

(2015) 06 MEG CK 0014

In the Meghalaya High Court

Case No : W.A. No. 14 of 2015 in WP(C) No. 325 of 2013

Erwin B. Kyndiah and Others

APPELLANT

Vs

Sharon A. Pakyntein and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Citation : (2015) 06 MEG CK 0014

Hon'ble Judges : U.N. Singh, C.J;S.R. Sen, J

Bench : Division Bench

Advocate : H.S. Thangkhiew, Senior Advocate, L. Khyriem, P. Nongbri, N. Mozika, Philemon Nongbri, L. Byrsat, A. Thangkhiew, W. Jyrwa, C. Khyriem and K. Warjri, for the Appellant; K. Khan, Addl. Sr. G.A. and S.P. Mahanta, Sr. Adv., Advocates for the Respondent

Final Decision : Allowed

Judgement

Sudip Ranjan Sen, J.—The appellant's case in a nut shell is that "Meghalaya Public Service Commission (MPSC) had issued an advertisement dated 04.06.2008 inviting applications for recruitment to 32 posts of LDA in the Meghalaya Secretariat. In response to the advertisement dated 04.06.2008, the appellants, the private respondents and the proforma respondents and others submitted their applications. The Respondent No. 2 vide letter dated 16.06.2011 informed the Chairman, MPSC that the likely vacancies available taking into consideration the existing vacancies and vacancies likely to arise in the near future was 115 and requested to take necessary action accordingly. Thereafter, the MPSC conducted the selection process and vide Notification No. MPSC/D-78/1/2007-2008/29 dated 16.07.2011 prepared the select list containing names of 126 selected candidates in order of merit. Thereafter, vide letter No. MPSC/D-78/1/2007-2008/30 dated 20.07.2011 the Secretary, MPSC wrote to the respondent No. 9 (Under Secretary, Secretarial Administration Department) mentioning therein the names of 126 selected candidates in order of merit for appointment to the post of LDA. The appellants' names were mentioned at serial

Nos. 56 and 57 in the said select list.

2. The validity of a select list prepared and submitted by the MPSC to the State Government is normally considered to be one year. However, in view of the fact that on a number of occasions the dates of preparation of select list by MPSC and date of submission of the select list by MPSC to the State Government had been different, vide Letter No. PER(AR)193/78 dated 23rd July 1974, the Special Officer to the Government of Meghalaya, Personnel Department had conveyed to all Administrative Departments and Heads of Departments in the State Government that, "the recommendation of the Meghalaya Public Service Commission for appointment to the posts and services under this Government shall be remain valid for a period of one year with effect from the date of its submission by the Government."

3. In the instant case, the MPSC had prepared the select list vide Notification dated 16.07.2011 but had submitted to the Government vide letter dated 20.07.2011. As such in view of the letter dated 23rd July 1974, the said select list was valid for one year from the date of submission. Since the date of submission by MPSC was 20.07.2011, as such the select list was valid till 19.07.2012. After the said select list was received the State respondents made appointments of 111 candidates vide various appointment orders dated 27.10.2011, 20.12.2011, 20.03.2012, 29.05.2012, 05.07.2012, and 18.07.2012. Vide the last appointment order that is appointment order No. SAE. 20/2008/355-A dated 18.07.2012, three candidates including the appellant No. 1 (at sl No. 56) and appellant No. 2 (sl No. 57 in the select list) were appointed. In view of the fact that out of 126 candidates recommended the State respondents could only appoint 111 candidates; the Government had requested MPSC to validate the list for one more year. However, the MPSC did not agree to the proposal and as such the select list communicated by MPSC vide letter dated 20.07.2011 expired on 19.07.2012.

4. The respondents No. 1 to 6 (writ petitioners) who were placed at serial Nos. 58, 60, 62, 53, 64 and 65, much below the appellants, could not be appointed. Aggrieved by the same, the respondents No. 1 to 6 as writ petitioners filed W.P. (C) No. 325 of 2013. The learned single Judge vide judgment and order dated 25.02.2015 passed in W.P. (C) No. 325 of 2015 has held that, "..... this Court is of the considered view that the validity of the select list published on 16.07.2011 expired on 16.07.2012. The authority cannot say that the validity period of the select list published on 16.07.2011 shall be counted from the date of sending the same by the MPSC to the State Govt. on 20.07.2011" and has directed that, "For the forgoing discussions, this writ petition is allowed only to the limited extent by quashing the impugned order dated 18.07.2012 for appointing the respondents No. 40, 41 and 69 to the posts of LDA in the Meghalaya Secretariat and the respondents No. 40, 41 and 69, shall be no more in service w.e.f. the date of this judgment and order."

5. The learned single Judge failed to consider that in view of absence of any

contrary rules to that effect, the executive instructions contained in the said letter dated 23rd July 1974 issued by the Special Officer to the Government of Meghalaya, Personnel Department still holds the field and as such a select list/recommendation of MPSC is valid for a period of one year with effect from the date of its submission by MPSC to the Government. In the instant case, the MPSC had prepared the select list vide Notification No. MPSC/D-78/1/2007-2008/29 dated 16.07.2011 but had submitted to the Government vide letter No. MPSC/D-78/1/2007-2008/30 dated 20.07.2011. As such in view of the letter dated 23rd July 1974, the said select list was valid for one year from the date of submission. Since the date of submission by MPSC was 20.07.2011, as such the select list was valid till 19.07.2012. The appellants were appointed from the said select list vide Appointment Order No. SAE. 20/2008/355-A dated 18.07.2012 and as such there was no illegality in the same."

6. Mr. HS Thangkhiew, learned senior counsel appeared for and on behalf of the appellants submitted that Select List in order of merit was forwarded by the MPSC, to the State Government on 20.7.2011 and the respondent Nos. 40, 41 and 69 of the original writ petition were appointed on 18.7.2012. Learned senior counsel further argued that the Select List survives from the date of submission or recommendation by the MPSC and not from the date of publication of the result. Therefore, the observation made by the learned single Judge in para 13 that Select List starts running from the date of publication of the result is erroneous and not correct and prayed that the judgment passed removing the appointment of the appellants is illegal, so the impugned judgment may be set aside and appellants be reinstated in service.

7. On the other hand, learned senior counsel Mr. SP Mahanta, appearing for and on behalf of the respondents submits that Select List was published on 16.07.2011, hence, it survives for one year w.e.f. 16.07.2011 and expires on 16.07.2012. Therefore, the appointment of the appellants vide order dated 18.07.2012 is after expiry of the Select List. Therefore, no interference is required with the judgment passed by the learned single Judge.

8. After hearing the submissions advanced by the learned senior counsels at the Bar, and on perusal of the impugned judgment dated 25.02.2015 passed in Writ Petition No. 325 of 2013, it appears to us that learned single Judge accepted the validity of the Select List from the date of publication and not from the date of submission or recommendation by the MPSC. Para 13 of the impugned judgment is quoted herein below:--

"13. From the said Office Memorandum dated 03.07.1982 for functions of the Selection Committee, it is clear that the select list shall be valid for a period of one year w.e.f. the date of its publication. This Court put pointed question to Mr. K Khan, learned Addl. Sr. GA appearing for the State respondents as to any order or Notification or Office Memorandum other than the said Office Memorandum dated 03.07.1982, prescribing the valid period of the select list and also as to counting valid period of one year. Mr. K Khan in his usual frankness submitted

that there is no order or Notification of the Govt. of Meghalaya other than the said Office Memorandum dated 03.07.1982. Mr. SP Mahanta, learned senior counsel appearing for the petitioners by drawing the attention of this Court to the Memorandums of other authorities prescribing the validity period of the select list for one year w.e.f. the date of its publication strenuously contended that the respondents No. 40, 41 and 69 had been appointed after the expiry of the select list as the select list published on 16.07.2011 was expired on 16.07.2012 and they were appointed on 18.07.2012. In the given case, this Court is of the considered view that the validity of the select list published on 16.07.2011 expired on 16.07.2012. The authority by taking undue advantage of their own fault for not sending the select list published on 16.07.2011 on the very day of publishing the select list cannot say that the validity period of the select list published on 16.07.2011 shall be counted from the date of sending the same by the MPSC to the State Govt. on 20.07.2011. The Apex Court in *Kusheshwar Prasad Singh Vs. State of Bihar and Others*, (2007) 5 JT 237 : (2007) 4 SCALE 534 : (2007) 11 SCC 447 : (2007) 4 SCR 95 held that the authority cannot be allowed to take advantage of their own fault. Paras 13 and 14 of the SCC in *Kusheshwar Prasad Singh*'s case (*Supra*) read as follows:--

"13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in *Mritunjoy Pani and Another Vs. Narmanda Bala Sasmal and Another*, AIR 1961 SC 1353 : (1962) 1 SCR 290 wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong)."

Therefore, this Court is of the further view that the appointment of the respondents No. 40, 41 and 69 to the posts of LDA vide impugned order dated 18.07.2012 is illegal."

9. Finally, learned single Judge came to the conclusion that any appointment after 16.07.2012 is irregular and quashed the appointment order dated 18.07.2012 of the respondent Nos. 40, 41 and 69.

10. After scanning the impugned judgment and the submission advanced by the learned senior counsels for the parties, the crux issue that evolves before us is whether Select List is valid from the date of submission or from the date of

publication? While going further, Annexure 6 at page 68 the letter dated 23rd July, 1974, issued by Personnel Department, Government of Meghalaya, addressed to the Chairman, Meghalaya Public Service Commission, Shillong, it is understood and appears that a Select List or recommendation remain valid for a period of one year w.e.f. the date of its submission by the Commission. The said letter is quoted herein below:--

"PER(AR).193/75 No. PER. 81/74/70 Government of Meghalaya Personnel Department

Dated Shillong, the 23rd July, 1974

From: Shri B. Kharkongor Special Officer to the Govt. of Meghalaya.

To Chairman, Meghalaya Public Service Commission Shillong.

Subject: Period of validity of the recommendation of the M.P.S.C.

Reference: your Letter dated No. 3MPSC/M-37/1/74-75 dated 11.6.74.

Sir,

I am directed to refer to your letter quoted above and to say that the Govt. agree to your suggestion that the recommendation of the Meghalaya Public Service Commission for appointment to posts and services under this Government shall remain valid for a period of one year with effect from the date of its submission by the Commission.

Yours faithfully, Sd/- Special Officer to the Govt. of Meghalaya.

Memo.PER/81/74/70-A Dated Shillong, the 23rd July, 1974.

Copy forwarded to:- 1. All administrative department. 2. All Heads of Department

For information and guidance

By Order, etc Sd/- Special Officer to the Govt. of Meghalaya"

11. Nothing in the record also shows that the said letter was challenged or quashed by any Court of law. That means the said letter is still valid. If it is so, it is amply clear that the Select List remains valid for a period of one year from the date of submission by the Commission and not from the date of publication of the Select List. On further perusal of the Office Memorandum dated 17.11.2014 of the Personnel and Administrative Reforms (B) Department, it is also found mentioned that validity period of one year from the date of recommendation which is mentioned in the said Office Memorandum at 4.8 is quoted below:--

"4.8 Validity Period - The validity period of the recommended list is for a period of one year from the date of recommendation and there should be no need for the validity of the recommendation to be extended."

12. After considering the rival submissions advanced by the learned counsel for

the parties and after giving careful reading of the impugned judgment and order passed by the learned single Judge and giving conscious thought over the Office letter dated 23rd July 1974 and 4.8 validity period referred above. We are of the considered view that the impugned judgment needs to be interfered with as the learned single Judge has failed to appreciate the office letter dated 23rd July 1974, issued by the Personnel Department, Government of Meghalaya, wherein it is clearly mentioned that the Select List is effective from the date of submission for a period of one year.

13. Since in this case it is an admitted fact that Select List was submitted by the MPSC on 20.07.2011 in that case it remained alive till 20.07.2013. Therefore, we do not find any wrong in the appointment letter dated 18.07.2012 as it comes within one year. For the reasons discussed above, we have no other alternative but to set aside the impugned judgment and order dated 25.02.2015 passed in WP(C) No. 325 of 2013. Accordingly, impugned judgment and order is hereby set aside.

Writ appeal is allowed.