



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.51/2024

Date of CAV : 12.08.2025

Date of pronouncement : 19.08.2025

Shri Cyprian Dkhar

..... Appellant

Vs.

1. Khasi Hills Autonomous District Council (KHADC) represented by the Secretary, Executive Committee, Shillong, East Khasi Hills District, Meghalaya-793002.

2. The State of Meghalaya represented by the Secretary to the Government of Meghalaya, District Council Affairs Department, Shillong, East Khasi Hills, Meghalaya-793001.

3. The Registrar (Judicial Service), High Court of Meghalaya, Shillong, East Khasi Hills, Meghalaya-793001.

4. Smti. Vyblue of Rest Mawlieh, Magistrate, First Class, Subordinate District Council Court, Nongstoin, West Khasi Hills Meghalaya.

5. Smti. Eblincy Lyngdoh Mawnai, Magistrate, First Class, Subordinate District Council Court, Mawkyrwat, South West Khasi Hills Meghalaya.

6. Smti. Kerphidalin Warjri, Magistrate, First Class, Subordinate District Council Court, Nongpoh, Ri-Bhoi District, Meghalaya. Respondents

Coram:

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

Appearance:

For the Appellant

: Mr. K. Paul, Sr. Adv with
Mrs. R. Dutta, Adv

For the Respondent

: Dr. N. Mozika, DSGI with
Mr. M.L. Nongpiur, Adv for R/1
Mr. N.D. Chullai, AAG with
Ms. Z.E. Nongkynrih, GA for R/2
Mr. D.K. Mishra, Sr. Adv with
Ms. T. Sutnga, Adv for R/4-6



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

This appeal has been preferred by one of the writ petitioners in the writ petition [WP(C) No. 328 of 2022]. There were two writ petitioners, other being Smti. Naphibanmer Laso. The writ petition was dismissed by a learned single judge of this Court by a judgment and order dated 26th July, 2024. One of the writ petitioners Cyprian Dkhar has preferred this appeal

The writ petitioners were candidates in a selection process for appointment of Magistrates First-Class, District Council Courts. Three posts were advertised for. The selection process was undertaken. A list of selected candidates for those three posts advertised for along with a list of waitlisted candidates was published. Now, it so happened that there were five posts vacant, when the recruitment drive for three posts was initiated. After publication of the above list, a move was undertaken to fill up the other two vacant posts. A further post of Magistrate First-Class was in the



process of creation. This was also taken into account. A policy decision was taken by the Khasi Hills Autonomous District Council (KHADC) that the additional three posts would also be filled up, not by a recruitment/selection process but by appointing candidates from the waiting list. Accordingly, the respondent Nos. 4, 5 and 6, Smti Vyblue of Rest Mawlieh, Smti Elbincy Lyngdoh Mawnai and Smti Kerphidalin Warjri were appointed from the waiting list. They are also respondent Nos. 4, 5 and 6 in the appeal.

The writ petitioners participated in the selection test but were nowhere in the original select list or the waiting list.

They challenged the entire procedure on the following substantial grounds: on an advertisement for three posts and on their being filled up by appointment, the selection process was completed and the list was exhausted.

The selection/recruitment drive for the next three posts was a fresh process for which the said waiting list could not be utilised. A new procedure for appointment had to be initiated by advertisement inviting applications, conducting test, viva voce and so on. The sixth post was not an anticipatory vacancy but a future vacancy that could not be filled up from the waiting list.



Now, according to the writ petitioners, if a new selection process had been started for the said three additional posts, they would stand a chance.

Law on the subject:

A selection process initiated by the State or a State agency within the meaning of Article 12 of the Constitution can only fill up existing and anticipated vacancies in a post or posts. It cannot fill up vacancies which are expected to arise in the future. This simply means that selection may be initiated for a post or posts in existence and vacant or likely to fall vacant during this process. A post which is not in existence at the time of initiation of the selection process but likely to be created or come into existence during the selection process or at any time thereafter, cannot be filled up by the advertised selection agenda.

Furthermore, if certain posts had been advertised by public announcement to be filled up by a selection process, it had to be confined to those posts only. The list of selected candidates or waitlisted candidates is relevant to fill up those posts only. Posts not advertised for cannot be filled up by the waitlisted candidates or other candidates from that selection process unless the exigencies of the situation demand urgent filling up of those additional vacancies from the said list of selected candidates and waitlisted candidates.



This emergent situation has to be appreciated and embodied in a policy decision by the recruitment authority or selection committee.

It follows that in case of appointments to future vacancies or appointment to posts not advertised for, the selection or recruitment process has to be thrown open again to the public at large for its participation. Selection can only be made after a competitive participation from eligible candidates [see *Prem Singh & ors v. Haryana State Electricity Board & ors* reported in (1996) 4 SCC 319].

In the absence of any specific rule, the life of a select panel is usually one year [see *State of Bihar & ors v. Amrendra Kumar Mishra* reported in (2006) 12 SCC 561 and *State of Rajasthan & ors v. Jagdish Chopra* reported in (2007) 8 SCC 161].

Facts in detail:

On 6th November, 2019, the Khasi Hills Autonomous District Council, Shillong published an advertisement inviting applications for filling up three vacant posts of Magistrates First-Class for the Subordinate District Council Court, Khasi Hills Autonomous District Council, Shillong. The candidate was to be a citizen of India belonging to the Schedule Tribes of Meghalaya, conversant in the Khasi language and customs, be not more than 37 years and less than 25 years and have at least five years' standing as an



Advocate. In this recruitment process, a written test followed by a personal interview was taken. After the selection process on 11th January, 2021, the said District Council announced the list of three successful candidates and a waiting list of another three. In a communication by the District Council dated 11th January, 2021, the following was inserted “the result is valid for a period of one year from the date of this publication”. On 19th August, 2021, this Court was approached with a request from the Secretary to the Executive Committee of the Council to the effect that there were three further vacant posts and that as a special case, the Council be allowed to fill up these vacancies from the said waiting list. This Court approved the said proposal of the Council as would be evident from the communication of the Registrar Judicial service to the Council dated 25th October, 2021. On 6th December, 2021, the Council extended the validity of the select list till 31st March, 2022. On 4th February, 2022, the three waitlisted candidates were appointed by the Hon’ble Governor as Magistrate First-Class, Subordinate District Council Court, Shillong along with powers of Judicial Magistrate of the First-Class.

Views:

When the appointments to the three posts of First-Class Magistrates were made with publication of a select list which included a list



of the selected candidates and a list of waitlisted candidates, the selection process initiated by the advertisement of 6th November, 2019 was concluded. The list so published was in relation to that process and was valid for one year. That is to say if any of the selected candidates did not join or resign or was discharged within the one-year period, then the list of waitlisted candidates could be utilised to fill up that vacancy.

Now, according to the above cited authorities, this waiting list could not be used to fill up any other vacancy for which a new selection process had to be initiated. However, there is one exception to this rule, namely, grave urgency to fill up the post. On 19th August, 2021, the Council wrote to this Court that “the current situation in the State and the country as a whole” referring to the covid pandemic and the need for more judicial officers to conduct speedy trial, necessitated filling up of the vacant post from the said waiting list. This High Court as it is evident from the communication dated 25th October, 2021 acceded to this request.

Does this mean that the right of a selecting authority to appoint candidates from the waiting list of a selection process which had been concluded was being exercised by the selecting authority? When the High Court acceded to this request, could it be said that a policy decision in this behalf had been taken?



We hold on the basis of the above authorities that subsequent appointments of the respondent Nos.4, 5 and 6 on 28th February, 2022, 28th February, 2022 again on 4th March, 2022 on the basis of which all three joined duties on 3rd March 2022 and 4th March, 2022, respectively were invalid. It is plain that these respondents have been discharging their functions for well over three and a half years. Two judgments cited by learned Deputy Solicitor General, Dr. Mozika in *Sivanandan C.T. & ors v. High Court of Kerela & ors* reported in (2024) 3 SCC 799 (paragraph 55) and in *Vivek Kaisth & anr v. State of Himachal Pradesh & ors* reported in (2024) 2 SCC 269 (paragraphs 43 and 44) come to the rescue of the government. The Supreme Court took into account the long service which the judicial officers had rendered, the experience they had gained and the contribution they had made to the judiciary and declined to “unseat” them. Here the service rendered by the respondent Nos.4, 5 and 6 is similar in nature. Hence, I am also of the view that their service should not be interfered with.

Mr. D.K. Mishra, learned Senior Advocate appearing for these respondents also made similar arguments as the learned Deputy Solicitor General. He did not fail to argue that the induction of his clients from the waitlist was further to a considered policy decision of the selecting authority with the



concurrence of the High Court, based on grave urgency to fill up the vacancies for the cause of speedy judicial administration during covid period.

A silver lining in the sky occurred during the close of hearing of this appeal, when learned Deputy Solicitor General remarked that there was existing one vacancy and one future vacancy to arise soon.

Taking into account those submissions, we direct that to have a fair and just result, the clock should be put back where it was when the three posts were filled up from the waiting list. This could be done by creation of one supernumerary post. There should be no difficulty in this because the Council has repeatedly urged that it was in need of more judicial officers to dispose of pending cases.

Hence, we direct the Council and the State to create one supernumerary post. Any approval from the High Court or the government is deemed to have been obtained. Such supernumerary post should be created by 30th September, 2025. Thereafter, a selection test to fill up these posts should be carried out where the appellant is at liberty to participate and to be concluded within a further period of three months. In this way, the grievance of the appellant is also redressed.



In view of the above, this appeal is disposed of.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice