the services holding the post of Joint Director and who have rendered not less than 3 (three) years of continuous service in the post as such, in consultation with MPSC.”

6. As per the above quoted Notification, it is an undisputed fact that the writ petitioner had become eligible for promotion from May, 2020, after having served for 3 years in the post of Joint Director, however, active consideration as seen from the affidavit of the respondents, commenced only from 18.10.2021, when the DPC sat for the first time. As noted earlier, the learned AAG has produced a note sheet containing the minutes of the deferred DPC, which was subsequently held on 25.10.2021. This note sheet attains great importance, inasmuch as, it is recorded therein, that the post of Director in the Meghalaya Urban Development Agency, was available for consideration of the petitioner's promotion to the post. As revealed by the note sheet, this proposal was submitted for consideration for promotion of the petitioner to the said post. However, what transpired after this meeting is not known, nor any materials placed before this Court, to come to a definite conclusion.

7. The creation of the supernumerary post of Director (Urban Survey) in the Department of Urban Affairs in this context therefore, appears to be afterthought to accommodate the petitioner, who was otherwise eligible in all respects.

8. Taking all these facts into consideration and in totality of the circumstances, especially from the note sheet dated 25.10.2021, this Court is of the considered view, that the petitioner being eligible and qualified for promotion to the post of Director, should at least be given the benefit pursuant to the proposal dated 25.10.2021, and not from 18.02.2022, when the promotion was finally granted.

9. In this view of the matter, the respondents are directed to accord notional retrospective promotion to the petitioner w.e.f. 01.11.2021 till the date of superannuation. This notional promotion with retrospective effect, however, will be only towards re-fixation of the pay of the petitioner at pay matrix L-21, for the said period as allowed by this order that is from 01.11.2021 to 28.02.2022.

10. With the above noted direction, this writ petition is allowed to the extent indicated above, and is accordingly disposed of.

11. It is further provided that the entire exercise should be completed within a period of 4(four) months from the date a copy of this order is presented before the respondents.

JUDGE

