Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 284 of 2020
With MC [WP(C)] No. 152 of 2020

Date of order: 03.11.2020

Cressida Shylla & Ors. Vs. State of Meghalaya & Ors.

Coram:
Hon'ble Mr. Justice Biswanath Somadder, Chief Justice
Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. T.L. Jyrwa, Adv.

For the Respondent(s) : Mr. K. Khan, Sr. G.A. with
Mr. A. Kharwanlang, GA (For R 1 & 2)
Mr. K. Paul, Adv. (For R 3)

COURT: (per the Hon'ble the Chief Justice) (Oral)

On 12th October, 2020, this Court had passed the following order;

> "Having heard the learned advocates for the parties and upon perusing the instant writ petition, it appears that the only issue which requires consideration in the facts and circumstances of the instant case is whether the Government of Meghalaya, Directorate of Social Welfare, while issuing an advertisement for the post of Child Development Project Officer under Social Welfare Department, dated 26th August, 2020 (being Annexure A - 8 to the writ petition at page 57), took into consideration the guidelines issued by the Government of India, Ministry of Human Resources Development, Department of Women and Child Development dated 20th May, 1986, relevant portion whereof is quoted hereinbelow:-
>
> > *"e) For recruitment to the post of CDPOs, the Recruitment Rules as should be so framed or revised as to provide for filling up of 75% of the posts by promotion from female supervisor of ICDS Projects and the remaining 25% posts by direct recruitment."*
>
> A report in the form of an affidavit shall be filed by the concerned respondent authority on or before the next date giving its specific response to the issue as framed above.
>
> List this matter after three weeks under an appropriate heading for further consideration."

Consequently, a report in the form of an affidavit was filed on behalf of the concerned respondent, namely, the respondent No. 2. Relevant portion

of the report in the form of an affidavit filed on behalf of the respondent No. 2, is quoted hereinbelow;

> "1. That it is stated that as per order dated 12.10.2020, this Hon'ble Court has framed an issue "*whether the Government of Meghalaya, Directorate of Social Welfare, while issuing an advertisement for the post of Child Development Project Officer under Social Welfare Department, dated 26th August, 2020 (being Annexure A – 8 to the writ petition at page 57), took into consideration the guidelines issue by the Government of India, Ministry of Human Resources Development, Department of Women and Child Development dated 20th May, 1986.*" It may be stated that the advertisement dated 26.08.2020 is for contractual appointment subject to termination upon recommendation of regular candidates, where the Meghalaya Social Welfare Service Rules, 2007 (hereinafter the Rules, 2007) is yet to be invoked for filling up the post on regular appointment. Since the rules 2007 is now governing the recruitment rules to the post of Child Development Project Officer (CDPO), as such the Central Government Guidelines dated 20.05.1986 will not be applicable to advertisement dated 26.08.2020. The answering respondent further states that since the advertisement dated 26.08.2020 is not for regular appointment under the Rules 2007, the issue of Central Government Guidelines dated 20.05.1986 meeting the requirement of advertisement 26.08.2020 will also not be applicable. It is only when regular appointment under the rules is made by the Respondent, then the question of incorporation or omission of the guidelines 1986 to the Rules, 2007 can be the subject matter for adjudication and consideration. The petitioners cause of action is premature as legality of the provisions of Rules 7(2) of the Rules, 2007 for regular appointment is yet to be undertaken by the respondents. Though when the relevant rules were drafted they were not specifically taken into consideration due to their nature of appointment and qualification prevailing then.
>
> The answering Respondents states that the Petitioners are regular appointees and that the advertisement dated 26.08.2020 is for contractual appointment. The answering respondent has not advertised the post invoking the Rules, 2007, rather it is a contractual advertisement for meeting limited administrative exigencies. At this stage the Writ Petition is not maintainable in as much as, it is not the cause of action of the Petitioners being regular appointees, whereby, they have been deprived of the promotional avenues vide advertisement dated 26.08.2020 which is a temporary advertisement invoked by the Respondent no. 1 and 2 for direct recruitment to the post of CDPO. This advertisement is not for promotion to the post of CDPO and the Respondent no. 3 has yet to invoke the said Rules, 2007

recommending fresh candidates to fill the post of CDPO's on regular appointment. The answering respondent states that no cause of action has arisen to the Writ Petitioners for invoking writ jurisdiction since they have failed to prove that they have been deprived of promotional avenues under the rules because of the advertisement dated 26.08.2020, in other words the Petitioners cannot claim as a regular appointee to the post of CDPO under direct recruitment which is actually for contractual appointment. Hence the Writ Petition is premature since the relevant rules has not been invoked by the State Respondents and appointment under the relevant rules to the post of CDPO has yet to be advertised or made by the Respondent No. 3."

The specific averment made in paragraph 1 of the report in the form of an affidavit, as quoted above, makes it clear that the impugned advertisement dated 26th August, 2020, is purely for the purpose of contractual appointment subject to termination upon recommendation of regular candidates. Considering this stand taken on behalf of the concerned respondent, being the respondent No. 2, this Court is of the view that the writ petitioners have no existing legal right, which has been infringed upon. However, the statements made in paragraph 1, as reproduced hereinbefore, do not indicate anywhere as to what would be the period of such contractual appointment. If the contractual appointment is being construed by the concerned respondent authority as a purely temporary one and such appointment is subject to termination upon recommendation of regular candidates, it is incumbent upon respondent No. 2 to specify the tenure of such appointment. The reason is, in the garb of a contractual appointment for the purpose of "meeting limited administrative exigencies", no person can be engaged in the concerned post for an indefinite period of time, which would lead to a situation where the writ petitioners – who are regular appointees – would lose their prospects of being considered for the post - in - question once the 2007 Rules are invoked. There is also another aspect of the matter. Contractual engagements for

"meeting limited administrative exigencies" cannot take away the substantive right of the writ petitioners – who are regular appointees – for being considered for promotion to the post of CDPO once the 2007 Rules come into force. As such, we dispose of the writ petition with a direction upon the respondent No. 2, namely, the Director of Social Welfare Department, Government of Meghalaya, Shillong, to specify the tenure of those who would be appointed in terms of the advertisement dated 26th August, 2020, for the purpose of "meeting limited administrative exigencies". This tenure has to be specified by the respondent No. 2 at the time of issuance of appointment letters to those who are likely to be engaged purely on a contractual basis in terms of the advertisement dated 26th August, 2020.

The writ petition stands disposed of accordingly.

In view of the above order, MC [WP(C)] No. 152 of 2020, stands disposed of accordingly.

(H. S. Thangkhiew)
Judge

(Biswanath Somadder)
Chief Justice

Meghalaya
03.11.2020
"Sylvana PS"