

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 399 of 2023 with
MC (WPC) No. 232 of 2023

Date of order: 01.05.2024

In WP(C) No. 399 of 2023:

1. The Principal Accountant
General (A &E), Meghalaya, Shillong-793001
2. The Sr. Dy. Accountant General (Admin.),
O/o the Principal Accountant General (A&E),
Meghalaya, Shillong.
3. The Establishment Officer, Office of the Principal Accountant
General (A&E) Meghalaya, Shillong.

vs.

Shri. Vijay Kumar

In MC (WPC) No. 232 of 2023

The Sr.Dy. Accountant General (Admin)

vs.

Vijay Kumar

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioners : Ms E.B. Passah, Adv.

For the Respondent : Mr L. Kosh, Adv.

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| i) | Whether approved for
reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

ORDER

(Made by Hon'ble, the Chief Justice)

The present writ petition has been filed challenging the order dated 03.02.2023 in Original Application No. 043/00019/2022 wherein the Tribunal had interfered with the impugned order and directed the writ petitioners to extend all the benefits to the respondent within a period of three months from the date of receipt communication of the order of the Tribunal.

2. According to the applicant in the Original Application, he was granted MACP w.e.f. 31.12.2014 after completion of 10 years of service based on the circular dated 19.05.2009 issued by the DoP&T. However, the financial upgradation was not granted to him to which he made a representation dated 15.07.2021 and was subsequently rejected on 04.08.2021. The reason given by the writ petitioners-Department was that the applicant in the Original Application was acquitted from the criminal case based on the benefit of doubt and since there was no honourable acquittal, the applicant would not be entitled to any relief.

3. The Department relied upon the Office Memorandum dated 14.09.1992 wherein paragraph 3 is extracted below:

“3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against

the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the juniormost officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears or salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.”

4. The respondent was charged with criminal case with regard to forgery of birth certificate for an offence under Section 468 IPC wherein the Criminal Court has acquitted him based on the ground of the benefit of doubt. The Tribunal has also observed that the Department was aware of the fact that the applicant was acquitted based on the benefit of doubt and granted MACP w.e.f. 31.12.2014, therefore, non-granting of arrears on the ground that he was acquitted on benefit

of doubt has no relevance in this regard. When the respondent/appellant has got the benefits of one particular circular, the earlier circular dated 14.09.1992 is equally applicable and the relevant paragraph with regard to action after completion of disciplinary case/criminal prosecution is extracted supra. The applicant was also in police custody from 19.06.2012 to 09.07.2012. Subsequently, he was released on bail and was placed under suspension. The applicant's suspension was revoked w.e.f. 01.01.2013 pending finalization of the criminal case in Shillong Sadar P.C. Case No. 59 (4) 12 u/s 420/468 IPC as the Department felt that court cases are moving in snail pace. However, on 13.01.2020 in G.R. Case No. 189(S) of 2013, the applicant was acquitted on the ground of the benefit of doubt. Since the applicant had the benefit of doubt which was the reason of acquittal, in the light of the Office Memorandum dated 14.09.1992, the Appointing Authority has every right to deprive the monetary benefits to the applicant. The applicant was in custody and only on grant of bail on 09.07.2012, the same was intimated to the Department on 10.07.2012. There is no need for departmental action, if the action is based on Office Memorandum extracted supra. Since the Appointing Authority has the right to deny the arrears of pay in case the departmental/criminal proceedings is ended in benefit of doubt, the applicant is not entitled to any relief. The

Tribunal had proceeded on the basis that an order had been passed on 31.12.2014 granting benefits and the writ petitioners-Department is aware of the fact that the applicant was acquitted on benefit of doubt. The substantial justice has to be done and in the present case on hand based on the Office Memorandum dated 14.09.1992, the respondent/appellant is not entitled to any relief and we have no other option except to interfere with the order of the Tribunal by setting aside the same.

5. With the above observations, WP(C) No. 399 of 2023 is allowed and MC (WPC) No. 232 of 2023 is disposed of. There is no order as to costs.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
01.05.2024
"Sylvana PS"