

Serial No. 01
Supplementary List with
Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 483 of 2022 with
WP(C) No. 462 of 2022

Date of Decision: 14.08.2023

Shri Mithu B. Marak & Ors. Vs. State of Meghalaya & Ors.
Smti Sympahunlang Syiemlieh & Ors. Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

For the Petitioner(s) Mr. V.K. Jindal, Sr. Adv. with
Ms. B. Jyrwa, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA.

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. Both these writ petitions being identical and similar are being disposed of by this common Judgment and Order.

2. The writ petitioners numbering 54 (fifty-four) in all, by way of these two applications are before this Court praying for directions to regularize their services w.e.f. the date of their joining to the post of Peon in the SAD (N) Department of the Government of Meghalaya, and further to set aside the advertisement dated 09.02.2022 calling for applications for filling up different categories of Grade-IV, in the said Department. The petitioners' stated case is that, the posts against which they are serving are sanctioned posts and though they were appointed after due selection, pursuant to an advertisement dated 20.01.2012 however, were engaged on a casual daily wage basis. The petitioners who have completed a number of years of service, were expecting regularization against the said posts, but however, were informed vide the impugned letter dated 05.01.2021, that their services were instead under consideration for regularization under the ***Regular Casual Worker Scheme, 1996*** after completion of 10 years of service. Being aggrieved thereby, they have filed the instant writ petitions.

3. The main ground set up by the petitioners, is that they having been appointed after undergoing through a selection process, cannot be treated to be casual workers, inasmuch as, the recruitment of employees into the Secretariat is governed by Rules namely; ***"The Meghalaya (Civil) Secretariat (Records Supplier, Duftry, Zamadar,***

etc. and other Grade-IV Staff) Service Rules, 1986” (hereinafter called the Service Rules 1986). It has been contended, that since the appointment of the writ petitioners was made in accordance with the Service Rules 1986, formulated by the State respondents under Article 309 of the Constitution of India, they have acquired a statutory right of conferment of permanent status and confirmation after completion of 5(five) years of service. It has also been contended that the State respondents violated the Service Rules, 1986 by non-conferment of permanent status as provided under Rule 22 (1) of the Service Rules, 1986.

4. Other points that have been urged are that though the advertisement dated 20.01.2012 against which the petitioners applied for and were appointed, was for temporary engagement on payment of daily wages under the Minimum Wages Act as prescribed, the first batch of Peons (60 in number) were however appointed as Casual Peons on contract basis for a period of 1(one) year on a fixed remuneration. Thereafter, the subsequent engagements of the petitioners, it has been submitted were until further orders, which are continuing as on date. The additional ground made out by the petitioners, is that though the advertisement may have been for temporary engagement, the methodology adopted by the State respondents for recruitment to the

post of Peon, was that of permanent employees which is as per the Service Rules, 1986. It has further been urged, that casual appointments are only for a short period and the same cannot extend for a longer period of more than 10 years, as has been occasioned in the instant case and that casual appointments are not generally made pursuant to a selection process.

5. Mr. V.K. Jindal, learned Senior counsel assisted by Ms. B. Jyrwa, learned counsel for the petitioners has also argued that the posts occupied by the petitioners were vacant sanctioned posts, inasmuch as, the respondents in their affidavit-in-opposition has stated that since there was a restriction in the creation of regular posts, the requirement was met through casual or contractual appointment purely on a daily basis, in order to ensure the smooth functioning of the offices. The learned Senior counsel has also argued that the State respondents have contradicted their own statement in the affidavit itself, by stating that the subsequent advertisement that was issued was only for vacant posts and that the posts occupied by the petitioners were not put up for advertisement. It is submitted by the learned Senior counsel therefore, that since as per the State respondents the posts occupied by the petitioners were not put for advertisement, it supports the contention that the petitioners were working against vacant existing sanctioned posts.

6. Learned Senior counsel submits that as the manner of recruitment was clearly as per the Rules, coupled with the stand of the State respondents that the petitioners are working against the posts which have not been advertised, the offer of regularizing them under the RCW Scheme does not arise, and they are liable to be regularized and confirmed in their service by the operation of Service Rules, 1986. Apart from these main points of contention, the learned Senior counsel has argued that the petitioners are also entitled for pay at the rate higher than the one fixed under the Minimum Wages Act, inasmuch as, they are discharging the same duties and functions as Peons, who are in a regular service in the Department.

7. In support of his submissions, the learned Senior counsel has cited the following Judgments:

A. On the point of conferment of permanent status

- i) *R.N. Nanjudappa vs. Thimmiah & Anr.* reported in (1972) 1 SCC 409
- ii) *B.N. Nagarajan & Ors. vs. State of Karnataka* reported in (1979) 4 SCC 407
- iii) *Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors.* reported in (2006) 4 SCC 1
- iv) *Dr. DC Wadhwa & Ors. vs. State of Bihar* reported in (1987) 1 SCC 378
- v) *Chief Conservator of Forest & Anr. vs. Jaganath Maruti Kondhare & Ors.* reported in (1996) 2 SCC 293

B. On the point of equal pay for equal work

- i) *Randhir Singh vs. Union of India* reported in (1982) 1 SCC 618
- ii) *Dharwad Dist. PWD Literate Daily Wages Employment Association vs. State of Karnataka* reported in (1990) 2 SCC 396
- iii) *D.S. Nakara & Ors. vs. Union of India* reported in (1989) 1 SCC 305
- iv) *Daily Rated Casual Labour Employed under P & T Department through Bhartiya Tar Majdoor Manch vs. Union of India* reported in (1988) 1 SCC 122
- v) *Chief Conservator of Forest & Anr. vs. Jaganath Maruti Kondhare & Ors.* reported in (1996) 2 SCC 293
- vi) *Union of India vs. Dineshan K.K.* reported in (2009) 1 SCC 586

8. Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA for the respondents, submits that the advertisement dated 20.01.2012, was issued by the State respondents specifically calling for temporary engagement of Peons in Meghalaya (Civil) Secretariat, Shillong on payment of daily wages, as there was a restriction in the creation of regular posts, the same which had been notified by the State vide various letters and Office Memorandums. Learned AAG submits that, as the recruitment of the writ petitioners in 2012 was made considering the restrictions, the said recruitment was not one conducted as per the Service Rules, 1986. The petitioners he contends, were fully aware of the nature of appointment which was offered under the advertisement 2012, and having voluntarily taken part in the selection

process and worked on a casual basis, cannot at this stage, turn around to question the same. It is further submitted that the petitioners do not hold sanctioned post and were specifically engaged as Peon on payment of daily wages, and therefore their status being that of casual workers, their regularization, has necessarily to be considered under Clause 3 and 5 of the ***Meghalaya Regular Casual Workers Scheme, 1996***.

9. With regard to the advertisement dated 09.02.2022, for appointment against the vacancies of Grade-IV posts in the Secretariat Administration Department, the learned AAG submits that the said advertisement will in no manner affect the engagement of the writ petitioners, who were appointed as Casual Peons in the Department, and that the said advertisement does not debar the writ petitioners from applying for the post advertised therein.

10. The learned AAG has also submitted that on the issue of equal pay for equal work raised by the counsel for the writ petitioners during the course of hearing, the same would not be applicable to daily wage employees as they do not hold a sanctioned post. The terms and conditions of appointment by which the writ petitioners were appointed on the basis of the advertisement dated 20.01.2012, he submits is very clear as it called only for temporary engagement as Peon on daily wages fixed under the Minimum Wages Act. In this context, the judgment of

the Supreme Court in the case of *State of Haryana & Ors. vs. Tilak Raj & Ors.* reported in (2003) 6 SCC 123, has been cited to show that the petitioners were not entitled in the circumstances for equal pay. He lastly submits, that in view of the advertisement, mode of appointment and engagement of the writ petitioners, there has been no illegality or arbitrariness on the part of the respondents and the impugned advertisement dated 09.02.2022, does not prejudice the writ petitioners in any manner. The writ petitions he submits being filed on a misapprehension is therefore, liable to be dismissed.

11. Having heard the learned counsels for the parties. The main issue for consideration before this Court, is whether the writ petitioners who were recruited for temporary engagement on payment of daily wages, would be entitled or eligible to be considered for conferment of permanent status by way of regularization. Though, it is correct that the Service Rules 1986, provide for the method of recruitment into the Meghalaya (Civil) Secretariat and are special rules specifically governing the services of the Grade IV staff, however, in the advertisement dated 20.01.2012, under which the petitioners were recruited, there is no mention of the rules therein, but only that the same was for temporary engagement as Peons on payment of daily wages. The advertisement being very relevant is reproduced herein below.

**“GOVERNMENT OF MEGHALAYA
SECRETARIAT ADMINISTRATION DEPARTMENT (NAZARAD)**

No. SAN.150/09/10

Dated Shillong, the 20th January, 2012.

ADVERTISEMENT

Applications are invited from the citizens of India (as defined in Article 5 to 8 of the Constitution of India) for temporary engagement as Peons in Meghalaya (Civil) Secretariat, Shillong on payment of Daily Wages at rates as fixed by the State Government under the minimum wages Act from time to time for unskilled labour and will be received by the undersigned on or before 6.2.2012 during office hours.

Application should be accompanied by – Treasury Challan of Rs.10/- (Rupees ten) only and Rs.5/- (Rupees five) in favour of Schedule Caste/Schedule Tribe to be deposited under the head of account “0051-Public Services Commission 102-State Public Service Commission (02) Receipt of other Department”. No Postal Order or Money Order will be accepted.

Applications may be submitted in the Standard Form as published in the last page of Part XI of the Meghalaya Gazettee. Application must be accompanied by attested copies of School Certificate, Scheduled Tribe/Scheduled Caste Certificates, etc. Incomplete and defective application will be summarily rejected.

Age:- *A candidate should not be less than 18 years on 1.3.2012.*

Qualification:- *The minimum qualification is class VI passed from any recognised Education Institution.*

Details of the test/interview will be communicated in due course of time to eligible candidates.

Sd/-

(F.J. Mairom)

**Deputy Secretary to the Govt. of Meghalaya,
Secretariat Admn: Department, Nazarat.**

Memo No.SAN.150/09/10-A Dated Shillong, the 20th January, 2012.

Copy to :-

- 1. The Director, Information & Public Relations, Shillong for favour of immediate publication in the local newspapers, one each in English, Khasi and Garo.***
- 2. Notice Board.***

By order etc.,

Sd/-

***Deputy Secretary to the Govt. of Meghalaya,
Secretariat Admn: Department, Nazarat."***

12. The recruitment of the writ petitioners therefore, was as per the above quoted advertisement and de hors the rules. Though, the recruitment was by way of a written test and interview, there is no mention, as to whether the said temporary engagement was against any existing vacancies, but what is conveyed by the advertisement, it can be seen, is for temporary engagement on payment of daily wages. The status of the writ petitioners on being appointed therefore, in view of the advertisement would only be that of temporary employment on a daily wage basis.

13. A pertinent point that has been put forward by the State respondents which deserves consideration is that, at that relevant point of time, as there was a restriction in the creation of regular posts, the department in order to ensure the smooth functioning of the office, had proposed that the requirement be met through casual or contractual appointment on a daily wage basis, which was the basis and purpose for

the issuance of the advertisement dated 20.01.2012. The relevant communication dated 19.01.2011, and Office Memorandum dated 17.07.2011, mandating this embargo on the creation of posts has also been annexed by the State respondents in their additional affidavit, which substantiates the stand of the State respondents. It is clear therefore that, the advertisement of 2012, by virtue of which the petitioners were appointed, were to non-sanctioned posts, which were created due to administrative exigencies and for the stated purpose of the smooth functioning of the office.

14. The status of the writ petitioners therefore being that of temporary and casual status, it is to be examined as to whether, they have acquired any vested right to be considered as members of the service as given in Rule 3(e) of the Service Rules, 1986. This is in view of the fact that, the writ petitioners were appointed through a selection process, which they assert was in accordance with the Service Rules, 1986, and should be confirmed on completion of 5(five) years of service under Rule 22(1). Rule 3(e) & 22(1) for easy reference are quoted hereinbelow:-

“3. Constitution of the Service-

(e) Persons recruited to the Service in accordance with the provisions of these rules.

22. Confirmation- (1) Subject to availability of permanent posts every member of the service shall be confirmed in

the post to which he is appointed if he has completed at least five years of service to the satisfaction of the Appointing Authority and is otherwise considered fit for confirmation.”

15. At this juncture, it is relevant to note that, the writ petitioners from the initial date of appointment were paid a fixed remuneration of Rs. 4,000/- (Rupees Four Thousand only), which was thereafter revised from time to time, and presently stands at Rs.15,000/- (Rupees Fifteen Thousand only) p.m. Further, the appointment order of the writ petitioners dated 12.03.2013 (Annexure-3 to the writ petition), has in clear terms defined the nature of employment/engagement of the writ petitioners as casual peons in the Meghalaya (Civil) Secretariat, on a fixed remuneration. In the considered view of this Court, therefore, though the recruitment was by way of a qualifying test, the employment of the petitioners does not have the trappings of an appointment that can be said to be under the Service Rules, 1986, to allow them the benefit of being considered ‘member’ of the service as provided in Rule 3(e), on the basis of completion of 5(five) years of service.

16. The writ petitioners in the acceptance and continuance in their service, for about 10(ten) years now, on being appointed pursuant to the advertisement, in the considered opinion of this Court cannot at this stage therefore, clamour for being included or claim to be governed

by the Service Rules, 1986, when their case is already being favourably considered for regularization under the Regular Casual Worker Scheme, 1996, by the respondents. The writ petitioners by their conduct have clearly acquiesced to their service conditions and to the fact that, their recruitment was not on the basis of the Service Rules, 1986. As such therefore, they cannot have any quarrel with the impugned advertisement dated 09.02.2022, calling for applications for filling up different categories of Grade-IV posts in the Department. Furthermore, this advertisement as has been stated by the State respondents does not concern the posts presently held by the writ petitioners, who have also not been debarred from applying for the same.

17. The other contention raised by the writ petitioners as to the application of the principle of equal pay for equal work, is of no relevance in the instant matter. A casual, daily or temporary employee such as the writ petitioners, has no scale of pay attached to the post, and as such, there cannot be any claim for any comparison with the regular and permanent staff, wherein a scale of pay is prescribed. This observation is made in view of the fact that as held in the judgment of *State of Haryana & Anr. vs. Tilak Raj (supra)* the principles of equal pay for equal work is not an abstract one and for it to be applicable, requires complete and wholesale identity between a group of employees

claiming identical pay scales, and others who have already earned such pay scales, and that it is for the claimant to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination. The petitioners being appointed and engaged on a purely casual basis, independent of the Rules, apart from not having demonstrated the factum of equivalence or hostile discrimination, there is no question therefore of the principle being applicable in the instant case.

18. It is also worthwhile to note that in the case of *State of Maharashtra & Ors. vs. Anita & Anr. (2016) 8 SCC 293* the Supreme Court held that an estoppel was created against challenging the nature of appointment once having duly accepted the same. Para-15 which has some relevance is reproduced hereinbelow:-

“15. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the Government. The appointments of the respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. The conditions of the respondents’ engagement are governed by the terms of agreement. After having accepted the contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, the respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.”

19. As such in view of the facts and circumstances of the case, apart from the long delay in challenging the terms of employment and engagement, no case has been made out by the petitioners for consideration of their services to be regarded as regular employees under the Service Rules, 1986. The judgments relied upon by the learned Senior counsel for the petitioners being of no assistance to their case are not discussed. Further, the aspect of the writ petitioners' eligibility for regularization under the Regular Casual Workers Scheme, 1996 as proposed by the respondents and opposed by the petitioners, in view of the fact that the same might have an impact on their future career prospects, is also not discussed at this stage and is left open.

20. Accordingly, these writ petitions stand dismissed,

21. There shall be no orders as to costs.

JUDGE

Meghalaya
14.08.2023
"V. Lyndem-PS"