



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.28/2024

Date of CAV : 06.03.2025

Date of pronouncement : 03.04.2025

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1. Shri Andrew Shabong, S/o (L) T. Pyngrope, Motinagar, Lumpyngngad, Shillong.
 2. Smti. Banisha Marwein, D/o (L) C.L. Nongbsap, Mawlai Motsyiar, Shillong.
 3. Ibashisha Nongkynrih, D/o (L) Hammar Jyrwa, Mawlai Umjaiur, Shillong. Appellants

Vs.

1. State of Meghalaya, represented by the Commissioner and Secretary, Public Work (R&B) Department, Shillong.
2. The Commissioner and Secretary, Personnel and Administrative Reforms (B) Department, Government of Meghalaya, Shillong.
3. The Chief Engineer, PWD (Roads) Government of Meghalaya, Shillong.
4. The Registrar, PWD (Roads), Government of Meghalaya, Shillong.
5. The Executive Engineer, PWD (Roads), Government of Meghalaya, Shillong, South Division, Shillong. Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Mr. Philemon Nongbri, Adv

For the Respondents : Mr. N.D. Chullai, AAG with
Mr. E.R. Chyne, GA



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

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.

JUDGMENT

(Delivered by the Hon'ble, the Chief Justice)

The Appellants before us are Upper Division Assistants (UDA) in the State government service.

They have raised an interesting point in this appeal.

They were Lower Division Assistants (LDA-cum-Typist) in the service. Under the relevant rules governing their service, they became eligible for promotion on completing five years of continuous service. This was accomplished in 2014.

Although an adequate number of vacancies existed in the promotional post of Upper Division Assistants, they were not promoted.

They were eventually promoted by the office order No. 4 of 2019 dated 3rd March, 2020.



Aggrieved, they filed the instant writ petition [WP(C) No. 250 of 2020] seeking promotion with retrospective effect from the time of eligibility for promotion i.e. 2014.

On 30th January, 2023, the writ petition was dismissed by a learned single judge of this Court.

On 18th May, 2023, the review petition was dismissed.

Hence, this appeal.

Now, I narrate the facts of this case in more detail.

The appellants are all permanent residents of Shillong, East Khasi Hills District, Meghalaya. They belong to the Scheduled Tribe community. Thus, they enjoy special rights under Articles 244(2) and 275(1) read with the Sixth Schedule to the Constitution of India.

Between 23rd December, 2008 and 11th February, 2009, the appellants were appointed as Lower Division Assistant-cum-Typist in the office of the Executive Engineer, PWD (Roads), Shillong South Division. The appellants assert, which is not disputed by the respondents, that under the service rules for promotion, the appellants became eligible to be considered for promotion to the next higher post of Upper Division



Assistant on seniority-cum-merit basis, upon their completion of five years' continuous service.

Learned counsel for the appellants has brought to our notice a very important notification dated 6th March, 1998 issued by the Personnel and Administrative Reforms (B) Department, Government of Meghalaya which noted that the Departmental Promotion Committee (DPC) had not taken prompt action to fill up the vacancies and that it should take the necessary measures to fill them up, even taking note of anticipated vacancies. He also brought to our notice clause 6(b) of the Meghalaya Ministerial District Establishment Service Rules, 2017 which provided for preparation of a select list from amongst the Lower Division Assistants of the respective districts/circles/divisions office who had rendered not less than five years' continuous service. He contended that all the appellants had completed five years' service in the year 2014 and that sufficient number of vacant posts of Upper Division Assistant were vacant to be filled up.

The DPC did not sit in 2014; not even thereafter. The appellants made representations on 6th November, 2019 and 13th February, 2020 to it asking it to sit.



Finally, the DPC met on 11th November, 2019. It prepared a list of selected candidates recommended to be promoted to the post of Upper Divisional Assistants. Considering the representations of the appellants, the Committee recommended that the appellants be promoted with retrospective effect. Such recommendation can be found in the minutes of the said meeting of the DPC.

By the office order No. 4 of 2019 dated 3rd March, 2020, the appellants were given promotion to the next higher post of Upper Divisional Assistants, but only from their date of joining.

The short case of the appellants was that they were eligible for promotion in 2014 to the post of Upper Division Assistant. Sufficient number of posts were vacant but their promotion was effected in 2019 after five years. This promotion should be given retrospective effect from 2014 with all financial and consequential benefits.

The learned judge while dismissing the writ petition on 30th January, 2023 advanced the following reasons:

Promotion with retrospective effect could only be made for compelling reasons and not in a routine manner.



Non-sitting of the DPC is not a ground for promotion with retrospective effect.

Only if the DPC did not convene a meeting with malafide intention, could the case for retrospective promotion be considered.

This was not the case here.

The memorandum of 1998 had been amplified by a notification dated 4th September, 2003 of the government to the effect that retrospective effect could not be given to an order of promotion and that promotion was to take effect from the date it was notified or the promotee took over charge from the person holding charge. Therefore, although the 1998 memorandum instructed the DPC to sit regularly and also to recommend filling up of anticipated vacancies in addition to existing vacancies, there was no policy of the government to give retrospective effect to the promotional order in case the DPC did not sit on time.

Mere existence of a vacancy did not create a vested right in an eligible employee with a right to promotion. The selection process involved selection and recommendation. For retrospective promotion, a specific rule permitting the same was necessary which is absent in the



service rules governing the employment of the appellants. Only in case of malafide conduct of the DPC, the Court could consider retrospective promotion on the principles laid down in the judgment in *Union of India & anr v. Manpreet Singh Poonam & ors* reported in (2022) 6 SCC 105 and a judgment of the Delhi High Court in *Union of India & anr v. K.L. Taneja & anr* [WP (C) No.8102/2012] decided on 12th April, 2013.

The seniority of members of the same grade has to be counted from the date of initial entry into the grade.

Substantially, the issue of promotion depends on the rules. Denial of retrospective promotion is justified on the ground that on the retrospective date, the employee was not born in the cadre.

My view endorses the opinion of the learned single judge.

I would advance some additional reasons.

Suppose, the post of Lower Division Assistant is also a promotional post. Also suppose, that the number of posts of Lower Division Assistants is 20 and 10 have become eligible for promotion to the post of Upper Division Assistant for which there is vacancy. Now, take the situation where the selection process for promotion of employees below the rank of Lower Division Assistant to Lower Division Assistant



has not taken place. Say the work is heavy in nature in the concerned department employing Lower Division Clerks. Taking out a few Lower Division Assistants from a particular office would hamper the work.

In those circumstances, the DPC would be justified in deferring the selection process for promotion of personnel in the rank of Lower Division Assistant to Upper Division Assistant. If such deferment is made, there is no malafide intention of the Committee.

Secondly, even if posts are vacant and there is insufficient work or less need to fill up the post, then the decision to retain the personnel in the lower post and not effecting the selection process to fill up the higher post of Upper Division Assistant would be justified.

Thirdly, if promotion was effected in 2014, there was no guarantee that the appellants would be retaining their service till date. All or anyone of them could have opted out or been discharged from service in this period.

While completely agreeing with the view taken by the learned judge, I would like to add my own views expressed above. I affirm the impugned judgment and order. I dismiss the appeal.



However, had the DPC held its meeting in time or held its meeting without unreasonable delay, the appellants would have had no occasion to approach this Court. The delay of over eight years in holding the DPC is substantial delay.

Under the relevant rules and the decisions of the Supreme Court, the appellants are not entitled to promotion with retrospective effect.

In the special facts and circumstances of the case, the appellants are entitled to cost of the legal proceedings incurred by them to pursue their cause of action which certainly arose in 2014.

This cost is assessed by us at ₹2 lakhs for each appellant to be paid by the respondents within eight weeks of communication of this order.

The appeal is accordingly dismissed.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice

Meghalaya
03.04.2025
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