



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 256 of 2021

Date of Decision: 22.08.2024

Shri. Omingchael Khardewsaw
 Aged about 56 years
 Son of Shri. Osparwell Lyngkhoi
 R/o Upper New Nongstoin-II, village-Nongstoin-793119,
 West Khasi Hills District,
 Meghalaya

.....Writ Petitioner

-Versus-

1. State of Meghalaya represented by the Chief Secretary, Shillong
2. Deputy Commissioner, South West Khasi Hills District,
Mawkyrwat
3. Block Development Officer Ranikor C&RD Block,
South West Khasi Hills Meghalaya

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
 Ms. P. Biswakarma, Adv.

For the Respondent(s) : Mr. H. Abraham, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No



J U D G M E N T

1. The petitioner, working as a Gram Sevak having been appointed on 09.03.1988 on Adhoc basis and later being regularised in the same post vide office order dated 27.07.1990, his service thereafter was confirmed against the permanent post of Gram Sevak on the strength of the order dated 07.03.2000, has now approached this Court with this instant writ petition seeking promotion to the higher post of Senior Gram Sevak w.e.f. the year 2019.

2. According to Mr. H.L. Shangreiso, learned Sr. counsel appearing for the petitioner, the case of the petitioner is that he was appointed as Gram Sevak in the then united District of West Khasi Hills having gone through the regular process of appointment.

3. In the year 2013, the Deputy Commissioner, West Khasi Hills District had published a draft inter se seniority list in respect of Gram Sevaks and the name of the petitioner figured at serial number 15 of such gradation list.

4. However, in the meantime, a new District, named as South West Khasi Hills District was carved out of the West Khasi Hills District and those employees, including the petitioner herein who were holding the post of Gram Sevak in the undivided West Khasi Hills District were shifted to the new district and continued to work as Gram Sevak in the said district.

5. There being no promotional avenue available to the petitioner



and others holding the post of Gram Sevak, the Assured Career Progression Scheme (ACPS) was extended to the petitioner which was conveyed to him and others vide Office Order dated 30.07.2015, wherein he was granted the 1st financial upgradation w.e.f. 22.02.2010.

6. It is also the submission of the learned Sr. counsel that the petitioner in course of his service had also officiated as Senior Gram Sevak w.e.f. 01.11.2017 on retirement of Shri. G.J. Sangma as Senior Gram Sevak, Ranikor C&RD Block. Again, on Shri. W. Shylla being appointed as Senior Gram Sevak, Ranikor in 2019, whereupon he retired from service in the year 2019 itself the petitioner was once again directed to officiate as Senior Gram Sevak, Ranikor.

7. The learned Sr. counsel went on to submit that within the South West Khasi Hills District as on November and December 2019, on the retirement of Shri. Brassly Thabah as Senior Gram Sevak of Mawkyrwat C&RD Block on 30.11.2019 two posts of Senior Gram Sevak that is one for Mawkyrwat and another for Ranikor C&RD Block are lying vacant and the petitioner being No. 2 in the inter se seniority list of Gram Sevak of South West Khasi Hills District had anticipated that he would be promoted to the post of Senior Gram Sevak but was never promoted as such in spite of having served as Gram Sevak for 33 years.

8. The learned Sr. counsel has submitted that as per Rule No. 7 Sub-Rule 3 of “The Meghalaya Community and Rural Development Gram Sevaks/Gram Sevikas Services Rules, 2008” it is provided that appointment to the post in the category (iii) under A & B of Sub-Rule



(1) of Rule 4 shall be made by promotion from the select list approved under Sub-Rule (4) of Rule 10 from amongst the members of the service holding the post of Gram Sevak/Gram Sevika who have rendered not less than 5(five) years of continuous service in the post on the first day of the year in which the selection is made. The petitioner in spite of serving for almost 33 years in the same post has not been considered for promotion, reiterates the learned Sr. counsel.

9. The petitioner has then made a representation dated 17.05.2021 before the relevant authority that is the Deputy Commissioner, South West Khasi Hills District with a prayer for consideration of his promotion on the ground that a vacancy in the post of Senior Gram Sevak is lying vacant in the Ranikor C&RD Block as well as another in Mawkyrwat C&RD Block. In the said representation he has also pointed out that till date no updated gradation list as per the rules has been brought out and the only gradation list that was issued was dated 06.06.2008 applicable to the then parental district of West Khasi Hills and since the bifurcation of South West Khasi Hills District was made, no separate gradation list for the new district has been brought out to the detriment of all the serving Gram Sevaks including the petitioner.

10. The petitioner has however admitted that vide office order dated 12.07.2021 a draft of seniority list as on 12.07.2021 in respect of the Gram Sevaks and Gram Sevikas under the office of the Block Development Officer, Mawkyrwat and Block Development Officer, Ranikor within the South West Khasi Hills District was published with the name of the petitioner figuring at Sl. No. 1 of the said list.



11. It is also the submission of the learned Sr. counsel that the respondent/Deputy Commissioner, South West Khasi Hills District vide office memorandum dated 15.07.2021 has granted the 3rd Financial Upgradation under the Modified Assured Career Progression (MACP) Scheme to some employees including the petitioner, who apparently have not been promoted till then. However, the petitioner being entitled to promotion under the Rules has not yet availed such financial upgradation.

12. The learned Sr. counsel has contended that the relevant respondent authorities have not considered the fact that in order of seniority, when Shri. G.J. Sangma retired on 29.02.2016 as the Senior Gram Sevak the second senior most person, that is, Shri. W. Shylla who was already working as Gram Sevak Grade-I since 2011 should have been promoted as Senior Gram Sevak and in that order, the petitioner would have been promoted as Gram Sevak (Grade-I) in the year 2016 itself and accordingly, in due course as per the provision of the relevant rules in the later part of 2021 on completion of 5(five) years of service and on two posts of Senior Gram Sevak being vacant, the petitioner would have been promoted as Senior Gram Sevak. This chain of events however did not occur solely on the ground that no Departmental Promotion Committee (DPC) was held at the relevant point of time, and although as contended by the respondent that the DPC was held on 31.01.2019 but the same could not be concluded due to non-receipt of ACRs of the eligible Gram Sevaks including the petitioner, the petitioner and other eligible employees not being responsible for such state of affairs, non-consideration of promotion to the petitioner at the



relevant point of time is a denial of his fundamental and legal rights.

13. The learned Sr. counsel has accordingly prayed that this petition may be allowed and the petitioner who has since retired from service in the month of September 2023 may be granted notional promotion with all consequential financial benefits.

14. In support of his case the learned Sr. counsel has cited the following authorities:

- i. *Ajit Singh v. State of Punjab*, (1999) 7 SCC 209, para 22;
- ii. *State of Mysore v. C.R. Sheshadri*, (1974) 4 SCC 308, para 1 & 2;
- iii. *P.N. Premachandran v. State of Kerela*, (2004) 1 SCC 245, para 9;
- iv. *Union of India v. Hemraj Singh Chauhan*, (2010) 4 SCC 290, para 37 & 38.

15. Per contra, Mr. H. Abraham, learned GA appearing for the State respondent in his submission has not contradicted the statement of facts made as regard the appointment of the petitioner to the post of Gram Sevak in the year 1988 and that his services against the permanent post of Gram Sevak was confirmed vide relevant order dated 07.03.2000. There is also no denial of the fact that on the bifurcation of the erstwhile West Khasi Hills District into two districts that is, the present West Khasi Hills District and South West Khasi Hills District



the petitioner was relocated to serve as Gram Sevak in the office of Block Development Officer, Ranikor C&RD Block.

16. The learned GA has also submitted that the petitioner has been allowed to officiate as Senior Gram Sevak in the Ranikor C&RD Block in the first instance on the post being left vacant upon the then incumbent having retired. Again, for the second time the petitioner was allowed to officiate in the post of Gram Sevak in view of the retirement of the then Senior Gram Sevak, Shri. W. Shylla.

17. As to the contention of the petitioner that he was not considered for promotion at the relevant period, that is in the year 2019 when there are two vacant posts of Senior Gram Sevak, being eligible to the same by virtue of his seniority, the learned GA has submitted that in fact the DPC to consider the promotion of the eligible candidates from amongst the Gram Sevak was conducted on 31.01.2019, however the same could not be completed as some of the Annual Confidential Reports of the candidates for the year 2016-17 are found to be inadequate and as such any move for promotion was put on hold till the process is complete.

18. Eventually, on 27.09.2021 the DPC was once again convened to consider the promotion of Gram Sevak and in compliance with the relevant rules of “The Meghalaya Community and Rural Development Gram Sevaks/Gram Sevikas Services Rules, 2008”, the petitioner was promoted to the post of Gram Sevak (Grade-I) from the post of Gram Sevak. As per the said Service Rules, Rule 7(3) provides for the mode of promotion of those members of the service holding the post of Gram



Sevak/Gram Sevika and such Rules stipulates that an eligible candidate would be considered for selection only if he/she has rendered not less than 5(five) years of continuous service in the post on the first day of the year in which the selection is made.

19. It is the contention of the learned GA that the petitioner was promoted as Gram Sevak (Grade-I) by virtue of the office order No.SWK/ESTT-27/2012/Vol-II/41 dated 28.09.2021 and as such he could not have been promoted to the post of Senior Gram Sevak since he has not completed 5(five) years of continuous service in that post having retired from service in the month of September 2023.

20. Another contention raised by the learned GA is that there is no discrimination made by the Department or the Government for that matter since in course of his tenure of service he was also granted financial upgradation under the ACP Scheme vide relevant order No.SWK/ESTT/50/2013/66 dated 30.07.2015 when in fact by the said order the petitioner was granted two financial upgradations that is the first and second ACP. Again, vide office order dated 15.07.2021, the Deputy Commissioner, South West Khasi Hills District had conveyed the grant of the 3rd Financial Upgradation under the Modified Assured Career Progression (MACP) Scheme.

21. The learned GA has finally submitted that the claim of the petitioner is without any basis and this petition being devoid of merit may be dismissed as such.

22. From the facts and circumstances which have emerged from the argument advanced by the learned counsels of the respective



parties, what can be understood is that the petitioner having been in service for about 33 years or so, he is entitled to be promoted in the normal course of his employment, but the same was denied to him.

23. According to the service rules applicable to the petitioner, that is, “The Meghalaya Community and Rural Development Gram Sevaks/Gram Sevikas Services Rules, 2008”, at Rule 4 is found the hierarchy of posts within the service, the categories of post starts with Gram Sevaks/Sevikas, the next higher post being Gram Sevaks (Grade-I) and the next being Senior Gram Sevak and at the top of this hierarchy is the post of Extension Officers (General).

24. As has been pointed out by the learned counsels, the relevant rule which deals with the issue of promotion is Rule 7 under the heading “Method of Recruitment”. It is pertinent to note that the eligibility condition for promotion from one stage to the next higher stage is continuous service of 5(five) years in a particular post. For example, for a Gram Sevak to be promoted to the next higher post of Gram Sevak (Grade-I), he has to be in continuous service as a Gram Sevak for the preceding five years. Nothing in the rules is found that a Gram Sevak even by dint of his prolonged stagnation in that post exceeding the stipulated five years period, he can be considered for promotion to the next higher post than the one he ought to have been promoted, again as an illustration, one can imagine a situation where a Gram Sevak who was not given promotion after being in the said post for five year or more, perhaps even for ten years or so, if considered for promotion at a later period of time, be eligible to get double promotion on this ground alone as the rules does not provide for the



same.

25. What is also noticed is that the petitioner throughout has sought for promotion to the post of Senior Gram Sevak when at the relevant period he was still holding the post of Gram Sevak, the next promotional post being that of Gram Sevak (Grade-I). It is also the prayer of the petitioner that since the District Departmental Promotion Committee has not been constituted the same ought to be constituted within a period of three months.

26. Again, on perusal of this petition it is seen that the same was filed on 22.09.2021. The State respondent in its affidavit-in-opposition filed through the respondent No. 2 at para 14 of the same has stated that the earlier DPC could not be convened due to unavailability of adequate ACRs of the petitioner however on 27.09.2021, the DPC was convened for promotion of Gram Sevak and accordingly the petitioner being found qualified was promoted to the post of Gram Sevak (Grade-I) the same being confirmed vide order No.SWK/ESTT-27/2012/Vol-II/41 dated 28.09.2021. Such promotion being a subsequent event after the filing of this petition, the same was not challenged by the petitioner to the extent that a prayer for amendment of the petition to incorporate such challenge was never made by the petitioner. At most, the petitioner at para 8 of his rejoinder affidavit has only indicated that his promotion as Gram Sevak (Grade-I) is highly belated which ought to have taken place in the year 2016. This however, would not dilute the fact that as on 28.09.2021, the petitioner has been promoted to the post of Gram Sevak (Grade-I). According to the 2008 Rules (supra) he could only be considered for promotion to the post of Senior Gram Sevak after a



period of continuous service of 5(five) years in the post of Gram Sevak (Grade-I).

27. It may also be pointed out that during the tenure of his service when the petitioner was stagnated in the post of Gram Sevak, he was accorded two financial upgradations under the ACP Scheme and again on 15.07.2021 he was granted the 3rd Financial Upgradation under the Modified Assured Career Progression (MACP) Scheme. Therefore, it cannot be said that the petitioner was put at a disadvantaged situation in his service career as far as adequate financial benefits are concerned.

28. In the case of Hemraj Singh Chauhan (supra) cited by the learned Sr. counsel for the petitioner at para 38 of the same the observation of the Hon'ble Supreme Court is that the legitimate expectation of the respondents therein to be considered for promotion has been defeated by the unreasonable inaction on the part of the Government which stood in the way of the respondents' chances of promotion. In this instant case as has been observed herein above, the Government in spite of delay in the constitution of the DPC (that too, not without reasons), has granted regular financial upgradations to the petitioner and as such, the issue of legitimate expectation would not be applicable to his case.

29. Again, in the case of P.N. Premachandran (supra) the petitioner has raised the issue of retrospective promotion being applicable to him as is noticed in the observation made by the Hon'ble Supreme Court at para 7 of this case under the facts and circumstances of that case, which in view of the factual situation in the case of the petitioner the same



ratio would not apply. Even reliance of the petitioner in the case of C.R. Sheshadri (supra), the proposition propounded by the Hon'ble Supreme Court at para 1 and 2 of the same, speaking of notional promotion, the said principle would not be applicable to the petitioner under the facts and circumstances of his case.

30. In the case of Ravikumar Dhansukhlal Maheta & Anr. v. State of Gujarat & Ors., reported in 2024 SCC Online 972, para 81, the Hon'ble Supreme Court has observed that “...no government servant can claim promotion as their right because the Constitution does not prescribe criteria for filling seats in promotional posts...”. A coordinate bench of this Court in the case of Andrew Shabong & Ors. v. State of Meghalaya & Ors. reported in 2023 SCC Online Meg 12 at para 10 has also observed as follows:

“10. Promotion to a higher post in the instant case is not a case of functional promotion, but as can be seen involves a process of selection and recommendation by a duly constituted DPC. A mere existence of a vacancy therefore, will not create a vested right for an eligible employee to claim for appointment on promotion to the said post, especially when the same has to be finalized through a selection process. A case that is relevant and has a bearing on the point in issue wherein leading cases have been digested is the case of Union of India v. K.L. Taneja and other similar cases [WP(C) No. 8102/2012] decided by the Delhi High Court on 12.04.2013. In this judgment which has great persuasive value, after analyzing many cases on this point, at Para-21, it has been held as follows:-

“21. The cornucopia of case law above noted brings out the position:-

- (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.



- (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.
- (iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.
- (iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

31. In the light of the authorities cited above which is found acceptable, this Court is of the considered opinion that the petitioner has not been able to make out a case as prayed for in this petition. The same is hereby rejected.

32. Petition disposed of. No costs.

Judge