

Serial No. 08
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 310 of 2022

Date of Decision: 23.06.2023

Vikas Kumar & Anr.

Vs.

Union of India & Ors.

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. K.P. Bhattacharjee, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.

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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 writ petitioners being aggrieved with an impugned notification dated 02.06.2022 and merit list dated 02.06.2022, issued by the respondent No. 3, whereby the number of posts of Sanitary

Inspector were reduced from 4(four) to 2(two) in the General Category, thereby depriving them of employment, are before this Court by way of this instant writ petition.

2. The brief facts of the case are that, by an advertisement dated 12.10.2007, the respondent No. 3 had advertised for filing up of Group B and C posts on Direct Recruitment, which included 4(four) Unreserved post and 2(two) ST posts of Sanitary Inspector. The advertisement thereafter remained pending, and on 21.08.2017, a second advertisement was issued for filing up of 4(four) posts of Sanitary Inspector (2-UR posts, 2-ST posts), which also stipulated therein that, candidates who had already applied against the earlier advertisement, need not apply again and that, the earlier applications received would suffice. The written test was then conducted on 14.03.2021, and thereafter on 02.08.2021, a Corrigendum was issued that the post of Sanitary Inspector as advertised be read as 6(six) (4-UR posts, 2-ST posts). The petitioners as per the results were placed at number 3 and 4 respectively, in the UR list which therefore guaranteed them employment to the post. However, after the publication of the merit list, the impugned notification dated 02.06.2022, was issued notifying that the number of posts of Sanitary Inspector would remain as 4(four) (2-UR posts, 2-ST posts), as advertised vide the

advertisement dated 21.08.2017, and the Corrigendum dated 02.08.2011 was cancelled, as also the merit list dated 25.11.2021. A fresh merit list was then published, wherein the petitioners were placed at Serial No. 1 and 2 in the waiting list. The petitioners therefore by the change and circumstances brought about by the impugned notification dated 02.06.2022, instead of being appointed directly were however, placed in the waiting list.

3. Heard learned counsels for the parties.

4. Mr. K.P. Bhattacharjee, learned counsel for the petitioners has submitted that, the petitioners had already been selected for the post of Sanitary Inspector vide the merit list dated 25.11.2021, but the respondents by way of the impugned notification dated 02.06.2022, changed the rules of the game by reducing the posts, an action he contends is wholly arbitrary, illegal and without any authority of law. Learned counsel has further submitted that the second advertisement was a continuation of the first, wherein the vacant posts for filling up by Direct Recruitment had been clearly mentioned and had also been reiterated by a Corrigendum dated 02.08.2021, to correct the second advertisement, wherein only 4(four) posts had been mentioned. He therefore submits that the action of the respondents which has resulted

in the illegal deprivation of the petitioners to gainful employment is liable to be interfered with by this Court.

5. In support of his arguments, learned counsel has placed reliance on a decision which has great persuasive value on the meaning and status of a Corrigendum, in the case of ***Polyplex Corp. N Ltd. Thru'Auth. Signatory vs. Union of India & Ors.*** reported in (2014) ***SCC OnLine 5211***, wherein it has been held that, a Corrigendum is used when correction is made in a printed manner, which has already been disclosed to public and a mere handwritten correction or draft will not be sufficient and the correction as such has to be notified separately. The learned counsel contends that, once the Corrigendum dated 02.08.2021, correcting the number of posts to 6(six) (4-UR posts, 2-ST posts) had been notified, the selection committee could not have sat over the same or annul it, as has been done by the respondents in the instant case.

6. The learned counsel has also apprised this Court about subsequent developments relating to the resignation of one of the UR candidates who had been appointed against one of the posts and also that the petitioner No. 2 is no longer interested having secured employment elsewhere.

7. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel on behalf of the respondents submits that before the appointment order was issued, the Selection Committee meeting held on 21.04.2022, decided to limit the post of Sanitary Inspector to 4(four) (2-UR posts, 2-ST posts), as per the second advertisement and also recommended that, the 2(two) extra posts be re-advertised, and as such, only 4(four) candidates were recommended for appointment. He further submits that, this decision was also communicated to the Ministry of Health and Family Welfare, which in turn by letter dated 19.05.2022, stated that the Director (Respondent No. 2), being the appointing authority, may take appropriate action as per the recommendation of the Selection Committee dated 21.04.2022. He submits that it is in this backdrop that, the merit list dated 02.06.2022 was published and 4(four) selected candidates were appointed. The learned DSGI has also not disputed the submission of the counsel for the petitioner that, one appointee namely Shri. Deepak Kumar, after joining the post had resigned from service on 27.04.2023, and also that the wait listed candidate No. 1, Shri. Rahul Chakraborty, was no longer interested in the post.

8. It is further submitted that, the vacancy has arisen after all the selected candidates were appointed and with their appointment, the

select list has served its purpose and expired and that the vacancy arising by resignation of a selected candidate cannot be filled up by a wait listed candidate. To support his contention, learned DSGI has relied upon the case of *State of Punjab vs. Raghubir Chand Sharma & Anr.* reported in (2002) 1 SCC 113 and also in the case of *Thrissur District Cooperative Bank Limited vs. Delson Davis P. & Ors.* reported in (2021) 14 SCC 407.

9. Having heard the learned counsels for the parties, this Court in its opinion has to examine the issue in question mainly on the question as to whether the action of the respondents subsequent to issuance of the Corrigendum dated 02.08.2021, whereby the posts were notified to be 6(six) (4-UR posts, 2-ST posts), is justifiable in law. The first advertisement it is noted, was published in 2007, and the second in 2017, for the same posts. It is also to be noticed that, the second advertisement though made 10 years after the first, was not a fresh advertisement in the true sense, but a continuation of the advertisement of 2007. It stands to reason therefore, that the Corrigendum dated 02.08.2021, corrected the second advertisement to be as per the first advertisement, wherein 6(six) posts had been advertised.

10. This Court finds force in the submission of the learned counsel for the petitioner, on the point that, the selection committee though

vested with the authority to decide such recruitment matters, after publication of the Corrigendum and the conclusion of the selection process, had no jurisdiction or power to recall the same and issue a fresh merit list, wherein the petitioners were put in the waiting list.

11. In this view of the matter, the instant writ petition deserves to succeed, and the petitioners it can be said, by the arbitrary action of the respondents have been deprived of gainful employment, and have been compelled to come before this Court. However, this Court has also noted the submissions of the learned counsels for the parties that, at present 1(one) post is lying vacant due to the resignation of one Shri. Deepak Kumar on 27.04.2023, and that the petitioner No. 2 (Shri. Rahul Chakraborty) is no longer interested having secured employment elsewhere. The availability of the vacant post therefore, will surely entitle the petitioner to be considered against the same, looking into the facts and circumstances of the case, as it stands.

12. Accordingly, this writ petition is disposed of by setting aside the impugned notification dated 02.06.2022 and the altered merit list dated 02.06.2022, with a further direction to the respondents to consider to afford appointment to the writ petitioner to the vacant post of Sanitary Inspector, a post to which he has been found to be duly qualified by a due selection process.

13. The entire exercise shall be completed within a period of 6(six) weeks from the date a copy of this order is presented before the concerned respondents.

14. There shall be no order as to costs.

Judge

Meghalaya
23.06.2023
"D.Thabab-PS"

