

(2025) 04 MEG CK 0588

In the Meghalaya High Court

Case No : Writ Appeal No. 68 Of 2024, Miscellaneous Case (Writ Appeal) No. 68 Of 2024

State Of Meghalaya & Ors.

APPELLANT

Vs

Daritimai Lyngdoh

RESPONDENT

Date of Decision : 23-04-2025

Acts Referred:

Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010 — Rule 9, 9(2), 11, 11(2)

Citation : (2025) 04 MEG CK 0588

Hon'ble Judges : I.P. Mukerji, CJ; W. Diengdoh, J

Bench : Division Bench

Advocate : N.D. Chullai, Z.E. Nongkynrih, E.R. Chyne, S. Sen, E. Blah

Final Decision : Dismissed

Judgement

I.P. Mukerji, CJ

1. This is an appeal from a judgment and order dated 31st July, 2024 made by a learned single judge of this Court in the exercise of his writ jurisdiction allowing the writ petition.

The State of Meghalaya is in appeal before us from that judgment and order.

The facts shortly are these. The respondent was appointed as typist (Grade-III) by a regular selection process through the Meghalaya Public Service Commission (MPSC). On 1st December, 1989, she joined service in the office of the Chief Engineer, PWD (Roads) Meghalaya, Shillong.

The Departmental Promotion Committee (DPC) at its meeting held on 30th November, 2020 recommended her to be promoted to the post of Lower Division Assistant (LDA). Accordingly, on 10th December, 2020, she was so promoted and joined the post. Incidentally, prior to this she had appeared for a speed test in typing but failed to qualify.

Great disappointment was caused to her by the office order dated 2nd July, 2021 by which she was reverted to her original post. The reason advanced was that the promotion had been effected by mistake not having considered the Office Memorandum dated 16th March, 2006. This Office Memorandum provided that a typist who opted for the grade system would not be eligible for the post of LDA.

At this stage, enumeration of the relevant rules is very important. First, the Meghalaya Directorate Establishment (Ministerial) Service rules, 2010 is reproduced below:

Rule-9 (unamended)

"9. Lower Division Assistant: Appointment to the post of L.D.

Assistant shall be made:

(1) By direct recruitment on the result of the competitive examination conducted by the Commission.

(2) By selection on the basis of merit from amongst Typists of the respective Directorate who have rendered not less than 4 years of continuous service on the first day of the year in which the selection is made.

(3) By selection on the basis of merit from amongst the Grade IV staff of the respective office who have passed the H.S.L.C. examination or any examination declared equivalent thereto and have rendered not less than 7 years of continuous service on the first day of the year in which selection is made.

(4) The quota to be filled up in the cadre of Lower Division Assistant in any year accordingly to sub-rules (1), (2) and (3) above shall be in the ratio of 8:1:1 respectively. This means that 80 percent of recruitment of Lower Division Assistants shall be by direct recruitment, 10 percent by selection from amongst the Typists and 10 percent by selection from amongst the Grade IV staff. In the event of sufficient qualified or suitable persons not being available in either of categories (2) or (3), the balance shall be made up from category (1), i.e., through direct recruitment. The quota shall be determined on the basis of strength of staff both permanent and temporary in the Lower Division Assistant cadre."

Rule 11 as amended on 05.12.2012

"Rule 11 (1) Typist (Grade-III) – Appointment to the post of Typist (Grade III) shall be made by direct recruitment on the result of the competitive examination conducted by the Commission.

(2) Typist (Grade II) – Typist with minimum 3 (three) years of qualifying service in Grade III shall be eligible for appearing the Speed Test of 45 words per minute to be conducted by the Meghalaya Public Service Commission and their placement in the Grade shall be subject to passing the Speed Test.

(3) Typist (Grade I) – Typist with minimum 3 (three) years of qualifying service

in Grade II shall be eligible for appearing the Speed Test of 60 words per minute to be conducted by the Meghalaya Public Service Commission and their placement in the Grade shall be subject to passing the Speed Test.”

The Office Memorandum dated 16th March, 2006 is also reproduced below:

“GOVERNMENT OF MEGHALAYA

SECRETARIAT ADMINISTRATION DEPARTMENT

ESTABLISHMENT BRANCH

No.SAE.178/86/211

Dated Shillong, the 16th March, 2006

Subject: Promotion Scheme for Typist.

The undersigned is directed to say that in pursuance of the Government decision on the Recommendation of the 3rd Meghalaya Pay Commission, announce in Resolution No.F(PR.150/98/7), dated 21.12.1998, the Governor of Meghalaya is pleased to decide placement of Typist into 3 (three) grades as indicated below:

1. (a) Typist Grade I: Rs.4250-110-4910-EB-120-5870-130-7170/- PM

(b) Typist Grade II: Rs.3725-90-4265-EB-100-5065-110-6165/-PM

(c) Typist Grade III: Rs.3100-70-3520-EB-80-4160-90-5060/-PM

2. The placement of the Typists in the three grades on their options shall be subject to the following conditions:-

(a) Grade-I: Typists with a minimum of 3 (three) years of qualifying service in Grade-II shall be eligible for appearing the Speed Test of 60 words per minute, to be conducted by Meghalaya Public Service Commission and their placement in the grade shall be subject to passing the Speed Test.

(b) Grade-II: Typists with a minimum of 3 years qualifying service in Grade-III shall be eligible for appearing the Speed Test of 45 words per minute, to be conducted by Meghalaya Public Service Commission and their placement in the grade shall be subject to passing the Speed Test.

(c) The existing Ordinary Grade Typist shall henceforth be categorized as Grade-III Typists.

3. Existing ordinary Grade Typists who have already passed the Speed Test of 45 w.p.m. shall be eligible to be placed directly in Grade-II and those who have already passed the Speed Test of 60 w.p.m. shall be eligible to be placed directly in Grade-I provided that they have rendered a minimum of 3 years of qualifying and satisfactory service in the Ordinary Grade.

4. With the introduction of the three tier system in the Typist Grade the advance increment(s) hitherto admissible shall cease to operate.

The existing system of having Selection Grade Typists shall henceforth stand abolished. However, the existing Selection Grade Typists shall remain categorized as such and shall be allowed to draw the corresponding Revised Scale of pay as personal to them until they vacate the post or cease to draw pay in the scale.

5. (a) A Typist who opts for the Grade System shall continue as such and he/she shall not be eligible for promotion to the post of L.D. Assistant irrespective of his/her Seniority in the Cadre/Service.

(b) The appointment to L.D. Cadre shall be open only to the Cadre of Grade-III Typists until he/she is eligible for such promotion as per the Provision of the Service Rules and on promotion to the post of L.D. Assistant shall continue as such and shall not be eligible to the Grade Scales in future.

(c) The Option once exercised is final."

The DPC on 30th November, 2020 made the following observations and recommendations:

Agenda No.5: Promotion to the rank of Lower Division Assistants (LDA):

The Department has 29 (twenty nine) sanctioned posts of Lower Division Assistant. As provided in Rule 9(2), Typists who have rendered not less than 4 (four) years of continuous service on the first day of the year in which the selection is made can be recommended to the rank of LDA and as provided in Rule 9(3) selection can also be made from amongst the Grade IV employees of the Directorate who have passed HSLC Examination or any examination declared equivalent thereto and have rendered not less than 7 (seven) years of continuous service on the first day of the year in which the selection is made. As provided in Rule 9(4) the quota to be filled in the cadre of LDA in any year shall be according to sub-rule (1), (2) and (3) in a ratio of 8:1:1, i.e. 80% by direct recruitment, 10% by promotion from amongst the typist and 10% from amongst the Grade IV employees. Taking this into consideration, the break up for the 29 (twenty nine) posts in the Department will be as follows:

1. By direct recruitment

= 23 posts

2. By promotion from amongst the Typist

= 3 posts

3. By promotion from amongst the Grade IV

= 3 posts

Out of the 3 (three) posts as per the quota for the Typists, 2 (two) are the existing vacancies due to superannuation of the previous incumbents and 1 (one) vacancy resulting from the above recommendation for promotion, the Committee therefore, after scrutinizing the documents of all the incumbents in the select

list, recommended Smti Sukmondoris Sohlang, Smti Salibon Muthoh and Smti Daritimai Lyngdoh for promotion to the 3 (three) vacant posts of Lower Division Assistant from the quota of Typists.”

On 23rd June, 2021, the same DPC reversed the promotion of the respondent and reverted her to the original post by the following resolution:

“It was also brought to the notice of the Committee that the recommendation of the previous DPC meeting held on the 30th November, 2020 needs to be reviewed. It may be mentioned that as per decision of the earlier DPC meeting, Smti Daritimai Lyngdoh was recommended for promotion to the post of Lower Division Assistant from the quota of Typist as per provision of Rule 9(2) of the Meghalaya Directorate Establishment (Ministerial) Service Rules, 2010. However, provision as laid down in the Government’s OM No.SAE.178/86/211-A dated 16.03.2006 was not referred to. As laid down in the OM above, at 5(a) and (c), a typist who opts for Grade System shall not be eligible for promotion to the post of Lower Division Assistant irrespective of his/her Seniority in the Cadre/Service and the option once exercised is final. Therefore, the Committee decided to revert back the service of Smti Daritimai Lyngdoh as a Typist.”

The rules are statutory being framed in exercise of legislative powers. The Office Memorandum dated 16th March, 2006 is just an administrative instruction and cannot supplant or override the statutory rules. The stipulation in clause 5(a) of the said Office Memorandum dated 16th March, 2006 that a typist who opted for the grade system shall continue as such and would not be eligible for promotion to the post of LDA could not override the right to promotion under Rule 11(2). In my opinion, the learned judge has rightly held that Rule 9 as amended by Rule 11 on 5th December, 2012 will have primacy over the government Office Memorandum dated 16th March, 2006. Therefore, the learned judge was absolutely right in holding that reversion of the respondent to her original post in terms of the Office Memorandum dated 16th March, 2006 when there was no such stipulation in the rules was not binding on her. The withdrawal of promotion of the respondent has been most unfair and unjust.

For the reasons above, I affirm the impugned judgment and order and dismiss the appeal.

MC (WA) No.68 of 2024 is disposed of.

No order as to costs.