



Serial No.24
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 120 of 2023

Date of Decision :12.06.2024

Shri. Andrew H.Khonglam,
Son of Shri. Shaphranglin E.Sohliya,
Resident of Lumbalang, Malki, Shillong,
East Khasi Hills District, Meghalaya.

...Petitioner

-Versus-

1. The State of Meghalaya through the Secretary to the Government of Meghalaya, Mining and Geology Department, Meghalaya Civil Secretariat at Shillong, East Khasi Hills District, Meghalaya, which post is now held by Shri. E.Kharmalki, IAS, Chairman of the Departmental Promotion Committee, Mining and Geology Department, Meghalaya, held on 14.03.2023.
2. The Joint Secretary of Meghalaya, Mining and Geology Department, Meghalaya Civil Secretariat at Shillong, East Khasi Hills District, Meghalaya.
3. The Under Secretary, Government of Meghalaya Mining and Geology Department, Meghalaya Civil Secretariat at Shillong, East Khasi Hills District, Meghalaya.
4. The Director of Mineral Resource, Government of Meghalaya, Risa Colony, Shillong – 793003, East Khasi Hills District, Meghalaya, which post is now held by Shri. P.D.Sangma, MCS,



Member of the Departmental Promotion Committee,
Mining and Geology Department,
Meghalaya, held on 14.03.2023.

5. Smti. A.Kharpor, MCS,
Joint Secretary,
Personnel (AR) Department,
Government of Meghalaya,
Meghalaya Civil Secretariat, Shillong,
Member of the Departmental Promotion Committee,
Mining and Geology Department,
Meghalaya, held on 14.03.2023.
6. Shri. P.Hoojon, MFS,
Joint Secretary,
Finance (B) Department,
Government of Meghalaya,
Meghalaya Civil Secretariat, Shillong,
Member of the Departmental Promotion Committee,
Mining and Geology Department,
Meghalaya, held on 14.03.2023.

...Respondents

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. S.Chakrawarty, Sr. Adv. with
Mr. E.Laloo, 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 petitioner by way of the instant writ petition has put a challenge to the constitution and recommendations of a Departmental Promotion Committee which had met on 14-03-2023, for considering the promotion of the petitioner and 2 other candidates to the post of Chemist by alleging that the said DPC had exercised powers which were in excess and beyond the scope of such Committees.

2. A brief overview of the facts is that the petitioner who is presently serving as an Assistant Chemist in the Mining & Geology Department, Government of Meghalaya, had initially entered service as a Lab Assistant on the recommendation of the Departmental Selection Committee on 10-01-2003 on a temporary basis. Thereafter, the petitioner by Office Order dated 18-07-2006, was allowed to officiate temporarily in the promotional post of Assistant Chemist which was then regularized vide Office Order dated 22-07-2008. The writ petitioner had earlier approached this Court by way of WP(C). No. 94 of 2018 with a prayer that he be considered for promotion to the post of Chemist, and this Court, then by order dated 15-04-2021 directed that, as and when the Departmental Promotion Committee sat, the petitioner was to be considered for the same. This was followed by another writ petition being WP(C). No.168 of 2021, on the



same prayer, wherein directions were issued that the promotional exercise should be completed within a period of two months. A contempt application was also filed alleging violation of this Court's order, but however, the same was withdrawn.

3. In the DPC held on 14-03-2023, which was convened and had sat for considering the promotion of the petitioner and two other candidates, the petitioner as also the two other candidates were found not eligible to be given promotion on the ground of nature of engagement in the case of the petitioner and one Shri. R.D.Sangma, and lacking in qualification in the case of the third candidate namely, Shri. M.Nongrum. The petitioner being aggrieved with the findings and recommendations of the DPC as regards his candidature, on the assertion that the DPC has exceeded its mandate, is therefore before this Court by way of this instant application.

4. Mr. S.Chakrawarty, learned Sr. counsel assisted by Mr. E.Laloo, learned counsel on behalf of the petitioner has firstly referred to the order of this Court dated 05-04-2021, passed in WP(C). No. 94 of 2018, and submits that this Court by the said order had observed that with regard to promotion to the post of Chemist, as the petitioner is qualified in all respects for consideration, his name was to be considered as and when the Departmental Promotion Committee sat. It is contended by the learned Sr. counsel that this Court having observed as such, and further the services of



the petitioner having been confirmed in the post of Assistant Chemist, which is a feeder post for promotion to the post of Chemist, the DPC in rejecting his candidature on the ground that his initial appointment had not been regularized, and the recommendation that his case be taken up for regularization, had gone beyond its mandate as permissible by law. He further submits that similar recommendation had also been made by the DPC with regard to the candidature of Shri. R.D.Sangma which is uncalled for in such proceedings, inasmuch as, the name of the petitioner and the two others had been shortlisted by the Department itself for consideration by the DPC. He therefore submits, the said proceedings being irregular and beyond the scope and mandate of the DPC, the same was liable to be interfered with by this Court, and the said proceedings be declared null and void.

5. Mrs. T.Yangi B, learned AAG assisted by Ms. R.Colney, learned GA on behalf of the respondents, in reply submitted that the DPC held on 14-03-2023, was in compliance to the directions of this Court and was constituted as per the 'The Meghalaya Mineral Service Rules, 2018' which though still a draft, is being followed by the Department. She further submits that the rejection of the petitioner's candidature by the DPC cannot be said to be illegal, irregular or malafide, as the DPC was correct in observing after scrutinizing the petitioner's service records that the



initial temporary appointment was yet to be regularized. It is also submitted that the promotion given to the petitioner to the post of Assistant Chemist could not have been regularized, inasmuch as, he was serving in an officiating capacity and therefore, there was no question that the petitioner be considered for further promotion. On the aspect of interference being sought by the petitioner on the findings of DPC, the learned AAG has contended that unless the process of assessment is vitiated either on the ground of bias, malafides or arbitrariness, Courts do not sit as an Appellate Authority over a Committee that has been duly constituted, and consists of members who have expertise and experience in the matter. In support of her arguments, learned AAG has cited the following decisions:

- (i) *H.S.Sidhu vrs. Devendra Bapna & Ors. (2016) 1 SCC 495, para 13.*
- (ii) *Union Public Service Commission vrs. M.Sathiya Priya & Ors. (2018) 15 SCC 796, paras 17, 21, 22 & 23.*
- (iii) *Mohd. Mustafa vrs. Union of India & Ors. (2022) 1 SCC 294, paras 15, 18 & 36.*

She therefore, submits that as the findings of the DPC being based on hard facts are not vitiated in any manner, the writ petition deserves no consideration.



6. Having heard learned counsel for the parties, it is seen that the case of the petitioner is a curious case indeed. This observation is being made in view of the fact that though the initial appointment of the petitioner as Lab Assistant on being selected by the Departmental Selection Committee on 10-01-2003 was purely on a temporary basis, for all practical purposes this appointment was considered substantive and regular by the respondents. It is not understood as to how the petitioner whose services were yet to be regularized, was allowed to officiate in the promotional post of Assistant Chemist from 18-07-2007, which was then regularized on the recommendation of a DPC held on 11-07-2008. The petitioner was subsequently allowed to cross the Efficiency Bar by order dated 04-09-2014, and thereafter, by Office Order dated 30-01-2020, was confirmed in service against the post of Assistant Chemist. As such, from these sequence of events, it was but natural that the petitioner aspired for promotion to the higher post of Chemist on attaining the required qualifying years of service, for which he sought a mandamus from this Court by way of WP(C). No. 94 of 2018, followed by WP(C). No. 168 of 2021. In the order dated 05-04-2021, this Court on the respondent's submission of the eligibility criteria for appointment to the post of Chemist, along with a list of names of the persons who were to be



considered for promotion which included the petitioner, had recorded the same at para 6 thereof, and the same is reproduced herein below:

“6. On the last date, i.e. on the 31.03.2021, this Court on being apprised about this position, had directed the learned State counsel for the respondent No. 1 to 4 to obtain precise instructions as to whether the petitioner is being considered by the respondents for promotion to the vacant post of Chemist as has been indicated in the letter. Today, Mr. H. Abraham, learned GA to this query, has referred to that part of the instructions received from the respondents 1-4, wherein eligibility criteria for promotion and names of persons who are to be considered have been given. This note is taken cognizance by this Court at this stage, and the eligibility criteria and names of persons as submitted, is reproduced herein below: -

*“**ELIGIBILITY CRITERIA** - Appointment to the post of Chemist shall be made 50% by promotion from amongst the Assistant Chemist who must possess B.Sc. with chemistry and have rendered not less than 5(five) years of continuous service in the post of Assistant Chemist on the first day of the years in which the selection is made.*

NAME OF THE PERSONS.

<i>Sl. No.</i>	<i>Name & Designation of incumbent</i>	<i>Dt. of joining in the present post.</i>	<i>Dt. of regularization in the present post</i>	<i>Educational Qualification</i>	<i>Remarks</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	
1.	Shri M. Nongrum, Asstt. Chemist	30.08.2002	18.07.2006	P.U.C.	By. D.P.C.
2.	Shri Robert D. Sangma, Asstt. Chemist	17.09.2002	Adhoc/ Officiating	B.Sc. (Chemistry)	Yet to be regularized
3.	Shri A. Khonglam, Asstt. Chemist	18.07.2006	18.07.2006	B.Sc. (Chemistry)	By D.P.C.



7. From what has been narrated above, it can be plainly seen that the Department for all practical purposes considered and treated the petitioner as a regular employee, to the extent that even before this Court had furnished his name as one of the candidates who were to be considered for promotion to the post of Chemist. At this juncture, after the petitioner has rendered over 21 years in service, the stand that is sought to be taken by the respondents that the entire service life of the petitioner would not amount to vesting him with any rights or actionable claim would surely result in the violation of his rights, as he also has been visited with civil consequences. This Court cannot overlook the fact that apart from his initial appointment which may be at the most irregular, but not illegal, the career progression of the petitioner has been in accordance with law, and at this stage to rewind the clock and divest him of rights he has since accrued, would result in manifest injustice being caused.

8. In the backdrop of these facts therefore, and to balance the equities, it is accordingly directed that as per the recommendation of the DPC held on 14-03-2023, the respondent No. 4 i.e., the Director of Mineral Resources shall immediately take up the case of the petitioner with the concerned Departments for regularization of his initial appointment either by the Meghalaya Public Service Commission or the District Selection Committee as the case may be. This may be facilitated by a special



selection by the concerned body. As the petitioner is serving against a sanctioned post, and having been duly confirmed in the same by the respondents, it shall not be open for them to review or revert the petitioner to his initial post, as in the considered view of this Court the regularization of the petitioner's services will be but a formality keeping in mind the fact that he had been appointed much prior to 2007, wherein in such similar adhoc or temporary appointments, the Cabinet by a Memorandum dated 23rd June, 2022, had regularized such appointments.

9. Further, no case having been made out to show that the DPC proceedings were vitiated in any manner, the same is not interfered with.

10. Accordingly, as per the directions given hereinabove, the writ petition stands closed and disposed of.

11. No order as to costs.

Judge

Meghalaya
12.06.2024

SAMANTHA ANNA LIYA
RYNDAH

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