

Serial No.03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.37/2022 with
MC (WA) No.18/2022

Date of Order: 01.02.2023

Iadamon Syiemlieh & anr Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants

: Mr. S.R. Lyngdoh, Adv with
Mr. H.R. Nath, Adv

For the Respondents

: Mr. N.D. Chullai, AAG with
Mr. S. Sengupta, Addl.Sr.GA
Mr. K. Ch. Gautam, Adv for R/5

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal has been preferred by the sixth respondent to the writ petition who, despite service of the writ petition, chose not to be represented before the writ court, and by the President of the managing committee of the relevant school.

2. In the writ petition, the appointment of the first appellant herein (the respondent No.6 to the writ petition) was challenged on the ground that she was overaged and that she was unfairly favoured on account of her being the daughter of an erstwhile Secretary and despite the present

Secretary of the managing committee opposing the move. On an assessment of the facts, the writ court found that the managing committee had bent backwards in favouring the first appellant herein and in persuading the State to accept the appointment of the first appellant herein despite the State's initial objection that the first appellant was clearly overaged.

3. An initial advertisement was issued for the post by the relevant government-aided school on May 7, 2019 inviting applications by May 10, 2019. The qualifications necessary for the post were indicated and it was also specified that candidates had to be residents of the village in which the school was situated.

4. It appears that an objection was raised regarding the candidates being limited to the relevant village, whereupon a fresh notice was issued on January 16, 2020 inviting applications for the post on similar qualifications without the residential qualification being repeated. Pursuant to the subsequent advertisement, applications were to be received by January 23, 2020. In the selection process that was conducted pursuant to the receipt of applications following the second advertisement, the writ petitioner claimed that the first appellant herein had been unduly favoured and her name was recommended for

appointment, but it is not necessary to go into such aspect of the matter since it is evident that the first appellant herein was clearly ineligible to apply for the post on account of being overaged as on the last date for submission of application.

5. There is no dispute that in respect of government-aided schools in the State, the age-limit for joining a post is 35 years for general category candidates, 35+5 years for scheduled caste and scheduled tribe candidates and 35+3 for other backward caste candidates. The same is evident from a communication issued by the Director of School Education and Literacy, Government of Meghalaya dated June 23, 2010. In a recent judgment of this Court in WA No.9 of 2020 (*Smti. Manjusree Dutta v. Smti. Sujata Deb Roy*) rendered on February 28, 2022, the position as to age on the basis of the said communication has been accepted. Thus, no person not meeting the age qualification requirements as per the said communication of June 23, 2010 can be permitted to join any teaching post at a government-aided school.

6. The first appellant's date of birth is May 14, 1979. As at January 23, 2020, which was last date for receipt of applications pursuant to the second advertisement, the first appellant, a scheduled tribe candidate, had attained the age of 40. As such, the first appellant herein

was not eligible to apply for the post, far less being recommended for selection therefor.

7. The appellants assert that since the original advertisement indicated that the last date of receipt of applications thereunder was May 10, 2019 and the first appellant was below the upper age-limit as on such date, her candidature was rightly considered. It is also the case of the appellants that the managing committee of the relevant school considered all the applications that had been received pursuant to the first advertisement.

8. There is no doubt in this case that upon the second advertisement being issued, the first advertisement stood cancelled. The matter may be appreciated if viewed from a different perspective. It is possible that there may have been a minimum age qualification and a candidate may not have been qualified as per such minimum age qualification to apply in terms of the first advertisement, but such candidate was eligible to apply pursuant to the second advertisement. Similarly, when the upper age qualification has to be regarded, it is second advertisement which has to be taken into account and the relevant date for the purpose in all cases would be the last date indicated for submission of the applications.

9. It is possible in an odd case that an initial advertisement is annulled for no good reason whatsoever and with the ulterior motive to avoid a candidate and issue a subsequent, similar advertisement at a time which would prejudice a particular candidate. In this case, there is no allegation of malafides made out by the first appellant. Indeed, the first appellant could not have made such an allegation since the first appellant chose not to be represented before the court of the first instance. Further, the first appellant herein has carried the President of the managing committee of the relevant school as the second appellant. Since the issuance of the first advertisement and the cancellation thereof were the handiwork of the managing committee of the school and the first and second appellants appear to be on the same boat, it cannot be the first appellant's case that the second appellant cancelled the first advertisement without basis to cause prejudice to the first appellant herein.

10. The order impugned is justified on all aspects and appropriately finds the first appellant herein to have been ineligible to apply for the post. Accordingly, the order impugned dated August 29, 2022 is affirmed and the selection of the first appellant herein for the relevant post is

annulled with a direction on the relevant school to take immediate steps in accordance with law as a consequence.

11. WA No.37 of 2022 is dismissed with costs assessed at Rs.1000/- to be paid by the first appellant to the Meghalaya State Legal Services Authority within a fortnight from date.

12. MC (WA) No.18 of 2022 is disposed of.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
01.02.2023
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