

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.A.No.53/2023

Reserved on: 26.02.2024

Pronounced on: 07.03.2024

1. Union of India, represented by the Secretary to the Government of India Ministry of Health & Family Welfare, New Delhi-110001.

2. North Eastern Indira Gandhi Regional Institute of Health & Medical Sciences, Mawdiangdiang, Shillong represented by its Director.

3. The Deputy Director (Administration), North Eastern Indira Gandhi Regional Institute of Health & Medical Sciences, Mawdiangdiang, Shillong

Vs.

1. Shri Vikas Kumar

2. Shri Rahul Chakraborty

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W.Diengdoh, Judge

Appearance:

For the Appellants : Dr. N. Mozika, DSG with
Ms. A. Pradhan, Adv.

For the Respondents : Mr. K.P. Bhattacharjee, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes
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ii)	Whether approved for publication in press:	Yes
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J U D G M E N T

(Made by Hon'ble, the Chief Justice)

The present Writ Appeal has been preferred, challenging the order 23.06.2023 of the learned Single Judge passed in W.P.(C) No.310 of 2022, in and by which, a direction was issued to the respondents / appellants herein to provide suitable employment to the Writ Petitioner in the vacant post of Sanitary Inspector.

2. The case put forth by the Writ Petitioners was that a notification together with merit list dated 02.06.2022 was published by the 3rd respondent, whereby the post of Sanitary Inspector was reduced from 4 to 2 in the General Category, which had resulted in denial of employment to the Writ Petitioners;

2.1. It was the further case of the Writ Petitioners that initially there was an advertisement dated 12.10.2007 issued to fill up 6 posts of Sanitary Inspector on direct recruitment with a ratio of 4 for UR and two for ST. During the pendency of the advertisement, nearly after a decade, yet another advertisement was issued to fill up 4 posts of Sanitary Inspector with a revised ratio of two for UR and 2 for ST, stating that candidates, who had already applied pursuant to the earlier

advertisement dated 12.10.2007 would be entitled to considered and they need not apply afresh;

2.2. It was also the case of the Writ Petitioners that based on the subsequent advertisement, a written test was conducted on 14.03.2021 and a Corrigendum dated 02.08.2021 was issued, stating that the post of Sanitary Inspectors that was advertised in 2007 would hold good and the vacancy to be read as 6, i.e. 4 for UR and 2 for ST;

2.3. The case of the Writ Petitioners was that based on the subsequent advertisement dated 21.08.2017, a merit list was drawn in which, the Writ Petitioners' names were shown in Sl.Nos.3 and 4, whereas their names reflected in Sl.Nos.1 and 2 in the waiting list. When the Corrigendum was issued restoring the earlier position, the Writ Petitioners should have been considered;

2.4. The further case of the Writ Petitioners was that though they had been selected to the post of Sanitary Inspector and the merit list was also drawn as early as on 25.11.2021, by a Corrigendum / Notification, again the ration was changed by reducing the post to 4 and the act of the respondents in the Writ Petition was completely illegal and the

respondents have no authority to keep the Writ Petitioners in the waiting list, when they realized that the total number of posts was 6, namely, 4 for UR and 2 ST. The petitioners also referred to a judgment of the Supreme Court in the case of *Polyplex Corp. N Ltd. Thru' Auth. Signatory vs. Union of India and others*, reported in *(2014) SCC Online 5211* in support of their stand. It was submitted by the Writ Petitioners that one of the selected candidates by name Deepak Kumar had resigned from the post and the second Writ Petitioner, namely, Rahul Chakraborty is not interested in the appointment and hence, the first Writ Petitioner, viz., Vikas Kumar is entitled to be appointed;

3. According to the Appellants herein / respondents in the Writ Petition, before appointment order was issued, a selection committee meeting was held on 21.04.2022 and a recommendation was made to limit the number of post of Sanitary Inspectors to 2 for UR and 2 for ST, totalling 4 and subsequently, the number of posts had been enhanced to 6. Though Vikas Kumar / 1st petitioner is ranked at Sl.No.4 in the merit list and 2 in the waiting list, he cannot as a matter of right demand appointment against the vacancy, which had arisen on account of resignation of one Deepak Kumar. It was the stand of the Appellants that once a person had joined the service and resigned, the vacancy has

to be notified and a fresh advertisement needs to be called for. Of course, it is true that Rahul Chakraborty / 2nd Writ Petitioner is not interested in joining the post;

3.1. It was the contention of the Appellants that the vacancy, which has arisen, pursuant to the resignation of a selected candidate, cannot be filled up with the candidate, who is in the waiting list in the light of the judgments of the Hon'ble Supreme Court in the case of *State of Punjab vs. Raghbir Chand Sharma*, reported in *(2002) 1 SCC 113* and *Thrissur District Cooperative Bank Limited vs. Delson Davis P*, reported in *(2021) 14 SCC 407*. Thus, it was contended that the 1st petitioner, who is alone contesting the matter, is not entitled to any relief and on that score, the order of the learned Single Judge is liable to be interfered with.

4. Learned Single Judge, having considered the arguments of both parties, came to the conclusion that in view of the Corrigendum dated 02.08.2021, whereby originally notified number of posts, viz., 6 has been restored, all the vacancies have got to be filled up from the merit list, by applying the principle of reservation. Learned Single Judge also held that almost 10 years have gone-by from the date of

original advertisement and consequent to the subsequent restoration of the number of posts to 6, the advertisement dated 12.10.2007 needs to be adhered to. It was further held that in view of the fact that one post is lying vacant due to the resignation of one Deepak Kumar and that the second Writ Petitioner, namely, Rahul Chakraborty has secured employment somewhere else, the sole Writ Petitioner Vikas Kumar is entitled to the benefit of earlier notification dated 12.10.2007 and thus, learned Single Judge had set aside the impugned notification dated 02.06.2022, aggrieved by which, the Appellants are before this Court.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. On a careful scrutiny of the entire facts and circumstances of the case, it is apparent that the Government was not certain in determining the number of posts before issuance of notification for the post of Sanitary Inspector. It is evident that except confusion and chaos, nothing could be seen in the process of selection to the post of Sanitary Inspector, inasmuch as there was an earlier notification dated 12.10.2007 issued to fill up the 6 posts of Sanitary Inspector and thereafter, there was a reduction in the number of posts from 6 to 4 and the subsequent restoration of posts to 6. On account of vagueness,

fuzziness, indeterminateness and indefiniteness on the side of the Government, the candidates much less the petitioners cannot be made suffer, especially when there was no fault on the part of the Writ Petitioners. Originally, the advertisement was issued to fill up six posts of Sanitary Inspector with allocation of ratio, i.e., 4 for UR category and 2 for ST that has to be unilaterally followed. It is true that the vacancy, which has arisen on account of resignation cannot be taken into account for the purpose of accommodating Vikas Kumar, as he is the Sole Writ Petitioner contesting the case as on date and another Writ Petitioner Rahul Chakraborty had given up his effort in joining the post of Sanitary Inspector on account of his engagement in some other employment. At the same time, it cannot be lost sight of the fact that Vikas Kumar was placed in the merit list at Sl.No.4, but for the confusion created by the Government, he lost his opportunity albeit he is meritorious.

7. At this stage, learned DSG for the appellants stated that after expiry of the period of waiting list, vacancies that had arisen subsequently cannot be filled up from the list. It is pertinent to state here that out of the candidates, who had participated in the selection, only two persons, namely, Writ Petitioners, out of whom 1st Petitioner alone

is contesting the case, have knocked at the doors of this Court and admittedly, the name of Vikas Kumar also finds place at Sl. No. 2 in the waiting list and 4 in the merit list. Therefore, Vikas Kumar is eligible to be accommodated in the post, by extending the benefit of earlier notification / advertisement dated 12.10.2007 and as Rahul Chakraborty is not interested in pursuing the matter, his case need not be considered at this stage. It is made clear that the vacancy that had caused on account of resignation has to be considered afresh and only after proper advertisement, the same needs to be filled up.

8. We direct the appellants to issue fresh advertisement and fill up the vacancies lying vacant as on 31.12.2023 in accordance with law and the whole exercise of identifying vacancies and filling up the same shall be completed on or before 30.04.2024. It is made clear that the relief is granted only to Vikas Kumar and since much water has flown, no other person can knock at the doors of this Court, seeking the same relief based on the advertisement dated 12.10.2007 at this distant point of time. It is reiterated that in case any attempt is made to get the benefit of this judgment by others who wake up from slumber now, the case that may be filed by them can be dismissed on account of laches.

9. In fine, finding no merits and substance in the argument advanced by the Appellants, in our considered opinion, the order of the learned Single Judge does not warrant any interference by this Court. Accordingly, ***W.A.No. 53 of 2023 is dismissed*** as devoid of merits, with a direction to the Appellants to give the benefit of the order of learned Single Judge to the 1st Writ Petitioner / Vikas Kumar within a period of six months from the date of receipt of a copy of this judgment.

10. Before parting with this judgment, we emphasize that future vacancies should be identified well in advance and all attempts to be made to fill up those vacancies, in view of the fact that every employer / State is aware about the vacancies that may fall vacant on account of attainment of superannuation of employees every year. As per the dictum laid down by the Apex Court in the case of **Malik Mazhar Sultan and Others vs. U.P.Public Service Commission and Others**, reported in **(2006) 9 SCC 507**, timely determination of vacancies and appointments are mandatory in order to avoid frustration in the mind of unemployed youths and backlog of vacancies. For the sake of convenience, the relevant paragraphs are extracted below:

“18. The Rules postulate the timely determination of vacancies and timely appointments. The non-filling of vacancies for long not only results in the avoidable litigation

but also results in creeping of frustration in the candidates. Further, non-filling of vacancies for long time, deprives the people of the services of the Judicial Officers. This is one of the reasons of huge pendency of cases in the courts.

19. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of Judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that system works automatically and there is no delay in filling up of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the Regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given year. The adherence to strict time schedule can ensure timely filling of vacancies. All State Governments, Union Territories and/or High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All State Governments, Union Territories and High Courts are directed to file within three months details of the time schedule so fixed and date from which time schedule so fixed would be operational.”

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya

07.03.2024

“Sylvana PS”/“ar”

PRE-DELIVERY JUDGMENT IN
W.A.No.53 of 2023