



Serial No. 23
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 422 of 2023

Date of Decision: 28.08.2024

1.Darren Damanbha Kharkongor
S/o Davis Pyngrope, resident of
Pokseh West – 793003, Shillong, Meghalaya

2.Bansharailang Kharkongor
S/o Garland Pyngrope, resident of
Pokseh West – 793003, Shillong, Meghalaya

:::Petitioners

-Vs-

1.The Additional Chief Engineer,
Meghalaya Power Distribution Corporation
Limited, Shillong, East Khasi Hills District,
Meghalaya

2.The Director Corporate Affairs,
Meghalaya Energy Corporation
Limited, Shillong, East Khasi Hills District,
Meghalaya

3.The Director Corporate Affairs,
Meghalaya Power Transmission Corporation
Limited, Shillong, East Khasi Hills District,
Meghalaya

4.The Director Corporate Affairs,
Meghalaya Power Distribution Corporation
Limited, Shillong, East Khasi Hills District,
Meghalaya

:::Respondents



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

For the Respondent(s) : Mr. S. Sahay, Adv.
Mr. A.H. Kharwanlang, 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 |
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JUDGMENT AND ORDER (ORAL)

1. The petitioners in the instant writ petition are before this Court with a prayer for regularization of their services and that they be paid a regular scale of pay as applicable to the equivalent posts under the respondents from the date of their joining. The prayer of the writ petitioners is on the premise that the same should be accorded to them, in view of the donation of a plot of land by the elders of their clan to the respondents for construction of a sub-station. It is the case of the petitioner that consequent to the donation and on an understanding, instead of providing regular/permanent employment, the respondents however employed the petitioners, on a contractual basis. Hence, this writ petition.



2. Mr. S. Jindal, learned counsel for the petitioners has submitted that since the land was given free of cost to the respondent and as a token of such acceptance, the respondent had agreed in principle to provide employment to at least two members of the clan, it was the natural expectation that the employment so provided would be regular against sanctioned posts. The provision for regular employment in such circumstances, it is asserted stems from an Office Memorandum dated 30.08.2017, whereby in the amendment to Para – 7, a special mode of appointment has been provided, when such land donations had been made. In this context, he submits the respondents in the implementation and application of the said Memorandum had afforded regular appointment to 20 persons, vide Office Order dated 11.06.2020, and as such, there was no reason that the petitioners be not given the same consideration.

3. It has been further submitted that the above Memorandum having prescribed the said conditions, the action of the respondents in not considering the regular appointment of the petitioners is unjustified and discriminatory. It is also submitted that the stand taken by the respondents that the Patta, whereby the land was handed over was on 22.03.2017, prior to the issuance of the Office Memorandum on 30.08.2017, thus making the same inapplicable to the case of the petitioners is misplaced and inconsistent. Learned counsel further submits that in a judgment of this



Court dated 15.07.2024, passed in WP(C) No. 133 of 2021, the respondents have reiterated the prevalence of the stated policy, with regard to granting regular employment to persons on the basis of agreements made with land owners. He therefore submits that the respondents are duty bound to grant the petitioners regular employment, as per the Memorandum.

4. Mr. S. Sahay, learned counsel for the respondents in reply has submitted that there was no promise of employment and at that relevant point of time, when the land was taken over, there was no such policy in place. The *Kharkongor* clan he submits, had donated the land, as the setting up of a sub-station, would be beneficial to the people inhabiting the land of *Kur Kharkongor Nongthymmai*. It is further submitted that the petitioner has incorrectly placed reliance upon the Office Order dated 11.06.2020, to claim parity with the 20 persons, who have been given appointment, inasmuch as, the said Office Order is in respect of a different land and does not pertain to the facts of the instant case. He lastly submits that, the petitioners do not possess any vested rights to claim for such regular employment, as there is no mention of any offer for employment to any member of the clan, nor any agreement to this effect.

5. Upon hearing the learned counsel for the parties, to the mind of this Court, the only question to be determined, is whether on the given set of circumstances, the petitioners would be entitled to the prayers as made in



the writ petition. First, it is noted that the fact that the *Kharkongor* clan had donated a plot of land measuring about 45,500 sq. ft. approximately for construction of an electrical sub-station to the respondents is undisputed. From the materials on record, it can be seen that the respondent No. 1, vide letter dated 03.02.2015, had written to the *Kharkongor* clan elders, with regard to the requirement of 1 acre of land, amongst other requirements for construction for a sub-station at Lad Smit, which was acceded to by the clan and conveyed vide letter dated 14.05.2015, whereafter the land was handed over to the respondents vide Patta dated 22.03.2017. The nature of the grant of the land, it is to be noted was a straight forward transaction and was not reduced to any form of formal agreement, except for the fact that the land document is in the form of a standard issue Patta. As such, apart from the handing over, the said transaction also did not provide for payment of lease rent or any payment of consideration. However, as per the stand taken by the petitioners, an understanding had been arrived at with the respondents, which was why the petitioners were given employment, and that the same had been accepted in the expectation that the appointment would be regularized in due course. At this juncture, it is necessary to refer to the Office Memorandum dated 30.08.2017, which for the sake of convenience is reproduced herein under.



**GOVERNMENT OF MEGHALAYA
PERSONNEL & ADMV. REFORMS (B) DEPARTMENT**

ER(AR)49/2012/67

Dated Shillong, the 30th August, 2017

OFFICE MEMORANDUM

Subject: Composition, functions etc. of the District Selection Committee for the Districts in the State of Meghalaya and the procedure for direct recruitment to various categories of posts which come under the purview of the Committee.

The undersigned is directed to invite attention to Govt. O.M. No. PER(AR)49/2012/5, dated 17th November, 2014 relating to the composition, functions etc. of the District Selection Committee for the Districts in the State of Meghalaya and the procedure for direct recruitment to various categories of posts which come under the purview of the Committee and to say that for the existing Para 7, the following new provision shall be substituted as:

Amendment of Para 7

In case where private land owner(s) have donated land free of cost for Government purpose, the land proposed to be donated should be legally handed over through a registered deed to enable the Government to provide appointment to any person(s) as recommended by the land owner(s) in a Grade IV/Grade III posts. Where land is donated by the Nokma/Syiem/Dolloi/Raid/Clan, etc then the Nokma/Syiem/Dolloi/Raid/Clan/Sardar, as the case may be, shall identify the appropriate person or persons, in consultation with the



affected families, if any, to whom appointment can be given. The Deputy Commissioner of the concerned District will identify the post in consultation with the District Head of the concerned Department to which the land is being donated. Appointment under this provision will be outside the purview of the DSC.

Provided that on the retirement/demise the vacancy will be filled up through normal recruitment.

This shall come into force with immediate effect.

*Sd/-
(L. Diengdoh)
Commissioner & Secretary to the Govt. of Meghalaya
Personnel & A.R. (B) Department*

6. From the above noted Memorandum it can be seen that, provision has been made for affording employment for appointment to any persons as recommended by the land owners, who had donated land free of cost for Government purposes. In the instant case, though in the affidavit filed by the respondents a stand had been taken that the Office Memorandum will not be applicable, inasmuch as, it is only for Government purpose, and that the Memorandum came into existence after the handing over of the land had been effected, this Court notes that as pointed out by the learned counsel for the petitioners, the respondents has in another matter cited the Memorandum, as the reason for appointing 20 employees in the



Corporation. This stand taken by the respondents appears at Para – 27 of the judgment and order dated 15.07.2024, passed in WP(C) No. 133 of 2021 (*MeECL Progressive Workers’ Union etc. vs. State of Meghalaya & Ors.*), and is quoted herein below.

“27. As to the contention of the petitioner/Union as regard the alleged discrimination as far as regularisation is concerned, particularly the process for regularisation of 20 employees, the explanation offered by the respondent/MeECL that the said 20 employees were regularised on the bases(sic) of an agreement made between the MeECL and the land owners, etc. for appointment of their preferred candidates, the same cannot be faulted since the policy decision of the Government in this regard would cover such decision. The said policy is found in the office memorandum No.PER/(AR).49/2012/67 dated 30.08.2017 (Annexure-R/2 of the affidavit-in-opposition) wherein the following is noted:

“In case where private land owner(s) have donated land free of cost for Government purpose, the land proposed to be donated should be legally handed over through a registered deed to enable the Government to provide appointment to any person(s) as recommended by the land owner(s) in a Grade IV/Grade III posts. Where land is donated by the Nokma/Syiem/Dolloi/Raid/Clan, etc then the Nokma/Syiem/Dolloi/Raid/Clan/Sardar, as the case may be, shall identify the appropriate person or persons, in consultation with the affected families, if any, to whom



appointment can be given. The Deputy Commissioner of the concerned District will identify the post in consultation with the District Head of the concerned Department to which the land is being donated. Appointment under this provision will be outside the purview of the DSC.”

7. On the other aspect that, the Memorandum came into existence after the land had been taken over, though the same is correct and further coupled with the fact that, there was no precise written agreement, in the considered view of this Court, the appointments made on contractual basis were done only in 02.07.2020, and in this regard, it can be safely assumed was made on account of the donation of land. Therefore, the appointments being made after the issuance of the Office Memorandum, the appointments will naturally be understood to be governed by the terms contained therein. Had the appointments been made prior to the issuance of the Office Memorandum, perhaps the rights of the petitioners would stand diluted, but in the instant case, the same not being so, the stand adopted by the respondents cannot be accepted.

8. As such, in the given facts and circumstances, in the considered view of this Court, the petitioners are entitled to be considered for regular employment, similar to the 20 employees, appointed by Office Order dated 11.06.2020.



9. The respondents are therefore directed to consider the case of the petitioners within a period of 4(four) months, after a copy of this order has been furnished to them.

10. As ordered, the writ petition is accordingly allowed and disposed of.

Chief Justice (Acting)