

Serial No.26
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 57 of 2023

Date of Decision :09.04.2024

Shri. Buddha Sangma,
S/o (L) Dev Bahadur Chetry,
R/o Dobogre, South Garo Hills District,
Meghalaya.

...Petitioner

-Vs-

1. The State of Meghalaya represented by
The Deputy Secretary to the
Government of Meghalaya,
Health and Family Welfare Department,
Meghalaya, Shillong.
2. The Director of Health Service (MI),
Meghalaya, Shillong.
3. District Medical & Health Officer,
South Garo Hills District Meghalaya.
4. The Medical & Health Officer,
I/c. Baghmara CHC,
South Garo Hills District, Meghalaya.
5. Smti. Fernelliya A. Sangma, UDA
O/o District Medical & Health Officer,
South Garo Hills, Baghmara,
Meghalaya.
6. Smti Tirza N.Marak, UDA
O/o Additional District Medical & Health Officer,
South Garo Hills, Baghmara,
Meghalaya.

7. Shri. Bongacheng R. Marak, UDA
O/o District Medical & Health Officer,
South Garo Hills, Baghmara,
Meghalaya.
8. Shri. Joseph Breney R. Marak, UDA
R/o Sibbari PHC, South Garo Hills,
Meghalaya.

...Respondents

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. P.T.Sangma, Adv.

For the Respondent(s) : Mr. A.H.Kharwanlang, Addl.Sr. GA
for R 1-4.
Mr. H.L.Shangreiso, Sr. Adv. with
Ms. P.Biswakarma, Adv. for R 6, 7,
9 & 10.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. The petitioner was initially appointed as a Ward Boy on 27-06-2001, and was regularized in service by order dated 30-11-2007, with effect from 27-08-2007. It appears that on the recommendation of a Departmental

Promotion Committee, the writ petitioner by order dated 19-11-2007, was allowed to be promoted against an existing vacant post of LDA. His services in the post of LDA, then vide order dated 02-06-2009, was regularized with effect from 03-06-2009, and it was recorded therein that the earlier promotion was temporary. The petitioner on not being granted promotion to the post of UDA, is therefore before this Court for directions that his services as LDA be regularized from 20-11-2007, the date on which he was initially promoted to LDA.

2. Mr. P.T.Sangma, learned counsel for the petitioner has strongly argued that the petitioner having been promoted by the order dated 19-11-2007, for all practical purposes his service into the post of LDA should be counted from this date. He further submitted that in view of this regularization being counted from 03-06-2009, the writ petitioner has been deprived of promotion to the post of UDA, whereas the private respondents have been given this benefit. He therefore, prays that the initial promotion order be considered for granting his prayer for regularization in the post of LDA.

3. Mr. A.H.Kharwanlang, learned Addl. Sr. GA appearing for the respondent Nos. 1-4, in reply, has submitted that by order dated 30-11-2007, the writ petitioner was regularized in the post of Ward Boy with effect from 27-08-2007, and as such, for counting of his service towards

promotion to the next grade was not yet eligible to have been considered for promotion. He further submits that the promotion of the writ petitioner to the post of LDA, was at the most a temporary arrangement, in view of the vacancy in the said post at that point in time. He also submits that unless a member of service has completed three years of service in the lower post, he shall not be eligible for promotion, and the writ petitioner having been regularized in the post of Ward Boy on 27-08-2007, there was no possibility of his being allowed to be promoted on a permanent basis from 19-11-2007. It was further submitted that as the writ petitioner had appeared before the DSC, and sat for the examination in 2009, he was accordingly granted promotion to the post of LDA thereafter.

4. With regard to the other aspect of the case, that is, the alleged supersession of the writ petitioner by the private respondents, the learned Addl. Sr. GA, has again referred to the order dated 30-11-2007, to submit that the concerned respondents, that is, the respondent Nos. 6 & 7 had been regularized on 27-08-2007 to the post of LDA and other equivalent post, and as such, there is no question to the writ petitioner being superseded in any manner.

With regard to the other private respondents, he submits that they have unnecessarily been dragged in as respondents, in view of the fact that

admittedly, the writ petitioner is senior to them. He therefore prays that no interference is called for and the writ petition is liable to be dismissed.

5. Mr. H.L.Shangreiso, learned Sr. counsel assisted by Ms. P.Biswakarma, learned counsel appearing for the respondent Nos. 6, 7, 9 & 10, has also supported the submissions of the learned Addl. Sr. GA, and submits that the writ petitioner has not been discriminated in any manner.

6. Having heard learned counsel for the parties and examined the materials on record, it is seen that the writ petitioner is staking his claim to the post of LDA to be counted from 19-11-2007, on the basis of the order of the same date. It is however pertinent to note that after the order dated 19-11-2007 had been issued, whereby the writ petitioner was promoted to LDA, the order of regularisation of his services as Ward Boy with effect from 27-08-2007, was issued on 30-11-2007, that is, after the order of promotion. This in itself has presented a contradiction of sorts, inasmuch as, there could not have been any exercise of promotion as the petitioner was yet to be regularized in the lower post of Ward Boy. However, by the order dated 02-06-2009, the petitioner was then regularized in the post of LDA, and the period for which he stood promoted earlier was taken to be promotion on temporary basis. For the sake of convenience, the order dated 02-06-2009, is reproduced herein below:

*“GOVERNMENT OF MEGHALAYA
OFFICE OF THE DISTRICT MEDICAL & HEALTH OFFICER
SOUTH GARO HILLS :: BAGHMARA.*

No. DM&HO/SGH/Estt-NGZT/09/dated Baghmara, the

ORDER

As per the recommendation of District Selection Committee, South Garo Hills, Baghmara vide letter No. SGH/DSC/3/Pt/2006-07/24 dated Baghmara the 21st May 2009 Service of Shri. Buddha M. Sangma who was temporarily promoted to L.D.Asstt. under Health and Family Welfare department, South Garo Hills District is hereby regularized in the scale of pay Rs. 3100-70-3520-EB-80-4160-90-5060/- (PM) w.e.f. 3rd june 2009.

*District Medical & Health Officer
South Garo Hills, Baghmara.*

Memo.No.DM&HO/SGH/Estt-NGZT/09/3539-40

Dated Baghmara, the 2/6/09.

Copy to:-

- 1. The Chairman, District Selection Committee, South Garo Hills, Baghmara for information.*
- 2. Shri. Buddha M. Sangma.*
- 3. Office file.*

*District Medical & Health Officer
South Garo Hills, Baghmara.”*

7. In the backdrop of these facts, and in view of prevailing law, with regard to years of qualifying service for being considered to the next post, the claim of the petitioner for regularization from 19-11-2007, therefore cannot be sustained, and as such, that portion of the order dated 19-11-

2007, has to be read down to mean only a temporary arrangement allowing the petitioner to occupy the existing vacant post. In view of these circumstances therefore, the prayer of the writ petitioner cannot be granted by this Court, and at the most, the respondents are to give due consideration for promotion of the writ petitioner subject to availability of vacancy and track record to the next post of UDA, as has been accorded to the other respondents, as per the gradation list that is being maintained.

8. With the above observation, writ petition is disposed of.

Judge

Meghalaya
09.04.2024
"Samantha PS"