



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 493 of 2021

Date of Hearing: 13.06.2025

Date of Decision: 24.06.2025

Shri Lurshai Basaiawmoit
Aged about 44 years
Son of (L) Phodren Shabong
R/o. Mairang Mission, Eastern
West Khasi Hills,
Mairang – 793121,
Meghalaya.

.....PETITIONER.

- Vs.**
- 1.** State of Meghalaya represented by the Chief Secretary Shillong.
 - 2.** Executive Engineer, (PHE), Mawkyrwat Division, Mawkyrwat.
 - 3.** Executive Engineer, (PHE), Mairang Division.
 - 4.** Executive Engineer, (PHE), Nongstoin Division.
 - 5.** Superintending Engineer (PHE), Rural Circle, Shillong.
 - 6.** Superintending Engineer (PHE), Western Circle, Nongstoin.
 - 7.** Chief Engineer (PHE), Meghalaya Shillong.
 - 8.** Shri. Nangteiskhem Ryntathiang O/o. S.E PHE Western Circle, Meghalaya.
 - 9.** Shri Bantreilang Wahlang O/o. S.E PHE Western Circle, Meghalaya.
 - 10.** Shri Hapiness Nongrang



O/o. E.E PHE, Mairang Division,
Meghalaya.

11. Shri Babiangdor Marwein
O/o. E.E PHE, Mairang Division,
Meghalaya.

.....RESPONDENTS.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H. L. Shangreiso, Sr. Adv. with
Ms. M. Hajong, Adv.
Mr. W. Khongsni, Adv.

For the Respondent(s) : Mr. K. Khan, AAG with
Mr. A. H. Kharwanlang, Addl. Sr. GA.

(JUDGMENT AND ORDER)

This writ petition is filed by the petitioner challenging the Gradation List dated 02-08-2021 pertaining to the Group D post of Peon wherein the petitioner has been placed at Serial No. 5 below the private respondent Nos. 8, 9, 10 & 11 and also the letter of approval of promotion of the private respondent No.8 dated 27-08-2021 issued by the respondent No.7.

1. The petitioner was appointed to the post of Blue Printer in the Office of the Executive Engineer (PHE), Mawkyrwat Division on the basis of the



recommendation of the District Selection Committee by order dated 24-08-1999. During his posting as Blue Printer, the petitioner was allotted the work of posting of contractors' ledgers including other works entrusted to him from time to time. The petitioner also made several representations for considering his promotion to the post of LDA-cum-Typist. By order dated 03-10-2002, the petitioner was allowed to officiate as LDA-cum-Typist w.e.f. 01-10-2002 on temporary basis till the posting of a regular LDA. The petitioner was also allowed to assist the Junior Engineer vide order dated 03-05-2007. On 08-10-2015, the petitioner submitted a representation to the respondent No.6 praying for his transfer from the post of Blue Printer, Mawkyrwat Division to the vacant post of Peon at Mairang PHE Sub-Division or to any other Grade-IV post. Following the request, the petitioner was transferred to the post of Peon in the office of the Executive Engineer (PHE), Mairang Division by order dated 21-04-2016. On his release from the post of Blue Printer on 10-05-2016, the petitioner joined the post of Peon immediately on 11-05-2016 at Mairang Division. The case projected by the petitioner in this writ petition is that despite he being senior to the private respondent Nos.8,9,10 & 11, his name has been placed at Serial No.5 below the private respondents in the impugned Gradation List dated 02-08-2021 and that the promotion of the respondent No.8 to the post of Lower Division Assistant was approved by the respondent No.7 by the impugned letter dated 27-08-2021 in utter disregard to the seniority of the petitioner in service.

2. Mr. H. L. Shangreiso, learned Senior Counsel appearing for the petitioner submits that the petitioner was appointed to the post of Blue Printer, a Grade IV post, by order dated 24-08-1999 and hence, his entire length of service should have been considered by the respondent No.7



while fixing the petitioner's seniority in the impugned Gradation List dated 02-08-2021 for Group D post of Peon. He submits that the exclusion of the period of service rendered by the petitioner as Blue Printer while preparing the Gradation List is totally arbitrary and illegal as the post of Peon is also a Grade IV post. He further submits that the impugned Gradation List was circulated on 02-08-2021 allowing 30 (thirty) days' time for filing objection, but before the expiry of the said period, the approval of promotion of the respondent No.8 was arbitrarily issued on 27-08-2021. The learned Senior Counsel contends that the respondent No.8 joined his service on 12-10-2006 and was promoted illegally on 27-08-2021 before completing 15 years of qualifying service as mandated by Rule 6 (c) (ii) of the Meghalaya Ministerial District Establishment Service Rules, 2017 (hereinafter referred to as the Rules of 2017). The learned Senior Counsel, therefore, submits that the placement of the private respondent Nos. 8,9,10 & 11 above the petitioner in the Gradation List and the subsequent promotion of the respondent No.8 to the post of LDA by ignoring the seniority of the petitioner are done in total violation of the established norms of service jurisprudence and are liable to be interfered with by this Court. To support the contention that the previous service of the petitioner is required to be counted for seniority in the transferred post, the learned Senior Counsel places reliance on the decisions of the Apex Court in *Sub-Inspector Rooplal & Another Vs. Lt. Governor Through Chief Secretary, Delhi & Others*. (2000) 1 SCC 644 and *K.P. Sudhakaran & Another Vs. State of Kerala & Others*, (2006) 5 SCC 386.

3. Mr. K. Khan, learned AAG appearing for the State-respondents No.1 – 7, on the other hand, submits that the Rules of 2017 does not contemplate consideration of any past service rendered in a different post for the



purpose of seniority in the Gradation List. He submits that the petitioner joined the post of Peon only on 11-05-2016 and, admittedly, had not completed 15 years of service in the said post at the time of the preparation of the Gradation List as well as the approval of the promotion of the respondent No.8. He submits that the approved Gradation List was circulated for objection, if any, within 30 days from the date of issuance on 02-08-2021, but the petitioner did not come forward with any objection. He submits that the statement of the petitioner in the rejoinder affidavit that he raised verbal objection against the Gradation List is nothing but an effort to cover up deficiency of his case before this Court as there is no disclosure of any date and details of any such objection. He contends that the case laws cited by the petitioner do not help the petitioner's case rather support the case of the respondents. He further contends that there is no challenge to the Rules of 2017 by the petitioner and he is, therefore, bound by the provisions of the rule. The learned AAG submits that the arguments raised on behalf of the petitioner are contrary to the provisions of the Rules of 2017 and not worthy of acceptance by this Court. He, thus, submits that there is no merit in the writ petition and prays for dismissal of the same.

4. None appears for the private respondent Nos. 8,9,10 & 11 despite service of notice upon them.

5. For better appreciation of the arguments raised by the rival parties, it is imperative to refer to the provision of Rule 6 (c) of the Rules of 2017 which reads as follows: -

“6.(c) Lower Division Assistant: Appointment shall be made:

- (i) By direct recruitment on the result of the competitive examination conducted by the District Selection Committee.*
- (ii) By Selection from the Select List prepared under Rule 8, from amongst the Peons of the respective District, Circle, Division*



office who have passed the S.S.L.C. or any Examination declared equivalent thereto and have rendered at least 15 (fifteen) years continuous service in the Establishment on the first day of the year in which the selection is made.

- (iii) *The quota to be filled up in any year according to Sub-Clause (i) & (ii) above shall be in the ratio of 9:1. This means that 90 percent of recruitment of Lower Division Assistant shall be by direct recruitment and 10 percent by selection from amongst the Peons who have passed class X/S.S.L.C. In the event of sufficient or suitable persons not being available for appointment under sub-clause (ii), the balance in any year shall be filled up through direct recruitment under sub-clause (i)."*

6. Based on the above, recruitment to the post of Lower Division Assistant (LDA) is conducted through two distinct methods: (i) direct recruitment based on the results of a competitive examination held by the District Selection Committee, and (ii) selection from among Peons serving in the respective District Offices. To qualify under the second method, a Peon must have passed the S.S.L.C. or an equivalent examination and must have completed at least 15 years of uninterrupted service in the establishment on the first day of the year in which the selection takes place. It is crucial to note that this method of recruitment by selection is exclusively applicable to Peons and does not extend to any other Grade IV or Group D positions. Accordingly, only those serving as Peons who fulfill the above conditions are eligible for consideration for appointment to the post of LDA under Rule 6 (c)(ii) of the 2017 Rules.

7. According to Rule 6(d) of the 2017 Rules, Group D positions include roles such as Chowkidar, Cleaner, Cook, Dak Runner, Handyman, Peon, and other similar posts. However, only the position of Peon is eligible for promotion to the post of LDA through selection. The Rules of 2017 do not indicate that these Group D posts are interchangeable. The petitioner



originally held the post of Blue Printer, which, under the 2017 Rules, qualifies as an 'other Group D post'. There is no evidence in the records to suggest that the Blue Printer post was abolished or merged with the Peon post. Therefore, placing the petitioner in the Gradation List under the Peon category of Group D posts raises concerns. The petitioner's claim that the roles of Blue Printer and Peon are equivalent and that seniority should be determined by treating them as equal Grade IV posts lacks legal support.

8. The decision of *Sub-Inspector Rooplal & Another (supra)* relied on by the learned Senior Counsel has no application in the present matter as the decision rendered by the Apex Court in that case was in respect of seniority of deputationist with regard to service rendered on equivalent post in parent department before absorption in deputation department.

9. The decision of *K.P. Sudhakaran & Another (supra)* also relied on by the learned Senior Counsel for the petitioner, though relevant to the present case, does not help the case of the petitioner. In para 11 of the said decision, the Apex Court held: -

“11. In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the juniormost employee in the category in the in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the



department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules.”

10. It follows from the above that in service jurisprudence, the general rule is that when an employee is transferred at his own request from one unit to another, he has to accept the seniority position in the new unit at the bottom of that unit. In the absence of statutory or rule-based provisions to the contrary, the service which he rendered in the original unit prior to the transfer does not count for determining his seniority in the transferee unit. In the instant case, it is clear from the averments made in the writ petition that the petitioner was transferred from the post of Blue Printer, PHE Mawkyrwat Division to the post of Peon in Mairang PHE Division by order dated 21-04-2016 on the basis of the request made by him by the representation dated 08-10-2015. There is no provision in the Rules of 2017 for placing the petitioner on par with the local Peons in the transferee unit for determination of his seniority by counting the past service rendered by him in his original position. In fact, the Rules of 2017 is silent in that regard. Hence, by applying the general rule of service jurisprudence laid down by the Apex Court, the petitioner had foregone his seniority till the date of his transfer. Therefore, the grievance raised by the petitioner with regard to his seniority in the Gradation List dated 02-08-2021 and the approval of promotion of the private respondent No.8 has no legal basis.

11. As regards the contention advanced by the learned counsel for the petitioner that the promotion of respondent No. 8 was approved prior to the



expiry of the period of 30 days stipulated for submission of objections to the Gradation List, it is pertinent to observe that the petitioner did not, in fact, lodge any objection within the said period. Even assuming that the promotion approval was accorded before the lapse of the thirty-days period, no impediment existed that precluded the petitioner from filing an objection within the time permitted. The petitioner's assertion in the rejoinder affidavit, to the effect that a verbal objection was raised, appears to be a belated and vague claim made only in response to the averments of respondent No. 7 in the affidavit-in-opposition, wherein it was categorically stated that no objection had been filed by the petitioner. Notably, the petitioner has failed to disclose the specific date on which such verbal objection was allegedly raised or the precise nature and content thereof, thereby rendering the said statement unsubstantiated and lacking in credibility.

12. With regard to the petitioner's contention that respondent No. 8 had not completed the requisite 15 years of qualifying service at the time of approval of his promotion, it is to be noted that such assertion finds no support in the pleadings of the writ petition. The writ petition is entirely silent on the question of eligibility of respondent No. 8, and the only averment made in that regard is that respondent No. 8 was six years junior to the petitioner in service. Since the issue raised pertains to a factual determination, and in the absence of any specific or substantive averment in the writ petition concerning the ineligibility of respondent No. 8, this Court finds no reason to entertain such a plea. This is all the more so when it is evident that the petitioner himself does not fulfill the eligibility criteria for selection to the post of Lower Division Assistant (LDA) under Rule 6(c)(ii) of the Rules of 2017.



13. For what has been discussed above, this Court finds no reason to interfere with the orders impugned in the writ petition. Resultantly, the writ petition stands dismissed.

14. In the facts and circumstances there will be no order as to costs.

Judge

Meghalaya
24.06.2025
"Biswarup PS"