

**Serial No. 01**  
**Supplementary List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WA No. 23 of 2023

Date of Order: 08.12.2023

Union of India & Ors                      Vs.                      Shri Gordon Kynsai Nongkynrih

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Hon'ble Mr. Justice B. Bhattacharjee, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Dr. N. Mozika, DSGI with

Ms. A. Pradhan, Adv.

For the Respondent(s) : Mr. S. Sen, Adv.

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

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

**JUDGMENT & ORDER**

**Per B. Bhattacharjee, J.**

This writ appeal seeks to challenge the judgment and order dated 01.12.2022 passed in WP(C) No. 96 of 2022 whereby the writ petition

filed by the respondent herein was disposed of with a direction to the appellant to consider the case of the writ petitioner for treating his appointment in a substantive/ permanent capacity.

1. The fact of the case giving rise to this appeal is that an advertisement dated 25.02.2010 was issued by the National Institute of Electronic and Information Technology (NIELIT) formerly known as Department of Electronics and Accreditation of Computer Course (DOEACC), inviting application for filling up various sanctioned posts on regular basis which included 3(three) posts of Scientists/ Engineer 'C'. The essential qualification for the post of Scientists/ Engineer 'C' was prescribed as BE/B.Tech, MSc in relevant fields or recognized equivalent qualification with not less than 65% marks. The writ petitioner having requisite qualification of MSc Computer Science, applied for the said post through proper channel as he was then working in National Informatic Centre (NIC), Mizoram as a Scientific Officer in a substantive capacity. The candidature of the writ petitioner was found to be valid and complete in all respect and he was called for interview. On the conclusion of the selection process, the writ petitioner was recommended by the Selection Committee for appointment and his name appeared at Serial No. 1, whereafter, an offer was made to the writ petitioner for appointment to the post of Scientist 'C' on short term basis for a period of 5(five) years. On 19-10-2010, an appointment order was issued and the writ petitioner joined the post at Aizawl centre and since then he has been provided with all the regular benefits of pay scale including increment, revised pay scale, contribution to provident fund, etc. Thereafter, the writ

petitioner was transferred to Itanagar along with the post on 02-05-2011 with two others who were appointed as Scientist 'B'. The writ petitioner continued working in Itanagar till the month of November 2019 when he was transferred to Shillong where he is serving till date. The grievance of the writ petitioner is that inspite of his continuance in service on a regular pay scale, his service was not regularized in terms of the advertisement dated 25-02-2010. The other two candidates who applied for the post of Scientist 'B' in response to the same advertisement were appointed on regular basis. Feeling discriminated, the writ petitioner filed representations seeking appointment against sanctioned posts from the date of joining, but the respondents did not take any action. Aggrieved thereby, the writ petitioner approached this Court by filing writ petition under Article 226 of the Constitution of India. The writ Court vide impugned judgment and order dated 01-12-2022 disposed of the writ petition in the following terms: -

*“ 13. In view of the facts and circumstances of the case, the respondents are therefore directed to consider the case of the petitioner for treating his appointment to the post of Scientist 'C', NIELIT in a substantive/permanent capacity with effect from 08.10.2010, the date, the petitioner joined, pursuant to the offer of appointment dated 10.08.2010.”*

2. The Union of India through the Secretary, Department of Electronics and Information Technology, Ministry of Electronics and Information Technology along with nine others have assailed the

aforesaid judgment of the writ court in the present appeal.

3. Dr. N. Mozika, learned DSGI appearing for the appellant submits that the Aizawl centre, which was created in the year 2009, did not adhere to the recruitment rules of NIELIT (formerly DOEACC) which stipulated the essential qualification for the post of Scientist 'C' as 1<sup>st</sup> Class B.E./recognized equivalent qualification with not less than 65% marks; or M. Tech/M.E./M. Design or Ph.D. (Engg.) and inserted M.Sc. in relevant field without any basis while issuing the advertisement. He further submits that the Aizawl centre also ignored the twin instructions contained in the letter dated 10-12-2009 issued from the headquarters of DOEACC and published the said advertisement for filling up vacancies on regular/deputation basis, including permanent absorption instead of stating that the post were to be filled up temporarily, on short term basis and would be transferred to Itanagar as and when required. He submits that the selection committee also miserably erred in recommending the name of the writ petitioner who had only an M.Sc. degree which is not equivalent to B.Tech. or M.Tech. and till date, the writ petitioner has not acquired the requisite qualification. He contends that the advertisement was issued in violation of the prevalent recruitment rules and the instruction dated 10-12-2009 and the writ petitioner, as such, cannot claim regularization of service. Referring to the offer of appointment dated 10-08-2010, the learned DSGI submits that the appointment was on short term contract basis for a period of 5(five) years and the writ petitioner having accepted it, cannot now claim appointment in substantive/permanent capacity with effect from the date of his joining.

4. Dr. N. Mozika, the learned DSGI further submits that the decision of the Gauhati High Court rendered in WP(C)286(AP)/2015 relied on by the writ petitioner in the present case is misplaced as the writ petitioners in that case were regularized as they were meeting the eligibility criteria as per the recruitment rules of DOEACC society at that time for the post of Scientist 'B'. He submits that the writ petitioner in the present case is not covered by the aforesaid decision as his educational qualification is only M.Sc. Computer Science which is not a valid qualification for Scientist 'C'. He thus submits that the impugned judgment and order dated 01-12-2022 cannot be sustained in law and facts and the same requires to be interfered with. He relies on the decision of the Apex Court reported in (2018) 3 SCC 55, Ashish Kumar v. State of Uttar Pradesh & Ors. (para-27) to assert that when there is a variance in the advertisement and in the statutory rules, it is the statutory rules which prevails.

5. In response, Mr. S. Sen, learned counsel appearing for the respondent/writ petitioner submits that the essential qualification for the post of Scientist 'C' prescribed in the advertisement is not in violation of the approved recruitment rules of NIELIT (formerly DOEACC) inasmuch as, M.Sc. in relevant field would mean M.Sc. in any technical discipline such as Computer Science, which the writ petitioner possesses. He further submits that the selection process was conducted by a Selection Committee comprising of experts which after detailed scrutiny of all the aspects including qualification, recommended the name of the writ petitioner. There is nothing on record to show that the same recommendation was ever altered or doubted by any other expert body.

He submits that whether the qualification possessed by the petitioner is equivalent qualification or not, can only be decided by a committee comprising of expert and in absence of that, the appellants cannot contend that the writ petitioner does not possess requisite qualification to deny him regular appointment. The learned counsel further refers to a letter dated 08-12-2009 communicating the approval of amendment of Rule 3.1 of Service/Staff Rules of DOEACC Society by the Governing Council of the Society and submits that the said amendment provided for recruitment only on regular basis or on deputation basis including permanent absorption against the sanctioned post by replacing the earlier rule which provided for appointment on contract or deputation basis for five years. He contends that the letter dated 10-12-2009, which was issued two days after the communication of the amendment, is totally contradictory to the aforesaid amendment in so far as it relates to the instruction for filling up vacancies on temporary or short- term basis.

6. Mr. Sen, learned counsel also submits that the writ court has rightly placed its reliance on the decision of the Gauhati High Court rendered in WP(C) No. 286(AP)/2015 as it squarely covers the issue of claim of the writ petitioner for appointment in substantive/permanent capacity. He submits that the said decision has already been implemented by the appellants herein and the petitioners therein have been regularized in the post of Scientist 'B' from the date of their joining. He submits that in the above and circumstances, the plea of the appellant raised on the basis of the stipulation made in the letter dated 10-12-2009 cannot be maintained at this stage and the writ appeal is liable to be dismissed

forthwith. The learned counsel in support of his argument placed reliance on the following decisions: -

- (1) *AIR 1965 SC 491, University of Mysore v. C.D. Govinda Rao & Anr. (para-12.)*
- (2) *(1986) 3 SCC 156, Central Inland Water Transport Corporation Ltd. & Anr. v. Brojo Nath Ganguly & Anr. (para-96).*
- (3) *(2006) 2 SCC 747, State of Karnataka & Ors. v. C. Lalitha.(para 29)*
- (4) *(2019) 15 SCC 59, Sridip Chatterjee v. Gopa Chakraborty & Ors. (para-14)*

7. The submissions advanced by the respective parties have been carefully considered. It appears that the contentions of the appellants before this Court in the present writ appeal is exactly the same which were raised before the writ court. The writ court has elaborately dealt with those contentions and recorded a detailed finding which is reproduced below: -

“10. Before dealing with the point of the qualification criteria, as raised by the respondents, the other conditions of appointment between the writ petitioner herein, and the writ petitioners in WP(C) No. 286 of 2015, are exactly on the same footing, as the entire recruitment of the appointees was through the same selection process emanating from the same advertisement dated 25.02.2010. The judgment of the Gauhati High Court, in this respect has great persuasive value, as the question of the irrationality and arbitrary action of the respondents in discriminating between the appointees, has been discussed in great detail, and a finding arrived at, that such action was totally unfair, while

allowing the writ petitions. In this context, it would be apposite to quote 2 paragraphs, which are relevant namely Para – 10 and 11 of the said judgment.

*“10. As per the earlier Rule 3.1 of Service/Staff Rules of DOEACC Society, all appointments will be made either on contract or on deputation basis for a period of 5 years as against the sanction posts on graded scale of pay. On completion of said period, the contract can be further be extended based on performance. The said Rule was amended subsequently vide Annexure – 4 whereby it is provided that “all appointments will be made either by the direct recruitment on regular basis or on deputation basis including permanent absorption against the sanctioned posts.” It is to be noted that after this amendment, the authorities has advertised for recruitment to the several posts including the posts of ScientistB (of the petitioners) for filling up of various posts on regular/deputation basis including permanent absorption basis, dated 25.02.2010. From the communication of the respondent authority vide Annexure – 5B, dated 12.05.2010, it appears that the authorities has intimated the member of the selection committee that they are intending to recruit Scientist B and C on regular basis. Thereafter, the selection Committee recommended the selection of both the petitioners and petitioner No. 2 secured the 2nd position in the select list whereas the petitioner No. 1 secured 6 th position in the select list and one K.H. RekaDevi stood 3rd position and another V. Khiantge secured 1st position. But while issuing appointment order to present two petitioners, they were appointed for short term Contract basis for 5 years whereas the other two above named persons Serial No. 1 & 3 has been appointed on regular basis on the same scale of pay. Such an affair on the part of*

*the respondents is wholly contrary to their own advertisement. As has been mentioned above, as per the amended Rules, no appointment can be made on contract basis. It is apparent that the authority has not only flouted the norms and Rules and has arbitrarily used the power of discretion while appointing the present two petitioners. As has been discussed above, the respondent authorities is a State as per the Article 12 of the Constitution of India and as such they are bound to carry transparency in the matter of selection and appointment strictly according to the Rules, which has not been adhered to by the respondent authority. Although, discretion always not a subject of criticism but such discretion should be exercised only on the sound principle of reasonableness which is not found in the given case. The respondent authority has extremely failed to disclose anything as to the reason of deviating from their own Rules and procedure and as about the reasons for exercising such discretion. 11. It is pertinent to note here all the selected candidates stood at par with each other and there is no opinion of the selection committee whatsoever that such persons should be categorized while at the time of appointment, as has been done by the respondent authorities. Without going any further, it can be held that decision of the respondent authority is vitiated by arbitrariness and beyond the test of reasonableness and liable to be interfered into.”*

11. Thus it is seen that the judgment of the Gauhati High Court has covered this aspect, after examining the entire gamut and actions of the respondents, with regard to the writ petitioners in WP(C) No. 286 of 2015, who are exactly on the same footing as the petitioners, which this Court notes and adopts the said finding.

12. On the question of qualifications, though arguments have been raised, and materials sought to be shown, that the petitioner did not meet the prescribed requirements, and further that the advertisement had been issued in violation of the directions of NIELIT (formerly DOEACC), in the considered view of the Court, it is too late in the day, for the respondents to raise such objections. This is in view of the fact, that the advertisement had been issued as far back as in February, 2010, and a selection process, which had been conducted thereafter, had found the candidature of the writ petitioner to meet the requirements. The selection no doubt, being conducted by a duly constituted selection committee, an expert body, had found the petitioner suitable for appointment, and it follows that the qualification of the writ petitioner, had therefore been found to be equivalent and suitable, to be recommended for appointment. The respondents therefore, cannot at this stage, take a stance that the petitioner did not meet the educational qualification criteria and that the appointment was never meant to be regular. No fault, negligence or suppression can be attributed in any manner to the writ petitioner, and in fact, he had given up a regular post in the NIC to join the respondent organization, in the secure hope that he was applying for a regular post, as was advertised. The respondents therefore, are estopped from taking an alternate stance, in disowning their advertisement to deny the writ petitioner the benefit of regular status or for consideration thereof.”

8. The appellants have failed to point out any infirmity or illegality in the aforesaid finding recorded by the writ court. We also do not see any apparent reason to disagree with the above finding or to adopt any

different view other than what has been expressed by the writ court.

9. Moreover, it appears from the materials on record that pursuant to the advertisement, a selection committee comprising of as many as 6(six) experts from various departments, was constituted by the respondent to conduct the recruitment process. The selection committee after thorough scrutiny of all aspects including educational qualification of each and every candidate recommended the name of the selected candidates for the post of Scientist 'C' wherein the name of the writ petitioner appeared at serial No.1. Nothing has been brought to our notice to establish that the recommendation of the selection committee, in so far as it relates to the candidature of the writ petitioner, stood interfered with or doubted at any point of time by any other committee or authority of the appellants. No material has been placed before us by the appellants to support its stand on the insufficiency of qualification of the writ petitioner. There is also nothing on record to show that M.Sc. Computer Science is held to be not equivalent qualification for the post of Scientist 'C'. In absence of any such material, it is not possible for this Court to hold that the writ petitioner does not possess the requisite qualification. The proposition of law laid down in the case of *Ashish Kumar (supra)* relied on by the appellants cannot be applied here to hold that there exists a variance in the advertisement and the related recruitment rules.

10. It is an admitted fact that pursuant to the appointment of the writ petitioner in the post of Scientist 'C', he has been continuing in the department on the strength of various extension orders beyond the initial

period of five years. The appellants never sought to terminate or remove the writ petitioner from service for want of requisite qualification. The only objection taken by the appellants appears to be against the claim of regularization of the service of the writ petitioner and not against his continuation on temporary basis. There is nothing on record to show that the prescribed qualification for contractual appointment and regular appointment are different from each other. If the appellants seriously contends that the writ petitioner lacks in educational qualification, his service should not have been extended from time to time. Thus, the objection of the appellants to the claim of the writ petitioner seems to be in defiance of any logic and cannot be accepted.

11. In addition, it is noticed that a period of more than 13(thirteen) years have lapsed from the date of advertisement and appointment of the writ petitioner, but no action has been taken by the department either to recall or cancel the recommendation made in favour of the writ petitioner. It appears that no corrigendum or clarification was also issued at any point of time to rectify or alter the stipulations made in the advertisement. In spite of all these, even if it assumed at this stage that the appointment of the writ petitioner was proper, the writ petitioner cannot be made to suffer on account of failure of the appellants in view of the fact that the writ petitioner had given up a regular post in the NIC to join the present post of Scientist 'C'.

12. Since this Court is not inclined to interfere with the impugned judgment and order dated 01-12-2022 passed in WP(C) No. 96 of 2022,

the analysis of the citations relied on by the learned counsel for the respondent/ writ petitioner is deemed not necessary.

13. In view of the discussions made above, there is no merit in the present appeal and it is accordingly dismissed.

14. There will be no order as to costs.

**(B. Bhattacharjee)**  
**Judge**

**(W. Diengdoh)**  
**Judge**

Meghalaya  
08.12.2023

" N. Swer, Stenographer, Gr-II "

