

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.42/2023 in
WA No.40/2023

Date of order: 12.10.2023

Ms. Larisha Shabong vs. State of Meghalaya & ors

Coram:

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

Appearance:

For the Applicant : Mr. H.L. Shangreiso, Sr.Adv. with
Mr. R. Majaw, Adv.
Ms. P. Biswakarma, Adv.

For the Respondents : Mr. R. Gurung, GA with
Ms. S. Shyam, GA for R/1-3
Mr. K. Paul, Sr.Adv. with
Ms. K. Decruse, Adv. for R/4
Mr. M.L. Nongpiur, Adv. for R/5

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| 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)

The delay of about 26 days in preferring the appeal is condoned in view of the good grounds shown.

2. The appellant, who aspired to be appointed to the post of Social Officer in the Meghalaya Institute of Medical Health and Neurological

Sciences (MIMHANS), challenges an order of August 14, 2023 by which her petition under Article 226 of the Constitution questioning the propriety of the respondent No.5 being appointed to such post has been repelled.

3. Two principal grounds were canvassed by the appellant before the writ court. The first substantial ground was that despite the requiring department setting down certain eligibility criteria for candidates to apply for the post, the Meghalaya Public Service Commission purported to tweak one of the key conditions. According to the appellant, the MPSC had no authority in such regard. The appellant further contends that the alternation effected by MPSC has to be disregarded and the selection process ought to have been conducted without adhering to such alteration.

4. The other ground canvassed is that the appellant was the better candidate in terms of the quality of the institution from which the appellant obtained her degree. To boot, the appellant claims to be more experienced and having had a better claim to the post by virtue of her educational qualifications and experience.

5. It is necessary, at this stage, to notice the extent of change brought about by the MPSC in the eligibility criteria suggested by the requiring department. The Director of Health Services (MI) by letter dated March 22, 2016 had indicated the eligibility criteria that provided, inter alia, that applicants should have more than five years' experience in the field of mental health from recognised institutions. The MPSC modified this criterion by inserting the word "preferably" therein. As a result of the change effected at the instance of the MPSC, the entire ethos of the qualification stood altered.

6. If the original condition as suggested by the Director of Health Services (MI) was allowed to remain, it would be obligatory on the part of a candidate to have more than five years' experience in the field of mental health from recognised institutions. Upon the criterion being modified, it was a qualification that would allow a candidate to be given preference, provided that other things were equal as between two candidates. In other words, if two candidates were jointly at the top and one had to be considered for the post, the use of the word "preferably" implied that in such a scenario if one of the candidates had the

preferable qualification, such candidate would be selected ahead of the other.

7. On facts, the writ court found that the basic eligibility criteria had been met by the respondent No.5 to the writ petition and, as such, no grievance could be raised on such ground. It is also an admitted position that the selection process was competitive and marks were awarded and the respondent No.5 scored higher marks than the appellant herein in the selection process. In such circumstances, when the candidatures of the respondent No.5 and the appellant were considered, the respondent No.5 stood ahead by virtue of having scored higher marks in the selection process.

8. Even if it is conceded that the preferable condition that the advertisement stipulated was complied with by the appellant and not complied with by the respondent No.5, in the event both the candidates were similarly placed at the end of the selection process, the preferred criterion would have tilted the balance in favour of the appellant herein. However, that was not the case. The respondent No.5 had scored more marks in the selection process. As such, the two candidates not being similarly placed, the preference condition did not come into play. There

does not appear to be any arbitrariness in the selection process or any error committed in such regard by the selection committee.

9. As to the substantial charge of MPSC not having the authority to change any conditions suggested by the requiring department, the appellant could not have urged such ground. Such a ground could have been raised prior to the appellant participating in the process. Once a person participates in the process with eyes wide open and being aware of the terms and conditions thereof, upon having taken a chance, such person would not be entitled to question the process or the rules thereof.

10. A specious – and completely unbelievable – ground is raised by the appellant to the effect that the appellant was not aware of the modification of the condition prior to the selection process. The appellant claims to have been informed of the same pursuant to a query raised under the Right to Information Act, 2005. Such ground cannot be countenanced. There can be no doubt that the appellant, like all other candidates for the post, applied upon the final advertisement in such regard having been published. Obviously, the final advertisement contained the alteration as made by MPSC from the suggested conditions as recommended by the requiring department. In such a

situation, upon the appellant having taken a chance under the rules which were indicated in the advertisement, the appellant is estopped from challenging the rules or the conditions indicated in the final advertisement. It is also elementary that when the requiring department has accepted the alteration suggested by the Commission, the candidates cannot question the authority of the Commission in such regard.

11. The writ court has referred to the facts and the applicable law. All relevant considerations have been taken into account. As such, the order impugned dated August 14, 2023 does not call for any interference.

12. Accordingly, WA No.40 of 2023 is dismissed.

13. MC (WA) No.42 of 2023 is disposed of.

14. There will, however, be no order as to costs.

(B. Bhattacharjee)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
12.10.2023
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