



Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 82 of 2018

Date of Decision: 24.03.2021

Shri Jesparley Diengngan Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

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

For the Respondent(s) : Mr. K.P. Bhattacharjee, 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 grievance of the writ petitioner as put up in the instant application is the non-condonation by the respondents of the deficiency of qualifying service in a Grade IV post to enable him to get the benefit of the revised pay scale w.e.f. 2007. The brief facts as put forth is that the petitioner was initially serving in a Grade-IV post as Chowkidar, and on completion of 5(five) years 9(nine) months service, was promoted to the post of Lower Division Assistant (LDA) and was serving as such for 16(sixteen) years till 2016. However, the benefits of the pay revision as per the



Meghalaya Services (Revision of Pay), 2009, was not extended to the petitioner, nor did respondents approve the same for want of qualifying service in the Grade IV post. Hence this instant writ application.

2. Mr. M.F. Qureshi, learned counsel for the petitioner submits that the petitioner after rendering satisfactory services in the post of LDA, the respondent No. 4, i.e. the District School Education Officer, West Khasi Hills, Nongstoin, vide letter dated 27.09.2016, had requested the respondent No. 5, i.e. the Under Secretary to the Government of Meghalaya, Finance (Pay Revision) Department to accord approval of initial pay statement of the petitioner, but the same was not accepted by the respondent No. 5 on the ground that the petitioner had rendered less than 7(seven) years of service as Group "D" employee, and as such had been promoted to the post of LDA in contravention of the rules/instructions of the Government.

3. The learned counsel submits that thereafter a proposal for condoning the deficiency of service was then submitted before the State Government, but the State Government however, did not consider the proposal on the ground that the same was not as per the Ministerial District Establishment Service Rules, 2017, which provided for 10% or 9:1 ratio of promotion to the post of LDA. It is also submitted that the petitioner has now been promoted to the post of UDA since 17.11.2017, and is posted in the office of the Sub-Divisional School Education Officer, Mairang, but however, is still awaiting pay fixation which till date has not been accorded.



4. Mr. M.F. Qureshi, learned counsel further submits that rejection of the petitioner's case as per the Meghalaya Services (Revision of Pay), 2009 for want of qualifying service cannot be sustained, inasmuch as, the Rules were only at the stage of Draft Rules and were not notified. He further submits that the subsequent Rules as sought to be applied i.e the Ministerial District Establishment Service Rules, 2017, are also not applicable to the case of the petitioner as the same were not in existence at that relevant point of time when the petitioner was promoted to the post of LDA. As such, he prays that there being no Rules governing the services of the petitioner at the relevant point of time, there is no impediment that the benefit of the revised pay scale be not allowed to the petitioner and the deficiency of service be not condoned.

5. Mr. K.P. Bhattacharjee, learned GA for the State respondents submits that though, the Draft Rules may not be applicable but the fact that the application for condonation of the deficiency of service was made after the said Ministerial District Establishment Service Rules, 2017 had been put in place prescribing 10% or 9:1 ratio for promotion to the post of LDA will make the 2017, Rules applicable to the case of the petitioner. He therefore, submits that there being no ground made out for condonation of deficiency of service, the writ petition is liable to be dismissed.

6. I have heard learned counsel for the parties.

7. It is noted and not in dispute that at the point of time when the petitioner was promoted to the post of LDA, he had rendered only 5(five) years 9(nine) months of service in the Grade-



IV post as Chowkidar. It is also further noted that at the relevant point of time when the petitioner was promoted, though Draft Rules were in existence the same were not notified and promotion was accorded it seems on the basis of executive instructions and normally, for promotion from a Grade-IV post to a Grade-III post, 7(seven) years of service is essential in the Grade IV post.

8. The Meghalaya Services (Revision of Pay), 2009 came into effect from 01.01.2007, and as such the question of approval of pay revision of the writ petitioner should have been taken up for consideration at an earlier point of time. Whatever the case may be, though there has undoubtedly been a delay and the matter has been hanging un-resolved, the legitimate rights of the petitioner cannot be overlooked or ignored. Apart from the fact that recommendations have been made by the employer for the revision of pay coupled with the fact that there was no concrete Rules governing the services at the time of promotion, this Court for the ends of justice, in the last hearing, had put up a proposal before the learned counsel for the parties to consider as a onetime measure for the settlement of the matter in dispute i.e. the consideration of the qualifying the services of the petitioner. The proposal was for the period of deficiency of service to be condoned for the promotion to the post of LDA and that the petitioner be eligible for pay revision from the date he completed 7(seven) years of cumulative service i.e. 5(five) years 9(nine) months in Grade IV and 1(one) year 3(three) months in the post of LDA.



9. Today, the learned counsel for the parties, especially the learned counsel for the State respondents has informed this Court that the said proposal is acceptable and fair, inasmuch as, it will balance the reliefs as claimed by the petitioner and maintain the service requirements. However, he prays that the same may be made as only a onetime measure and not to serve as a precedent.

10. For the foregoing reasons, this writ petition is therefore, disposed of with a direction that the services of the petitioner in the post of LDA shall be counted from the date he has completed 7(seven) years in cumulative service i.e. 5(five) years 9(nine) months in Grade IV and 1(one) year 3(three) months in the post of LDA for the purpose of fixation of pay revision as per the Meghalaya Services (Revision of Pay), 2009.

11. It is made clear that this case will not be taken as a precedent as the decision has been made taking into account the peculiar facts and circumstances of the case.

12. With the above directions, the instant application stands disposed of.

JUDGE

Meghalaya
24.03.2021
"V. Lyndem-PS"