Serial Nos. 11,12&13
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 129 of 2019 with
WP(C) No. 130 of 2019
WP(C) No. 143 of 2019

Date of Decision: 03.03.2020

Shri Archie S. Marak	**Vs.**	State of Meghalaya & Ors.
Shri Sengan K Momin	**Vs.**	State of Meghalaya & Ors.
Shri Phillip M. Sangma & Ors.	**Vs.**	State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. R. Kar, Adv. with
Ms. S. Momin, Adv.

For the Respondent(s) : Mr. A.H. Kharwanlang, GA in
WP(C) No. 129 of 2019
WP(C) No. 143 of 2019

Ms. A. Thungwa, GA in
WP(C) No. 130 of 2019

---

i) Whether approved for reporting in Law journals etc. Yes/No

ii) Whether approved for publication in press: Yes/No

ORAL

1. These three writ petitions being similarly situated are proposed to be disposed of by this common Judgment and Order.

2. The brief facts of the case is that the petitioners pursuant to the advertisement dated 01.09.2009 for the posts of Gram Sevak, East Garo Hills, Meghalaya had applied for the same and after the interview the

petitioner in WP(C) No. 129 of 2019 Shri Archie S. Marak was placed at No. 2, the petitioner in WP(C) No. 130 of 2019 Shri Sengan K. Momin was placed at No. 3 and the petitioner in WP(C) No. 143 of 2019 Shri Phillip M. Sangma was placed at No. 5 of the waiting list. It is the further case of the petitioners that the said advertisement did not disclose the number of vacancies, as such on not being selected at that relevant point of time had approached this Court by way of WP(C) No. 55 of 2014, and this Court by order dated 03.02.2015 while disposing of the matter had directed that the respondents may consider the case of the petitioners as and when vacancies arose.

3. The relief as sought by the petitioners is that presently there are vacancies existing and they should be considered for the same and it is also contended that rejection of their case on the ground of expiry of the select list is not valid in view of the earlier order passed by this Court. As such, being aggrieved they are before this Court by way of these instant writ petitions.

4. Heard Mr. R. Kar, learned counsel for the petitioners and Mr. A.H. Kharwanlang, learned GA with Ms. A. Thungwa, learned GA for the respondents.

5. Mr. R. Kar, learned counsel for the petitioners submits that on being deprived of appointment after their selection and being placed in the waiting list, this Court in WP(C) No. 55 of 2014, which had been preferred by the petitioners, amongst others, had directed that the Government may consider their case for appointment, if there be any vacancy, in the post of Gram Sevak. Learned counsel submits that thereafter certain vacancies arose and has drawn the attention of this Court to the affidavit dated 5th November, 2019 filed by the petitioners indicating the same. He therefore submits that there being at least two vacancies available, the respondents in not considering the petitioners for appointment have not acted in accordance with the order dated 03.02.2015.

6. In this regard, the learned counsel has placed reliance in the judgment in the case of ***Kshiti Goswami & Ors vs. Subrata Kundu & Ors.*** reported in ***(2013) 11 SCC 618*** which he submits, the Hon'ble Supreme

Court in exercise of the powers under Article 215 of the Constitution, had upheld the direction of the Calcutta High Court for faithful implementation of the directions for consideration of the persons concerned for appointment, as and when vacant positions arose, inspite of the expiry of the select list.

7. He lastly submits that the case of the petitioners being similarly situated, inasmuch as, there is a direction of this Court for consideration of appointment and there being existence of vacancies, there is no impediment for the State respondents to not consider the case of the petitioners for appointment to the vacancies. As such, he prays that a mandamus be issued directing the respondents to consider the case of the petitioners against the existing vacancies.

8. Mr. A.H. Kharwanlang, learned GA with Ms. A. Thungwa, learned GA for the respondents in reply to the submissions made by the learned counsel for the petitioners, firstly read out the order dated 03.02.2015 passed in WP(C) No. 55 of 2014 and emphasized that the directions as contained in Para-7 of the said Judgment is only that the Government may consider and it is not a direction that the Government shall consider. He further submits that even in the event that presently there exist vacant posts, the fact that cannot be ignored is that the concerned select list has since expired. As such, he submits the directions as contained not being mandatory in any manner, it cannot be said that there has been any violation of the orders of this Court.

9. The learned GA in support of his submissions has placed reliance on the judgment in the case of ***Rakhi Ray & Ors. vs. High Court of Delhi & Ors.*** reported in ***(2010) 2 SCC 637*** and has taken this Court to Paras, 7, 8, 11, 12 & 24, and submits that the Hon'ble Supreme Court has laid down that a person whose name appears in the select list does not acquire any indefeasible right of appointment and that empanelment at the best is a condition of eligibility, and does not amount creation of vested right to be appointed. He further submits that the judgment also dealt with the legal proposition that vacancies cannot be filled up over and above the

number of vacancies advertised and if the same is done would be in violation of Article 14 & 16 of the Constitution of India.

10. The learned counsel then submits that the validity of the merit list for the posts of Gram Sevak having already expired in 2014, and the select panel coming to an end by efflux of time, there is no question of consideration of the petitioners' case who had been placed in the waiting list in the year 2011. He also submits that the vacancies, if any or which will arise in future are to be filled up through proper procedure and through fresh advertisement and that the petitioners cannot claim any vested right over these vacancies.

11. He lastly submits that the petitioners have misconceived the purport of the order dated 03.02.2015 passed by this Court, and it cannot be taken that this Court had given a mandatory direction for consideration even after the select list stood expired on 08.03.2014. He therefore submits that the writ petitions being devoid of merit are liable to be dismissed.

12. I have heard the learned counsels for the parties and also examined the materials on record.

13. The short question to be decided in this batch of writ petitions, is whether the writ petitioners possess any vested right to claim for consideration of appointment on the basis of the expired select list and whether the order of this Court has vested them with any actionable claim to be considered as such.

14. With regard to the first aspect, it is a settled law that mere appearance of name of a person in select list will not entitle him for appointment, but only speaks of eligibility to be considered for appointment. In the earlier round of litigation, it is not disputed that when the order dated 03.02 2015 was passed, the select list as prepared was still valid, and in this context, this Court had directed that the Government may consider their case for appointment if any vacancy arose. A plain understanding of the directions as contained in the earlier order would only mean that the same can be limited to the life of the select list and not beyond for consideration of the petitioners cases and that too, the word used is **'may'** and not **'shall'**. The Judgment as placed by learned counsel for the

petitioners in the case of ***Kshiti Goswami & Ors vs. Subrata Kundu & Ors.*** *(supra)* is of no assistance, inasmuch as, in that case there is a positive direction contained in the proceedings before the Tribunal and High Court of Calcutta directing for appointment as and when the vacancy position was ascertained, which is not the case herein.

15. Admittedly, the expiry of a select list, limits whatsoever rights the petitioners possess, and in fact stood extinguished with the lapse of the list. Though averments have been made that the order of this Court has not been complied with by the respondents in not considering the case of the petitioners, it is seen that this position taken is not correct for the reasons afore stated.

16. There being no right infringed upon, nor the petitioners possessing any right to claim for appointment, or consideration of appointment on the basis of an expired select list, or on the basis of the earlier orders passed by this Court, there is no merit in these instant writ petitions and the same are accordingly dismissed.

17. However, dismissal of the writ petitions will not disqualify them or be a bar for future selection in accordance with due process.

18. In view of the foregoing facts and circumstances the matters stand disposed of. No orders as to costs.

JUDGE

Meghalaya
03.03.2020
"V. Lyndem PS"