



Serial No.16
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 385 of 2020

Date of Decision :17.04.2024

Shri. Elias Marwein,
Son of Late Elen Diengdoh,
Mobile No. 8837479501,
Resident of Lum-Nongrim, Iewlieh,
Ri-Bhoi District,
Meghalaya.

...Petitioner

-Vs-

1. State of Meghalaya
Represented by the Secretary to the
Govt. of Meghalaya,
Animal Husbandry and Veterinary Department,
Meghalaya.
2. The Principal Secretary to the
Govt. of Meghalaya,
Animal Husbandry and Veterinary Department,
Meghalaya.
3. The Director of Directorate of Animal Husbandry
and Veterinary, Govt. of Meghalaya,
Shillong.
4. The Finance & Account Officer,
Meghalaya, Shillong.

...Respondents



Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. M.F.Qureshi, Adv.

For the Respondent(s) : Mr. K.P.Bhattacharjee, GA.
Ms. I.Lyngwa, GA.

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

JUDGMENT AND ORDER (ORAL)

1. The petitioner being aggrieved with the impugned letter dated 01-09-2020, whereby he was reverted back to the original post of Poultry Attendant as per the instructions of the Finance & Accounts Officer, on the ground that the post held by the petitioner, that of a Driver, was but an officiating appointment and irregular, is before this Court seeking directions to direct the respondents to extend the benefit of monthly pension as per the pay scale of a Driver and not of Poultry Attendant.

2. The brief facts are that on the recommendation of the District Selection Committee, East Khasi Hills, the petitioner was appointed as Poultry Attendant on 11-11-1981, in the Central Hatchery cum-Poultry Farm Bhoi, Nayabanglow. Thereafter, by an office order dated 12-07-



1985, the writ petitioner was allowed to hold the post of Driver temporarily, under the office of the Assistant Dairy Development Officer, Jowai on a regular scale of pay including other allowances as admissible which were to be effected from the date of joining. It appears that the writ petitioner had continued in the said post until 25-03-2015, when his name was forwarded by the office of the respondent No. 3 to the District Transport Officer, for conducting an eligibility test to enable the respondent No. 3 to consider the writ petitioner for promotion to the post of Senior Grade Driver. Thereafter, the writ petitioner qualified for the said test and a Certificate dated 06-05-2015 to this effect was issued by the office of the District Transport Officer, Ri-Bhoi District, Nongpoh.

3. The petitioner then was granted promotion on 13-10-2015, as per the recommendation of the Departmental Promotion Committee held on 17-09-2015, to the post of Senior Grade Driver on a regular scale of pay with effect from 01-01-1996. The petitioner then superannuated on 30-09-2019, after rendering 38 long years in service, but however, his pension has not been released from the date of superannuation till date, due to the objection which is contained in the impugned order.

4. Mr. M.F.Qureshi, learned counsel for the petitioner has submitted that the writ petitioner though appointed as a Poultry Attendant, was by due process allowed to temporarily hold the post of Driver since 1985, and



thereafter, had retired as Senior Grade Driver. He submits that in the entire length of service, no query or no objection had ever been raised with regard to his initial appointment as Driver, subsequent promotion and fixation of pay by the concerned departments. He further submits that it is only after the petitioner had retired, that the objections have been raised which has resulted in deprivation of his pensionary benefits since 2019. It has also been contended that at the point of time of the appointment of the writ petitioner, there were no rules governing the field and as such, there is no impediment to the respondents to process the pay settlement or final pay of the writ petitioner for computation of his pension as admissible.

5. Mr. K.P.Bhattacharjee, learned GA for the respondents in reply has submitted that the Rules do not provide for a Poultry Attendant to be promoted to the post of Driver, and that the officiation of the petitioner against the post of Driver, and the subsequent promotion was highly irregular, which is now being sought to be corrected by reverting the writ petitioner to his original post, and for calculation of his pension as per admissible pay of the said post. He further submits that as the irregularity is not attributable only to the writ petitioner, after the last pay and pension amount is finalized, no recovery will be made by the respondents, for any amounts that may be calculated to have been overdrawn.



6. Heard learned counsel for the parties, considered their submissions and perused the materials on record. Firstly, it is noted that in the case concerning the petitioner, at the point of time of his initial appointment as Poultry Attendant and subsequent appointment as Driver under respondent No. 3, there were no Rules in force. This has also been concurred to by the learned GA, who fairly submits that the Rules relied upon by the respondents at this stage are, “The Meghalaya Ministerial District Establishment Service Rules, 2017.” This matter, it may be noted, had been adjourned repeatedly to enable the state respondents to come up with executive instructions, or any materials of the relevant period to show as to how the services of the writ petitioner was regulated, and whether the temporary appointment to the post of Driver and subsequent promotion, was per se illegal. Today also, learned GA has expressed to the Court that no materials could be obtained in this regard.

7. In view of the stated facts as narrated above, and also in view of the fact that the writ petitioner, though appointed as Poultry Attendant, was thereafter allowed to temporarily hold the post of Driver and retired after promotion in the post of Senior Grade Driver, the service benefits on the services rendered by him for the long years from 1985 to 2019 cannot be denied. It is settled law that appointment of a person, whether temporary or permanent, cannot be reverted to the post from which he was regularly



promoted. Even if it is taken that the temporary engagement of the writ petitioner as Driver from Poultry Attendant to be irregular, in the considered view of this Court, in the absence of any Rules, this appointment has cloaked the writ petitioner with the right to claim his service benefits as prayed.

8. Accordingly, the writ petition is allowed and the respondents are directed to approve the pay statement of the writ petitioner on the amount he was drawing on the date of his retirement, and to fix the pension as payable thereon. Consequently, the impugned order dated 01-09-2020 also stands set aside and quashed.

9. Due to the peculiar situation of the case, this case may not be taken to be a precedent in other matters where executive instructions exist, or rules are available for consideration of services of such employees.

10. The entire exercise of fixation of pension and release thereof, shall be completed within a period of two months from the date of receipt of this order.

11. With the above directions, this writ petition stands closed and disposed of.

Judge

Meghalaya
17.04.2024
"Samantha PS"