

(2014) 05 MEG CK 0002
In the Meghalaya High Court
Case No : WP(C) No. 238/2013

Altricia Majaw

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Constitution of India, 1950 — Article 154, 187, 283

Citation : (2014) 05 MEG CK 0002

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. HS Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel for the petitioner and Mr. ND Chullai, learned Sr. GA assisted by Mrs. NG Shylla, learned counsel appearing for the respondents No. 1-3. Also heard Mr. K Paul, learned counsel for the respondent No. 4.

2. By this writ petition, the petitioner is assailing the order of the Secretary, Meghalaya Legislative Assembly dated 04.07.2013 for allowing the private respondent No. 4 to officiate as Watch & Ward Officer, Meghalaya Legislative Assembly in the scale pay of Rs. 13,100-330-15,410-EB-420-19,190-580-25,570 PM plus other allowances as admissible under the rules with immediate effect vide sanction order No. PA. 35/2010/12 dated Shillong, the 22nd August, 2012. The fact leading to the filing of the present writ petition is briefly noted.

3. The petitioner was appointed as Junior Watch & Ward Assistant in the Meghalaya Legislative Assembly on 26.03.2002 and since then, she is serving in the said post to the best of her ability and efficiency and without any complaints from any quarters. It is also stated in the writ petition that prior to her appointment in the said post, the petitioner had been in the NCC for many years and had completed all the trainings successfully viz., parade, firing, long and

short distance running, push-ups, sit-ups, first aid etc. Over and above, the petitioner was a lady para-jumper and she was the only lady para-jumper representing North East in the year 1991. Further, the petitioner is a sportsperson and she had also represented the North Eastern Hill University and the State of Meghalaya in various sports events in the past. Vide Office Memo. No. PA. 35/2010/12 dated 22.08.2012, one post of Watch & Ward Officer (Female) was created in the Meghalaya Legislative Assembly. In exercise of the powers conferred by Clause (3) of Article 187 of the Constitution of India, the Governor of Meghalaya, after consultation with the Speaker, Meghalaya Legislative Assembly makes a Rule called "the Meghalaya Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 2011" (for short "the said Recruitment Rules of 2011"). The said Recruitment Rules of 2011 was notified in the Gazette of Meghalaya, September 22, 2011. It is an admitted case of the parties that the said Recruitment Rules of 2011 came into force from 22.09.2011. The present case relates with the appointment of Watch & Ward Officer.

4. Srl. No. 21 of Schedule-1 of the said Recruitment Rules of 2011, deals with the conditions for appointment to the post of Watch & Ward Officer. Srl. No. 21 of the said Recruitment Rules of 2011 clearly mentioned that there is only one post of Ward & Watch Officer. For easy reference, Srl. No. 21 of Schedule-1 of the said Recruitment Rules of 2011 i.e. the Meghalaya Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 2011 is quoted hereunder:-

SCHEDULE-1

OF

THE MEGHALAYA LEGISLATIVE ASSEMBLY SECRETARIAT (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2011.

A. GENERAL POSTS

5. It is stated that the Hon"ble Speaker of the Meghalaya Legislative Assembly in exercise of his powers under Rule 23(1) of the Meghalaya Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 2011, makes the Rules called "the Meghalaya Legislative Assembly Secretariat (Recruitment and Conditions of Service) (First Amendment) Rules, 2012" and it was notified vide Notification No. ES. 3/MLA/2011/Pt/1 dated 08.01.2013 (Annexure-4 to the writ petition). By the said First Amendment Rules, 2012, the existing entry No. 21 of the Schedule-1 of the said Recruitment Rules of 2011, which had been quoted above, had been substituted as follows:-

(vi) For the existing entry No. 21 in the Schedule, the following may be substituted, namely,

6. On bare perusal of the said First Amendment Rules of 2012, it is clear that not only the conditions for appointment or criteria for appointment for the post of Watch & Ward Officer, but also number of post(s) in the Old Rules had been

amended inasmuch as, the First Amendment Rules of 2012 had increased the number of posts from 1 to 3, therefore, it is clear that the said First Amendment Rules of 2012 had created two more posts of Ward & Watch Officer. Mr. HS Thangkhiew, learned senior counsel appearing for the petitioner strenuously contended that the private respondent No. 4 was appointed on officiating basis against one of the newly created posts of Watch & Ward Officer. To the contra, Mr. ND Chullai, learned Sr. GA appearing for the respondents No. 1-3 contended that the private respondent No. 4 was allowed to officiate in the old post i.e. the post of Watch & Ward Officer indicated in Srl. No. 21 of Schedule-1 of the said Recruitment Rules of 2011.

7. The respondents No. 2 & 3 filed joint affidavit-in-opposition wherein, vide para 7 of the affidavit-in-opposition stated that the Govt. of Meghalaya, Finance (Estt) Department, under the letter dated 07.02.2013, informed the respondents No. 2 & 3 that the State Govt. is of the opinion that till such time that the question of financial autonomy of the State Legislature is decided, status-quo may be maintained in all financial matters on the basis of the State Financial Rules and Delegation of Financial Power Rules, which are in force and as such, the impugned First Amendment Rules of 2012 notified vide Notification dated 08.01.2013 (Annexure-4 to the writ petition) will not be operative. The said letter of the Finance (Estt) Department, Govt. of Meghalaya dated 07.02.2013 is available at Annexure-IV to the joint affidavit-in-opposition filed by respondents No. 2 & 3 and it reads as follows:-

GOVERNMENT OF MEGHALAYA FINANCE (ESTABLISHMENT) DEPARTMENT

No. FEG. 35/2009/68 dated, Shillong, the 7th February, 2013.

From: The Under Secy. to the Govt. of Meghalaya, Finance (Establishment) Department.

To,

The Secretary,

Meghalaya Legislative Assembly,

Shillong.

Sub: Proceedings of the Meeting of the Rules committee held on 8th Nov., 2012.

Ref: OM No. ACCT. 238/MLA/2012/1 dated 27/11/2012 OM No. ACCT. 238/MLA/2012/2 dated 27/11/2012 OM No. ACCT. 238/MLA/2012/3 dated 27/11/2012 Gazette Notification No. ES. 3/MLA/2011/Pt/1 dated 8th January, 2013.

Madam,

I am directed to draw your attention to the OM/Notification under reference above, and to inform you that Finance Department has examined the matter in depth in consultation with Law Department. A copy of letter No.

LJ(B).35/2005/88 dated 30.11.2012 received from Law Department is also enclosed. It was observed that all the OMs/Notification aforementioned relate to financial matters, and as such are outside the purview of Article 187 of the Constitution of India, which strictly relates with the conditions of service or Service Rules in respect of the Secretarial staff of the State Legislature. The powers relating to financial rules and delegation of financial power rules are provided under Articles 154 and 283 of the Constitution of India and such power are vested only with the State Government. It is also to be clarified that creation of posts is a power vesting with the State Government only, which has been delegated specifically under the Delegation of financial Power Rule's only.

The Rules Committee, in its meeting held on 8th November 2012 desired to depute a team to visit Parliament Secretariat to find out its workings and functioning. The State Government is therefore of the opinion that till such time that the question of financial autonomy of the State Legislature is decided, status quo may be maintained in all financial matters on the basis of the State Financial Rules and Delegation of Financial Power Rules which are in force. Accordingly, the OMs/Gazette Notification referred to above will not be operative.

This has the approval of the Hon"ble Chief Minister.

Yours faithfully,

Sd/-

(D Mukhim)

Under Secretary to the Govt. of Meghalaya, Finance (Establishment) Department.

8. In the said letter of the Finance (Estt) Department, Govt. of Meghalaya dated 07.02.2013, it has been clarified that the power for creation of posts is vested with the State Govt. which has been delegated specifically under the Delegation of Financial Power Rule's and Article 187 of the Constitution of India relates with the conditions of service or Service Rules in respect of the Secretarial staff of the State Legislature. Therefore, it is the case of the official respondents as stated in their joint affidavit-in-opposition that the creation of two more posts of Watch & Ward Officer under the said First Amendment Rules of 2012 notified under the said Notification dated 08.01.2013, without the sanction of the State Govt. for creation of two more posts will not be valid inasmuch as, the power for creation of posts is vested with the State Govt. under the delegation of Financial Power Rules. In the present writ petition, the petitioner is neither assailing nor questioning the said letter of the Finance (Estt) Department, Govt. of Meghalaya dated 07.02.2013.

9. One vacancy in the post of Watch & Ward Officer had arisen on 07.02.2013 and against that vacancy post, the private respondent No. 4 had been allowed to officiate in the pay scale of Watch & Ward Officer. This Court is not deciding disputed fact as to whether the private respondent No. 4 had been allowed to officiate in the lone post of Watch & Ward Officer indicated in Srl. No. 21 of

Schedule-1 of the said Recruitment Rules of 2011 or against one of the newly created posts.

10. In the joint affidavit-in-opposition filed by the respondent No. 2 & 3, it is clearly stated that there was no creation of new posts of Watch & Ward Officer and the private respondent No. 4 is allowed to officiate in the old post indicated in Srl. No. 21 of Schedule-1 of the said Recruitment and Conditions Rules of 2011. In such circumstances, this Court is compelled to make an observation that there cannot be appointment of Watch & Ward Officer more than one. On perusal of the joint affidavit-in-opposition filed by the respondent No. 2 & 3 and also from the submissions of the learned Sr. GA appearing for the respondents No. 2 & 3, it appears that the service of Watch & Ward Officer is required in the Secretariat of the Meghalaya Legislative Assembly and as such, there is a requirement for appointment of one Watch & Ward Officer. In such case, this Court is of the considered view that if there is a requirement for the service of Watch & Ward Officer in the Secretariat of the Meghalaya Legislative Assembly, the said post should be filled up according to the constitutional scheme. What is meant by constitutional scheme is clearly defined and illustrated in Uma Devi's case: (2006) 4 SCC 1. Therefore, vacancy in the lone post of Watch & Ward Officer in the Secretariat of the Meghalaya Legislative Assembly should be filled up on regular basis according to the prevailing service rules at the time of arising of the vacancy i.e. 07.02.2013. It is made clear that at the time of filling up of the said lone vacancy in the post of Watch & Ward Officer, all the eligible persons within the zone for consideration should be considered according to the rules applicable. The whole exercise shall be completed within a period of two months from the date of receipt of a certified copy of this judgment and order.

11. With the above observations and directions, this writ petition is allowed.