

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 128 of 2021

Date of Decision: 25.08.2023

Smti Krishpilla T. Sangma Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

For the Petitioner(s) : Mr. A.G. Momin, Adv.

For the Respondent(s) : Mr. K. Khan, AAG with
Ms. Z.E. Nongkynrih, GA (For R 1-3)
Mr. S. Jindal, Adv. with
Ms. B. Jyrwa, Adv. (For R 5-7).

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

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

JUDGMENT AND ORDER

1. The instant matter in question involves the claim of the petitioner for seniority, on the basic ground that her date of appointment as Lower Division Assistant on 17.05.2007 as a direct recruit, was prior to the promotion of the respondent No. 4, from the level of Typist to

LDA on 16.07.2007. The prayer as made out in the writ petition was for quashing the Draft Gradation List dated 10.06.2014, order dated 19.05.2017, which provided for seniority according to merit as per the Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010 (hereinafter referred to as the Rules) and the Draft Gradation List dated 10.03.2021. These Rules, it is noted which regulate the recruitment and conditions of service of employees, appointed to the ministerial posts in the various office of the Head of Department of the Government of Meghalaya were made under powers conferred by the proviso to Article 309 of the Constitution.

2. It is first to be noted that the prayer in the writ petition, is focused exclusively against the respondent No. 4, and no relief has been sought against the respondents No. 5, 6 and 7, who were impleaded subsequently in the course of the proceedings. With the retirement of the respondent No. 4 on 18.10.2022, and there being no cause of action surviving against him, no further relief was sought with regard to the respondent No. 4, and the case proceeded against the State respondents, and the private respondents No. 5, 6 and 7. It is also to be noted herein that as there was no appearance made on behalf of the respondents No. 5, 6 and 7 after being served, the matter proceeded ex parte against the said respondents, which was recorded in the order dated 19.04.2022.

3. On the changed course of direction of the writ petition, the emphasis at the time of hearing, was limited only to the claim to seniority by the petitioner over the respondents No. 5, 6 and 7, on the basis of the date of appointment. It has been contended that the writ petitioner was appointed on 01.06.2007, whereas the respondents No. 5 and 6 were appointed on 04.09.2007, and the respondent No. 7 on 27.09.2007, under Rule 9(1) of the Rules, and as such the writ petitioner should have been placed above the respondents No. 5, 6 and 7 in the impugned Gradation List, if seniority is reckoned from the date of appointment.

4. In the course of hearing though submissions have also been advanced by the counsel for the writ petitioner with regard to the seniority position *vis-a-vis* the respondent No. 4, the same will not be dealt with, as it is no longer relevant, due to the retirement of the said respondent. As such, this Court will only examine the claim of seniority by the writ petitioner *vis-à-vis* the respondents No. 5, 6 and 7, by the application of the Rules. At this juncture before proceeding, it very pertinent to note the fact that the petitioner and the respondents No. 5, 6 and 7, are all Lower Division Assistants, appointed under the Rules, through the same recruitment process, which was conducted by the Meghalaya Public Service Commission by way of competitive

examination as this will form the basis for determining the claim of the petitioner.

5. The petitioner on her claim for seniority had earlier preferred several representations before the State respondents, seeking her placement over the respondent No. 4 by the application of Rule 29(4)(d) of the Rules, but the same was not acceded to by the respondents, as respondent No. 4 was a promotee, who would be considered senior over the petitioner and the respondents No. 5, 6 and 7, who are direct recruits. The State respondents on further repeated representations of the writ petitioner, had by letter dated 05.11.2020, replied that the fixation of seniority was finally determined in accordance with the merit list from the Public Service Commission, as provided under Rule 29(i)(b) and 29(4)(d), read with Office Memorandum dated 25.11.2009, issued by the Personnel and AR(B) Department, which placed the respondent No. 4, a promotee, and the respondents No. 5, 6 and 7, who were more meritorious, ahead of the writ petitioner in the Gradation List (Annexure – XIV to the writ petition). After the retirement of respondent No. 4, the respondent No. 2, then published a Draft Gradation List dated 09.02.2023, placing the petitioner at Serial No. 20, and the respondents No. 5, 6 and 7 at Serial No. 17, 18 and 19 respectively. The petitioner had also tendered a representation against the same, and in the reply

thereto, the state respondents had justified that the same was in terms of Rule 29(1)(d) of the Rules.

6. Mr. A.G. Momin, learned counsel for the petitioners', main argument, apart from the other contentions raised, is that as the respondents No. 5, 6 and 7, who were appointed after the petitioner, cannot be made senior, inasmuch as, they were not even borne in the cadre, while the petitioner was already in service since 16.07.2007. It is submitted by the learned counsel, that there cannot be any grant of retrospective seniority to persons who are not yet borne in the service. Reliance has been placed in the judgment of ***Pawan Pratap Singh & Ors. vs. Reevan Singh & Ors. (2011) 3 SCC 267***, to show that the date of entry into a service is the safest rule to follow, while determining the inter-se seniority between one officer or the other or between one group of officers and others, recruited from different sources. The learned counsel has also cited the case of ***Ganga Vishan Gujrati & Ors. vs. State of Rajasthan & Ors. (2019) 16 SCC 28***, which he submits the Supreme Court held that, retrospective seniority cannot be granted to an employee from a date when the employee was not borne in a cadre, and that seniority amongst members of the same grade, has to be counted from the date of initial entry into the said grade.

7. The learned counsel has also placed heavy reliance on the Division Bench judgment of this High Court rendered in ***WP(C) No. 394 of 2021 (Zanera R. Marak & Ors. vs. State of Meghalaya & Ors.)***, to press home his point that ordinarily the person in public employment appointed earlier becomes senior to a person appointed later.

8. In brief, the arguments that have been advanced by the learned AAG, Mr. K. Khan, for the State respondents is confined to the fact that, the service of the Lower Division Assistant being governed by the Rules, by application of the same, the instant case is covered by 9(1) of the Rules, as the petitioner and the respondents No. 5, 6 and 7 were appointed by way of direct recruitment from the same competitive examination and as such, the inter-se seniority was determined as per the merit list and by the application of Rule 29(1)(b) of the Rules. Rule 29(4)(d) has also been referred to by the learned AAG, and it has been submitted that the same, contrary to the submissions of the petitioner will have no application, inasmuch as, the petitioner and the respondents No. 5, 6 and 7 are direct recruits from the same competitive examination conducted by the Meghalaya Public Service Commission.

9. As noted earlier, though the matter had proceeded ex-parte against the respondents No. 5, 6 and 7, however, the learned counsel for the said respondents, Mr. S. Jindal, was permitted to address the Court

on the points of law at the time of final hearing, on his prayer, and taking into consideration the ruling cited by him, in the case of *Sangram Singh vs. Election Tribunal, AIR 1955 SC 425*.

10. As the entire case rests upon the Rules and their application, it would be expedient therefore to discuss and interpret the same in the context of the claim made by the petitioner. Rule 9(1) of the Rules provides for appointment of Lower Division Assistants by way of a direct recruitment. The inter-se seniority amongst the Lower Division Assistant is governed by Rule 29, and in the instant case, more specifically by 29(1)(b), which provides that the inter-se seniority of the Lower Division Assistant mentioned in clause 3(1)(b) of the Rules, shall be in the order in which the names appear in the result of the competitive examination conducted by the Commission. The relevant provisions for easy reference are reproduced hereinbelow: -

Rule 3, Rule 9(1) Rule 29 (1)(b)(c) and 29 4(d)

“3. Constitution:

(1) The Service shall consist of the following persons, namely-

(a) Members of the Assam Directorate Establishment (Ministerial) Service allocated to the State of Meghalaya in accordance with the provision of Section 64(1) of the North Eastern Areas (Re-organisation) Act, 1971

(b) Persons recruited as Lower Division Assistants and Typist in the offices of the Heads of Departments,

mentioned in Column (1) of Schedule I, on the result of the competitive examination conducted by the Commission.

- (c) *Retrenched personnel of Relief and rehabilitation Department who were absorbed in different Departments under the Government of Meghalaya.*
- (d) *Persons serving in connection with the affairs of the State Governments or Central Government and who are brought on deputation on or before the 31st December 1975 and absorbed permanently in different Departments under the Government of Meghalaya before commencement of these rules.*
- (e) *Persons recruited as L.D.As and Typist through the Meghalaya Public Service Commission in the offices of the Heads of Departments, mentioned in Column (1) of Schedule I, after 31.12.75 but before the commencement of these rules.*
- (f) *Persons recruited in the offices of the Heads of Departments, mentioned in Column (1) of Schedule I in accordance with the provisions of these rules.*

(2) *The status of the members holding the posts of Registrar shall be ministerial officers of Group 'B' gazetted rank and members holding the post of Superintendent, Upper Division Assistant, Lower Division Assistant and Typist shall be Group 'C' non-gazetted ministerial staff.*

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.

29. Seniority:-

(1) (b) The inter-se seniority of the Lower Division Assistants mentioned in clause (b) of sub-rule (1) of Rule 3 shall be in the order in which their names appear in the

result of the competitive examination conducted by the Commission. Such Lower Division Assistants shall be junior to the Lower Division Assistants falling under clause (a) of sub-rule (1) of Rule 3.

(c) The inter-se seniority of the Lower Division Assistants mentioned in clause (c) of sub-rule (1) of Rule 3 shall be in order in which their names are arranged by the Government for the purpose of appointment. The inter-se seniority of the Assistants appointed under clauses (b) and (c) of sub-rule (1) of Rule 3 shall be according to the dates of appointment. The inter-se seniority among the Assistants appointed under clauses (b) and (c) of sub-rule (1) of Rule 3 on the same date shall be in the following order –

- i) Assistants appointed under clause (b) of sub-rule (1) of Rule 3.*
- ii) Assistants appointed under clause (c) of sub-rule (1) of Rule 3.*

(4) The inter-se seniority of the members of the service appointed to the different cadres of the service in accordance with the provisions of these rules shall be as follows –

(d) The inter-se seniority of the Lower Division Assistant appointed under sub-rule (1), (2) and (3) of Rule 9 shall be in the order in which their names appear in their List respectively. The inter-se seniority in between Lower Division Assistants required under any of the aforesaid Sub-rules shall be according to the dates of appointment. The inter-se seniority amongst the Lower Division Assistant appointed under the aforesaid sub-rule on the same date shall be in the following order:-

- i) Assistant appointed under sub-rule (1) of Rule 9*
- ii) Assistant appointed under sub-rule (2) of Rule 9*
- iii) Assistant appointed under sub-rule (3) of Rule 9.”*

[Emphasis supplied]

11. Rule 3 specifies the three categories of persons, who shall constitute the service, the petitioner and the respondents No. 5, 6 and 7 are therefore covered under Rule 3(1)(b), being LDAs recruited on the result of a competitive exam conducted by the Commission, as per Rule 9(1). The inter-se seniority of LDAs recruited under Rule 3(1)(b), is therefore governed by Rule 29(1)(b) which stipulates that the inter-se seniority shall be in the order, in which names appear in the result of the competitive exam conducted by the Commission. It is noted that, 'dates of appointment' have been mentioned in Rule 29(1)(c) and Rule 29(4)(d), and it has been contended by the learned counsel for the petitioner, that this is a relevant factor for consideration. However, a perusal of these two Rules as quoted above, show that these two Rules have to be read in conjunction and in harmony with Rule 29(1)(b), which states that inter-se seniority of persons appointed under Rule 3(1)(b) like the present parties will be determined in the order, in which the names appear in the merit list in the result of the competitive examination. The purport of Rule 29(4)(d) and Rule 29(1)(c) therefore, will be applicable only in a situation where inter-se seniority is to be determined between 'different categories' of members of the service, appointed to different cadres, under Rule 3(1)(a), (b) and (c), wherein the date of appointment will then be the benchmark. The inter-se

seniority of persons appointed under Rule 3(1)(b), however, being in the same cadre therefore, are governed by Rule 29(1)(b), and the names as they appear in the merit list in the results of the competitive exam, will determine the inter-se seniority.

12. Though, it has been reiterated and held in various judgments, that the date of entry into a service is the safest rule to follow, while determining the inter-se seniority between one employee or the other, however, in the circumstances such as in the present case, where there is the presence of rules framed under Article 309 of the Constitution, which creates a distinction as provided in Rule 29(1)(b), the contention that the respondents No. 5, 6 and 7 were not borne in the service, cannot be accepted due to the presence of a specific rule. Moreover, the interpretation of the petitioner to bring in a date of formal appointment into Rule 29(1)(b), cannot be accepted, as this factor is clearly not present in this rule. The judgments placed by the learned counsel for the petitioner, are therefore of no assistance in the facts of the present case.

13. It is also important to note herein, that as discussed earlier, the writ petitioner had no grievance against the respondents No. 5, 6 and 7, and was focused only on the respondent No. 4. The fact that, the petitioner harboured no grievance against the respondents No. 5, 6 and 7, is amply demonstrated by a letter dated 09.11.2020 (Annexure – XV

to the writ petition), wherein the petitioner had in no uncertain terms, accepted that the respondents No. 5, 6 and 7 were senior to her, as they were covered by Rule 29(1)(b), which as conceded, were above her in the merit list. Though, in view of this clear admission, the writ petition as it stood on the retirement of the respondent No. 4, had been rendered infructuous, this Court however, in the interest of justice, allowed the writ petitioner to expand the scope of arguments and the subsequent challenge to the seniority position of the respondents No. 5, 6 and 7 was given some consideration. However, inspite of this concession by this Court, on the facts and circumstances, and materials as placed, no relief as claimed by the writ petitioner can be granted.

14. For the foregoing reasons, there being no case made out for any interference, the instant writ petition stands dismissed.

15. There shall be no order as to costs.

Judge

Meghalaya
25.08.2023
"D.Thabab-PS"