**Serial No. 26**
**Regular List**

# HIGH COURT OF MEGHALAYA
# AT SHILLONG

WP(C) No. 77 of 2023 Date of Decision: 21.05.2024

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Shri. Hawaman Ebor Lyttan
S/o (L) U.B. Warjri
R/o Mawlai Phudmuri, Nongmadan
Shillong, East Khasi Hills District,
Meghalaya :::Petitioner

-Vs-

1.State of Meghalaya
Represented by the Chief Secretary,
Government of Meghalaya, Shillong.

2.The Joint Secretary (Admn) to the
Govt. of Meghalaya, Public Works (R&B)
Dept., East Khasi Hills District, Meghalaya.

3.The Chief Engineer P.W.D. Roads,
Shillong, Meghalaya. :::Respondents

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**Coram:**

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

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**Appearance:**

For the Petitioner/Appellant(s) : Mr. L.J.L. Nongpiur, Adv.

For the Respondent(s) : Mrs. T. Yangi. B, AAG with
Ms. R. Colney, GA.

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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 brief facts of the case as portrayed are that the writ petitioner was appointed as Section Assistant (SA) on 1st August, 2001 under the NH Shillong Bye Pass Division, Shillong purportedly against a sanctioned post. The service of the writ petitioner was allowed to continue on various extensions till February, 2022, whereafter his salary was withheld for 9(nine) months from March – November, 2022. Being aggrieved with non-payment and non-extension of his services, writ petitioner is before this Court, seeking appropriate orders for payment of salary and for regularization of his services.

2. Mr. L.J.L. Nongpiur, learned counsel for the petitioner has submitted that the writ petitioner was appointed against a sanctioned post, and has been working for the past 21 years and as such, the decision of the

respondents to treat him as an adhoc employee instead of considering his regularization against the sanctioned post was totally unjustified. He further submits that the writ petitioner has rendered service till December 2022 and therefore should be paid for the entire period. Reliance has been placed by the counsel for the petitioner on the rejoinder affidavit, wherein at Annexure – IV thereof, a letter dated 15.12.2022, has been enclosed, wherein a request has been made to the Chief Engineer, PWD (Roads), to take up the matter regarding their service and for appointment on contractual basis as they have been rendering satisfactory service to the department.

3. The learned counsel for the petitioner then submits that the petitioner had preferred representations to the respondents which were not given any consideration especially on the aspect of the petitioner serving against a sanctioned post. Thereafter he submits clarification by way of a representation dated 07.03.2023, was sought by the petitioner of a letter dated 23.06.2022, issued by the Personnel & Admn. Reforms (B) Department, whereby adhoc appointees were approved by the cabinet for regularization subject to certain conditions of which one of them was to be against sanctioned posts only, and also appointments made before 31.12.2007. Learned counsel submits that the name of the writ petitioner had figured in the list of adhoc employees to be regularized. As such, he contends the writ petitioner being appointed before 2007, should have been

regularized to a sanctioned post. He therefore submits, the respondents are liable to regularize his services and also pay all his pending salary for services rendered till December 2022.

4. Mrs. T. Yangi. B, learned AAG assisted by Ms. R. Colney, learned GA for the respondents has submitted that the appointments given in the year 2001 of Section Assistants, were not against existing vacancies, but against regularised work charged post, which has since lapsed, and were not retained. She submits that the writ petitioner's appointment in the year 2001, was to a non-sanctioned post, but however, in consideration of the fact that, the writ petitioner has been working for a long time, he had been offered along with other similarly situated adhoc employees to opt for contractual employment in December 2022, which was refused by the writ petitioner, but however, accepted by the other 9(nine) similarly situated employees. It is further submitted that, notwithstanding the refusal of the writ petitioners, to revert to contractual appointment, the writ petitioner at this stage is again given the option to accept the offer of regularization, though without any back wages as claimed. It is further submitted that, as the fact that the writ petitioner was appointed to a non-sanctioned post is not disputed, the submission of his name for regularization under the decision of the cabinet is an aberration, and will not vest any right on the petitioner.

5. Mr. L.J.L. Nongpiur, learned counsel at this stage has submitted that if the writ petitioners are to accept the proposal as given by the respondents for regularization, the same should be given from the date of initial appointment to the said post. Certain decisions have also been placed by the learned counsel for the petitioner, in support of his case.

***(i) Dr. Mukesh Sharma vs. State of Rajasthan through Principal Secretary, Department of Medical Education, Government of Rajasthan, Secretariat, Jaipur in the case of S.B. Civil Writ Petition No. 10718/2015***

***(ii) Raman Kumar & Ors. vs. Union of India & Ors. in the case of Civil Appeal No(s). /2023 @ SLP(C) No. 7898/2020.***

6. I have heard learned counsel for the parties. It is noted from the materials that have been placed and not disputed, that the initial appointment of the writ petitioner was on a temporary basis, as a Section Assistant for a period of 3(three) months on an adhoc basis, which was subsequently extended. However, it is also interesting to note that, in a letter dated 30.07.2005, under the hand of the Joint Secretary to the Government of Meghalaya, PWD Department (respondent No. 3), request has been made to allow the incumbent(s) to continue in their service and further, that the District Selection Committee need not be informed. Further, by another

letter dated 03.08.2005, the said respondent No. 3, again communicated that the incumbent(s) be allowed to continue in service and to be retained, and that payment of monthly salaries was to be made and continued as has done before. By another letter dated 24.08.2005, the name of the petitioner was forwarded to the Personnel & Admn. Reforms (B) Department by the respondent No. 3 for consideration of regularisation.

7. The above noted three letters to the mind of the Court, had facilitated the continuation of the petitioner in service on adhoc basis for a long period without there being any reasonable basis. Thereafter, though the status of the writ petitioner as adhoc employee remained, benefit of revised pay and arrears thereof, was allowed, and also placement of the pay on a higher scale, as is seen from Office Order No. 33 of 2010 dated 16.06.2010, and Office Order No. 40 of 2014 dated 08.09.2014. As discussed, the appointment of the petitioner, being temporary was not against any sanctioned post, as projected, but was against a regularized work charged post, which has since lapsed, and as such, therefore, there is no question of being regularized at this stage, in view of the terms of appointment and the non-existence of a post to which he would be accommodated against.

8. However, with the advent of the cabinet decision, though the petitioner was not temporarily appointed against a sanctioned post, he has been given a second chance to have his service regularized, on the

concession made by the respondents. The services of the writ petitioner which were retained throughout purely on extension orders, though the appointment cannot be said to be perse illegal, the same was irregular. This Court has also noted that with regard to the temporary retention of other Section Assistants, who were similarly appointed in the year 2001, a few of them numbering 9 in number accepted the contractual appointment, which was refused by the writ petitioner, the same having occurred before the cabinet decision, will have no bearing or relevance for the purposes of this case.

9. Though the offer of regularization, in view of the decision of the cabinet, may seem inadequate to the petitioner, in the considered view of this Court, the circumstances by which the writ petitioner entered into service, on being appointed against a non-existent post and allowed to continue therein for a long period, the proposed regularization will suffice to address the grievance to a large extent. On the prayer of the writ petitioner for consideration of back wages, the same is rejected. The respondents are accordingly directed to take up the matter for regularization of the writ petitioner, and complete the process within a period of 2(two) months.

10. The authorities placed by the counsel for the petitioner being of no assistance, are not discussed here.

11. Matter accordingly stands closed and disposed of.

**Judge**

Meghalaya
21.05.2024
***"D.Thabah-PS"***