

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.27/2023 with
WA No.28/2023

Date of order: 29.08.2023

Mithu B. Marak & ors Vs. State of Meghalaya & ors
Sympahunlang Syiemlieh & ors Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellants : Mr. V.K. Jindal, Sr. Adv with
Mr. S Rana, Adv

For the Respondents : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA

- | | | |
|-----|--|--------|
| 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)

These two appeals are directed against a common judgment and order of August 14, 2023 passed on two sets of petitions under Article 226 of the Constitution.

2. The grievance carried by both sets of petitioners – the appellants herein – was two-fold. They claimed that by virtue of their long service, albeit as temporary peons in the Meghalaya (Civil) Secretariat, Shillong,

they were entitled to be regularised under the Service Rules, 1986 rather than be considered under the Regular Casual Workers Scheme, 1996. The second limb of complaint was that the appellants herein had been exploited by the State in the sense that the appellants were required to do all duties as regular peons but were discriminated against and were not afforded either equal pay or equal benefits though doing the same work.

3. Pursuant to an advertisement issued on January 20, 2012, seeking applications for temporary engagement as peons in the Meghalaya (Civil) Secretariat on payment of daily wages at rates fixed by the State government under the Minimum Wages Act from time to time for unskilled labour, the appellants applied. It is the case of the appellants that a proper examination was held following which the successful candidates were called for interviews. The appellants seek to establish that a thorough recruitment exercise, as in the usual course under the service rules, was conducted before the selection process to the temporary post was completed and no appointment was given without obtaining a police verification report.

4. However, what cannot be missed is that the advertisement was for temporary engagement as peons, the letter of appointment also

provided that the appellants were temporarily engaged as peons and a lump-sum monthly amount was indicated as the pay.

5. The initial appointment was for a period of a year, but the appellants claim that the State continued to obtain the services of the appellants without issuing any subsequent letter or indicating the tenure or terms of the appellants' further engagement. It is, however, the undeniable position that from a monthly payment of Rs.4000/- in the year 2012, the appellants received a payment of about Rs.15,000/- per month in the year 2022 when the appellants approached this Court.

6. The two immediate reasons for approaching this Court were the issuance of a circular or letter of January 5, 2021 to the effect that the appellants' cases would be considered under the Regular Casual Workers Scheme, 1996, despite the appellants insisting that the appellants had made several representations for regularisation of their services and some kind of assurance may have been given by the appellants' seniors that their cases would be considered favourably in such regard. The other matter that triggered off the appellants' ire was the issuance of an advertisement on February 9, 2022 calling for applications for filling up different categories of Grade-IV posts in the Department.

7. According to the appellants, since the recruitment process in the appellants' case was done as in any regular recruitment exercise by conducting a written examination and thereafter an interview and finally causing a police verification to be made before offering appointment to a person, there could be no doubt as to the integrity of the process. Thus, according to the appellants, their recruitment has to be seen to have been above board and in accordance with any regular recruitment exercise. Next, the appellants say that they were required to do the same work as the regular appointees or as would be expected of the regular appointees who may be engaged pursuant to the advertisement of February 9, 2022. In such regard, the appellants have produced some details of the nature of duties that the appellants had to discharge and the duties and work requirements of regular appointees in the same post.

8. The Single Bench held that since the appellants accepted their appointments with their eyes wide open in temporary posts and the advertisement of January 20, 2012 clearly indicated the nature of the engagement to be temporary, merely because such temporary engagement continued for a period of nine or ten years, would give no right to the appellants to assert a claim for regularisation. The writ court noticed that a consolidated lump-sum monthly amount was regularly

paid to the appellants herein instead of the graded manner of payment of regular employees. Though certain other benefits, such as some leave, were extended to the appellants, the appellants did not have any further rights as regular appointees.

9. Under the Scheme of 1996, casual workers who have worked for a certain period of time or who possesses the qualifications necessary for regular appointment to the similar posts are considered, subject to the age relaxation which is provided in the scheme itself. Of course, the scheme recognises instructions and orders to be issued by the State government to provide for further relaxation to absorb persons who have worked in casual posts into the regular posts.

10. The writ court found that for a claim of equal pay for equal work to be established, the equivalence had to be demonstrated on all counts. The writ court referred to the principle enunciated by the Supreme Court in such regard and found that the material presented fell woefully short of what was required in such regard.

11. The essential feature of the matter, as the writ court noticed by referring to a Supreme Court judgment, was that the appellants herein were aware that they were being temporarily engaged and that their services could be terminated at short notice. The only basis for the

appellants' assertion that the appellants should be considered for regular appointment appears to be the length of time that the appellants spent in the temporary engagement. Rather than looking at such aspect of the matter from the point of view of how long the appellants served, the appellants should view it as to how lucky the appellants were that their temporary engagement lasted for a period of 10 years or more.

12. At the end of the day, considering the strict rules that are now in place for regularisation of casual employees, there is no right that the appellants have been able to demonstrate for the appellants to be given a chance under the service rules to obtain regularisation. It will be open to the appellants to accept the benefits that may be conferred to all or some of them in terms of the Scheme of 1996.

13. There is a further aspect to the matter. Upon the casual peons' representations for regularisation of their services, the Personnel and Administrative Reforms Department of the State issued an order on January 5, 2021 to the effect that casual employees who were appointed on daily wages may be regularised under the RCW Scheme after completion of 10 years' service. There does not appear to have been any immediate protest to such order though representations continued to be

made for regularisation by the casual employees and also seeking higher pay.

14. The RCW Scheme defines a regular casual worker to be a casual worker who has been working as such for a continuous period of not less than 10 years. The conferment of RCW status on a casual worker would entitle such casual worker to obtain earned leave on prorata basis, casual leave, festival advance and children education advance. In addition when vacancies in Group-D posts arise in the relevant Department, 50 per cent of such posts, subject to the rules, orders and instructions as may be issued by the State government, would be filled up from amongst the RCWs working in that Department. In such a scenario, the maximum age limit is relaxed by the total number of years served continuously as a casual worker. Further, if an RCW is selected to a regular Group-D post, half of the length of service rendered as an RCW would be added to the length of service rendered in the Group-D post for the purpose of retirement benefits.

15. Thus, it is evident that casual workers who have been engaged for a continuous period of 10 years are conferred certain benefits which may even extend to regular appointment if they are otherwise found suitable. The RCW Scheme appears to be benevolent and even if every

casual worker who attains the status of RCW does not get selected to the regular post, such casual worker obtains certain other benefits that ordinarily casual workers cannot expect to enjoy.

16. The RCW Scheme was in place at the time that the appellants were recruited in 2012 and the appellants are deemed to have been aware of such scheme, if not at the time of their recruitment, at least after having been temporarily engaged for some period of time. Once it is found that casual workers with long period of engagement are conferred certain benefits, such casual workers would be confined to the benefits under the scheme and not permitted to jump to any regular post.

17. In a sense, since the writ petition was not filed immediately upon issuance of the letter of January 5, 2021 but it was filed only after the advertisement of February 9, 2022 was published, it would appear that the pretended dissatisfaction with the decision contained in the letter of January 5, 2021 was an afterthought and the only object of the appellants' exercise was to scuttle the recruitment process of 2022 and jump into the regular posts by only citing the length of service rendered in the casual post.

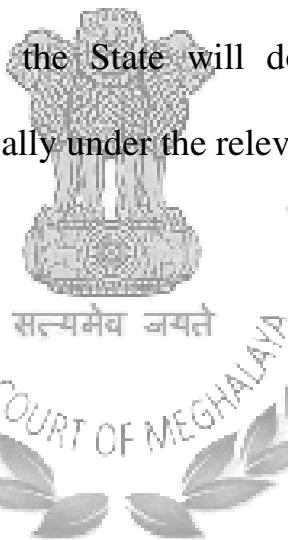
18. Since there was no specific right that could be demonstrated before the writ court, such Court was perfectly justified in rejecting the

petitions by taking relevant considerations into account as evident from the judgment and order impugned. The order impugned calls for no interference.

19. Accordingly, WA No.27 of 2023 and WA No.28 of 2023 are dismissed. There will, however, be no order as to costs.

20. Despite there being no room for sympathy in this jurisdiction, considering the fact that the appellants have been used to a certain way of life for over 10 years, the State will do well to consider the appellants' case sympathetically under the relevant Scheme of 1996.

(B. Bhattacharjee)
Judge



(Sanjib Banerjee)
Chief Justice

Meghalaya
29.08.2023
"Lam DR-PS"