



Serial No. 06
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 31 of 2024

Date of Decision: 06.09.2024

Smti. Ibahunshisha Nongphud
D/o Shri. Budsing Pohiing
R/o Mawlai Mawdatbaki Nongpathaw
Shillong – 793008, East Khasi Hills District
Meghalaya

:::Petitioner

-Vs-

1.North Eastern Indira Gandhi Regional
Institute of Health & Medical Sciences,
Shillong, Ministry of Health and Family
Welfare, Government of India represented
by the Director, Director's Block, Mawdiangdiang
Shillong – 793018, East Khasi Hills District,
Meghalaya

2.Deputy Director (Administration)
North Eastern Indira Gandhi Regional
Institute of Health & Medical Sciences,
Shillong.
Director's Block, Mawdiangdiang
Shillong – 793018, East Khasi Hills District,
Meghalaya

:::Respondents



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Appellant(s) : Ms. P.S. Nongbri, Adv.

For the Respondent(s) : Dr. N. Mozika, Sr. Adv. with
Ms. K. Gurung, Adv.

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 petitioner being aggrieved with the non-consideration of her candidature as a wait listed candidate, for appointment against the post that was available on resignation of the selected candidates, and the re-advertisement of the said post which was against the executive instructions of the Ministry of Health & Family Welfare is before this Court seeking remedy.

2. The brief facts are that on 03.12.2021, an advertisement for filling up of 2(two) posts of Lower Division Clerk (LDC), in an Unreserved Category, was floated by the respondents, to which the petitioner applied. On the completion of the written and typing skill test, the result was notified on



01.06.2023, wherein the petitioner was placed at Serial No. 2, of the waiting list. Thereafter, the 2(two) persons to whom appointments had been offered, resigned on 13.09.2023 and 17.09.2023, respectively, thereby causing a vacancy in these 2(two) posts. The petitioner accordingly on coming to learn about the said resignation, filed a representation on 26.12.2023, and on getting no reply, by another representation dated 07.02.2024, prayed that she be appointed on account of the post being vacant upon the resignation of the 2(two) appointees.

3. The respondents however, it appears by another advertisement dated 17.10.2023, had issued a fresh advertisement for 10(ten) posts of LDC, including the 2(two) posts, which had become vacant due to the resignation. The petitioner at that point of time, had also participated, but was placed lower in the merit list. As the 2(two) vacant posts had been put up for fresh advertisement, inspite of the validity of the waiting list, and on her representations being rejected, a prayer has also been made for setting aside the impugned second advertisement dated 17.10.2023, as far as it concerns the post of LDCs, quashing of the impugned letter dated 15.02.2024, and the notification dated 16.02.2024, declaring the result of LDCs, pursuant to the second advertisement.

4. Ms. P.S. Nongbri, learned counsel for the petitioner has in her submissions asserted that the action of the respondents in denying



appointment to the writ petitioner is illegal and bad, for the following reasons.

- (a) By letter dated 09.11.2023, clarification had been sought by the respondents from the Ministry of Health & Family Welfare, Government of India, with regard to the appointment of the wait listed candidates against the vacancy that had arisen on the resignation of the selected candidates, as the validity period of the wait listed candidates was still valid. To the above noted letter, by a communication dated 21.12.2023, the Ministry of Health & Family Welfare directed that the respondents were to fill up the vacancies from the wait listed candidates, which however, was not done.
- (b) That inspite of the clarification being to the knowledge of the respondents, though the petitioner had sought clarification on 26.12.2023, and again on 07.02.2024, the respondents rejected the request vide a letter dated 15.02.2024, on the ground that the selection of the petitioner under the earlier advertisement was no longer valid, as the said posts had been advertised, and a fresh panel was available for selection.
- (c) That in another similarly situated case, of one Shri. Hemant Kumar, a wait listed candidate for the post of Nursing Officer, the said



candidate was then accommodated in the revised list published subsequently.

(d) That inspite of the writ petitioner approaching this Court well in time, that is on 21.02.2024, and this Court passing order dated 23.02.2024, in Misc. Case No. 28 of 2024, the respondents did not adhere to the same and proceeded to fill up all the posts most arbitrarily.

(e) That the Office Memorandum dated 13.06.2000, being well within the knowledge of the respondents, and the same being reiterated by the letter dated 21.12.2023, of the Ministry of Health & Family Welfare, which provided that vacancies resulting from resignation or death of an incumbent within one year of appointment should be filled immediately by the candidate from the reserve panel, the action of the respondents in re-advertising the said posts and treating it as a fresh vacancy is arbitrary, illegal and discriminatory.

5. The learned counsel then concluded her submission by praying for appropriate directions to issue to the respondents, to accommodate the petitioner in the post of LDC, with retrospective effect.

6. Dr. N. Mozika, learned Senior counsel assisted by Ms. K. Gurung, learned counsel for the respondents has submitted that as the respondent Institute had notified the fresh vacancies of 10(ten) posts of LDCs, which included the 2(two) vacant posts, due to the resignation of the appointees,



the vacancies got exhausted, and on a fresh panel being available, coupled with the fact that the petitioner had subjected herself to the second selection process initiated by the second advertisement dated 17.10.2023, but was unsuccessful, no case has been made out to warrant any relief. With regard to filling up of all the 10(ten) vacant posts of LDCs, inspite of the order dated 23.02.2024, passed in Misc. Case No. 28 of 2024, the learned Senior counsel submits that for the said posts, offers of appointment had been issued on 19.02.2024, prior to the order of this Court, and that the lapse on the part of the respondents in not complying with the order was due to genuine bona fide reasons and inadvertence.

7. Upon hearing the learned counsel for the parties, the matter in issue within a small compass, is whether the writ petitioner being placed in the wait list was eligible to be appointed to the post that had become vacant, due to the resignation of the appointees. Without dwelling or diving too deep into the facts and circumstances of the case, from the face of the records itself and the narration of facts, serious illegalities can be seen to have been perpetuated by the respondents in the entire process. This unfortunate observation is made in view of the fact that, as placed by the petitioner, the respondents being well aware as to what method was to be adopted with regard to the resultant vacancies due to resignation, against stated policy and subsequent clarification persisted to flout the directives



resulting in the deprivation of the valuable right of the petitioner to gainful employment.

8. To illustrate this, reference first is made to the Office Memorandum dated 13.06.2000, and the directives which are contained in Paragraph – 2 thereof, which is extracted herein below.

41019/18/97-Estt(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated 13th June, 2000.
OFFICE MEMORANDUM

Sub: Operation of reserve panels prepared on the basis of selections made by UPSC, Staff Selection Commission, other recruiting agencies and where selections are made by Ministries/Department etc. – acceptance of recommendations of Fifth Central Pay Commission – regarding.

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2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future,



where a selection has been made through UPSC, and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.

The directives as contained above, would squarely apply to the petitioner, inasmuch as, the appointees had resigned within 3(three) months from the date of their appointment that is 26.06.2023, and the respondents instead of abiding by the instructions, floated a fresh advertisement on 17.10.2023, by including the 2(two) vacant posts, when in fact, recourse should have been taken to the waiting list or reserve panel, as directed.

9. Further, by a letter dated 09.11.2023, the respondents when the selection from the fresh advertisement was yet to happen, had sought clarification from the Ministry, in respect of the wait listed candidates, for which the list would lapse on 22.03.2024, an extract thereof, is reproduced herein below.

“It may be stated that the validity period of the respective waitlisted candidates is (one) year from the date of the meeting of the



respective Selection Committee. Hence, the validity period of 1 (one) year of the respective waitlisted candidates would lapse on 22.03.2024 for the posts of Nursing Officer and on 24.05.2024 for the posts of Lower Division Clerk.”

A copy of the above noted letter was marked to Shri. Hemant Kumar, who it appears had also filed a representation being a wait listed candidate. A reply to the letter seeking clarification was then given by the Ministry of Health & Family Welfare on 21.12.2023, wherein, the respondents were advised to follow the instructions of the Office Memorandum dated 13.06.2000, for filling of vacancies from wait listed candidates. The same is also reproduced herein below.

***F.No. U-12012/78/2023-NE
Government of India
Ministry of Health & Family Welfare
(North East Section)***

***Nirman Bhawan, New Delhi
Dated, 21-12-2023***

To

***The Director,
NEIGRIHMS, Shillong
Meghalaya – 793018***

Subject: Seeking clarification on the appointment of waitlisted candidates from the reserve panel against vacancy arises due to resignation of selected candidates after joining the posts-reg.

Sir,



I am directed to refer to your Letter No. NEIGR-GAD (RC)/14/2017/Pt.III dated 09.11.2023 on the subject mentioned above and to say that the matter has been examined in the Ministry in consultation with DoPT.

2. You are advised to follow the instructions of DopT OM dated 13.06.2000 for filling up of vacancies from waitlisted candidates and further the same stand be followed uniformly for all the posts in the Institute for maintaining uniformity & transparency.

3. This issues with the approval of the Competent Authority.

*Yours faithfully,
Sd/-*

*Under Secretary to the Govt. of India
Tel: 011 – 23061640
Email ID: anuradha.ramakrishan@nic.in*

This clarification, as can be seen from the materials, was received before the filing of the petitioner's representations on 26.12.2023 and 05.02.2024. However, the respondents even though, the second selection process was yet to culminate, acted in total derogation to the stated policy contained in the Office Memorandum dated 13.06.2000, and clarification dated 21.12.2023, rejected the petitioner's candidature by a letter dated 15.02.2024, on the ground that a fresh panel had been made available, and made a reference to the Office Memorandum dated 13.06.2000, to justify their action, when in fact, the directions were otherwise.

10. From the entire sequence of events, what can be seen is the arbitrary, illogical and incomprehensible manner, in which the respondents inspite of



being well aware, as to the policy and inspite of the clarification received, with regard to the waiting list and also inspite of the representations received, and inspite of the fresh recruitment process not yet completed, went ahead to offer appointment on the basis of the fresh panel to the newly selected candidates.

11. This Court notes with concern the manner in which the respondent institute, which prides itself in being a premier institution and supposed to be a model employer, has conducted itself which is unfortunate. The petitioner therefore having been illegally deprived and discriminated against, inasmuch as, in the case of Shri. Hemant Kumar, the respondent institute having dealt with it otherwise and as per policy, is therefore entitled to equitable relief.

12. Accordingly, the respondents are directed to accommodate the petitioner to the post of LDC forthwith with retrospective effect; to be reckoned from the date the fresh appointments were made from the second selection process.

13. For the indiscretion and glaring illegalities, and for also acting in disregard to the orders of this Court, passed in Misc. Case No. 28 of 2024, and for failing to take corrective measures thereon, this Court deems it fit to impose a cost of Rs.50,000/- (Rupees Fifty Thousand only) upon the respondents to be made over to the writ petitioner.



14. The writ petition stands allowed and is disposed of.

Chief Justice (Acting)