

(2015) 07 MEG CK 0013
In the Meghalaya High Court
Case No : WP(C) No. 215 of 2014

Sunity Nongbri

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 309, 39(a)

Citation : (2015) 4 GLT 21

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : H.S. Thangkhiew, Senior Advocate and P.N. Nongbri, for the Appellant; S. Sen Gupta, GA, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

T. Nandakumar Singh, J—Heard Mr. H.S. Thangkhiew, learned Sr. counsel, assisted by Mr. P.N. Nongbri, learned counsel appearing for the petitioner and also Mr. S. Sen Gupta, learned GA appearing for the respondents No. 1 to 4. None appear for the private respondents No. 5 to 12. However, this Court has given anxious consideration of mind to the affidavit-in-opposition filed by the private respondents.

2. The concise fact of the case leading to filing of this writ petition is recapitulated. The Governor of Meghalaya in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India was pleased to make the Rules i.e. "The Meghalaya Secretariat (Gazetted) Stenographers Service Rules, 2011" (for short MSS Service Rules, 2011). The MSS Service Rules, 2011 was notified vide Notification No. PER.52/97/147, dated Shillong the 15-02-2011. Rule 6(2)(a) of the MSS Service Rules, 2011, clearly provides the mode of procedure for promotion to the post of Stenographer Grade I. For easy reference Rule 6 read as follows:

"METHOD OF RECRUITMENT

6.(1) Senior Grade Stenographer.

Appointment to the post of Senior Grade Stenographer shall be made by promotion from amongst the members of the service confirmed in the post of Stenographer Gr.I (Private Secretary) and who have passed the specified Departmental examination on speed test and drafting. Promotion shall be on the basis of the Select List prepared/approved for the purpose under Rule 8 on the first day of the year in which the selection is made.

(2) Stenographer Grade. I (Private Secretary)

Appointment to the post of Stenographer Grade I (Private Secretary) shall be made by the following methods, namely

(a) 50% of the vacancies shall be filled up by promotion from select list prepared under rule 8 from amongst the confirmed Stenographers Gr.II of the Secretariat who have rendered not less than 7 (seven) years of satisfactory service as Stenographer Gr. II on the first day of the year in which the selection is made and who have passed the specified Departmental examination on speed test and drafting.

Provided that only those Stenographers Grade II borne in the Secretariat Establishment of S.A.D. (E) will be eligible for promotion to the higher posts of Stenographers Grade I in the Secretariat.

(b) 50% of the vacancies shall be filled up by direct recruitment on the result of open competition in the Speed Test at 150 words per minute in English Stenography to be conducted by the Meghalaya Public Service Commission from amongst Stenographers Grade II and Grade III serving under the Govt. of Meghalaya for not less than 5 (five) years.

Provided that in the event of non availability of qualified and suitable persons for appointment under clause (a) above, the shortfall in the quota may be filled up by qualified suitable persons under clause (b) irrespective in the proportion prescribed in a year."

3. From plain perusal of Rule 6(2)(a), it is crystal clear that 50% of the vacancies shall be filled up by promotion from the select list of the Stenographers Grade II prepared from amongst the Stenographers Grade II who have rendered not less than 7(seven) years of satisfactory service as Stenographer Grade II on the first day of the year in which the selection is made and who have passed the specified Departmental examination on Speed Test and Drafting. Under Rule 20 of the MSS Service Rules, 2011, the Governor of Meghalaya has the power to relax. Rule 20 of the MSS Service Rules, 2011 read as follows:

"20. Power of the Governor to dispense with or relax any Rules - The Governor, if satisfied that the operation of any of the provisions of these Rules causes undue hardship in any particular case or cases or result in any particular post or posts being left unfilled for want of person (s), possessing the minimum experience as

specified by these Rules for promotion to such post (s), may dispense with or relax the requirement of any of these Rules to such extent and subject to such condition, as it may consider necessary for dealing with the case in a just and equitable manner, or, for meeting the exigencies of public interest."

4. Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner contended that rule is made for compliance and not for violation. He also reiterated that under Rule 6(2)(a) of the MSS Service Rules, 2011, only the Stenographer Grade II who had rendered not less than 7(seven) years of satisfactory service as Stenographer Grade II and who have passed the specified Departmental examination for Speed Test and Drafting is eligible for promotion to the post of Stenographer Grade I.

5. The petitioner is a Graduate in Arts from the North Eastern Hill University (NEHU) and had also completed a course of training in shorthand and typing. The petitioner was appointed by direct recruitment in the cadre and post of Stenographer Grade III vide appointment letter dated 15-05-1995. After serving as Stenographer Grade III for a period little more than 5(five) years, the petitioner was directly recruited through the competitive examination conducted by Meghalaya Public Service Commission to the post of Stenographer Grade II vide appointment letter dated 13-10-2000. As such, the petitioner had served in the said cadre of Stenographer Grade II since 2000 and posted in the Meghalaya Secretariat. As per the Gradation List of the Stenographers Grade II in the Meghalaya Secretariat as on 01-01-2013, the name of the petitioner appears at Sl. No. 10 in the said list i.e. Seniority list. The said Gradation List was circulated on 11-02-2013. It is stated that the petitioner after serving for more than 13(thirteen) years as Stenographer Grade II, she got the first opportunity to be promoted to a post of higher grade i.e. Stenographer Grade I. It is stated that in compliance of Rule 6(2)(a) of the MSS Service Rules, 2011, the Deputy Secretary to the Govt. of Meghalaya, Secretariat Administrative (Estt) Department, issued the order dated 27-06-2013 directing the petitioner and 13(thirteen) others to appear in the Departmental examination on Speed Test and Drafting to be held on 02-07-2013 at 10.30 AM in the Meghalaya Administrative Training Institute, Shillong. Copy of the said order dated 27-06-2013 is annexed as Annexure-4 to the writ petition which read as follows:

"GOVERNMENT OF MEGHALAYA SECRETARIAT ADMINISTRATION DEPARTMENT ESTABLISHMENT

OFFICE.....ORDER

Dated Shillong, the 27th June, 2013

No.SAE.57/2011/55 - The following stenographers Grade II of the Meghalaya Secretariat are directed to appear the Departmental Examination on Speed Test and Drafting to be held on the 2nd July 2013 at 10:30 AM in the Meghalaya Administrative Training Institute, Shillong.

1. Smti. Violy Nongsiej, attached with the Secretary, PWD.
2. Shri. Buc Charles Basan, attached with Principal Secretary, Political. (Respondent No. 5)
3. Smti. Deilang Lamare, attached with C&S (Smti. M.H.K. Marak). (Respondent No. 6).
4. Smti. Trinity Doneth Bell Lyngdoh, attached with Secy. Labour. (Respondent No. 7)
5. Shri. Donkupar Lyngdoh, attached with Addl. C.S. (Finance) (Respondent No. 8)
6. Smti. Luckymon Shullai, attached with Parl. Secy. (R. Syngkon) (Respondent No. 9)
7. Smti. Icyllinda Lamare, attached with Prin. Secy. Edn. (P.S. Thangkhiew) (Respondent No. 10).
8. Smti. Liberal Dora Kharlyngdoh, attached with Parl. Secy (S Mukhim) (Respondent No. 11).
9. Shri. Teiborlang Nongkynrih, attached with Parl. Secy. (L. Myllem) (Respondent No. 12).
10. Smti. Sunity Nongbri (*Petitioner), attached with C&S (R.V. Suchiang).
11. Smti. Grethel Rynjah, attached with Secy. Board of Revenue (H.L. Pyrtuh).
12. Smti. Banribha Nongkhlaw, attached with Dy. C.M. (R.C. Laloo)
13. Smti. Remiss Rymbui, attached with Projector Director Sc. & Tech.
14. Shri. Primbor Sohtun, attached with Parl. Secy. (Ashahel D. Shira).

Sd/- E. Lyngdoh Deputy Secretary to the Govt. of Meghalaya, Sectt. Admn. Department (Estt.)"

6. The petitioner in compliance of the said order dated 27-06-2013 appeared in the departmental examination on Speed Test and Drafting conducted on 02-07-2013. It is also pertinent to mention that the petitioner was the sole candidate who appeared in the said Departmental examination on Speed Test and Drafting conducted on 02-07-2013. The remaining 13(thirteen) i.e. respondents No. 5 to 12 and 4(four) others, refused to appear in the said departmental examination on Speed Test and Drafting conducted on 02-07-2013. The result of the said Departmental examination on Speed Test and Drafting was published vide Office Order No. No. MATI.6/2011/87, dated 08-07-2013 and the petitioner was declared successful. The said order dated 08-07-2013 (Annexure-5 to the writ petition read as follows:

"GOVERNMENT OF MEGHALAYA MEGHALAYA ADMINISTRATIVE TRAINING

INSTITUTE, SHILLONG

OFFICE - ORDER

No. MATI.6/2011/87

Dated Shillong, the 8th July, 2013

The following Stenographer Grade II of Meghalaya Civil Secretariat is declared to have pass the Departmental Examination on Speed Test and Drafting conducted by Meghalaya Administrative Training Institute, Shillong on the 2nd July 2013.

(Shri. D. Vijay Kumar, IAS) Director, Meghalaya Admv. Training Institute, Shillong"

7. It is the further case of learned Sr. counsel appearing for the petitioner that even if the petitioner was the lone successful candidate in the said departmental examination for promotion to the post of Stenographer Grade I and vacancy in the post of Stenographer Grade I was also available, the petitioner was not promoted to the post of Stenographer Grade I. Accordingly, the petitioner filed several representations to the State respondents requesting the respondents to take steps in order to promote the petitioner to the post of Stenographer Grade I as per the prevailing Rule i.e. MSS Service Rules, 2011.

8. The petitioner had filed the present writ petition i.e. WP(C) No. 215/2014 against the State respondents seeking writ of mandamus directing the respondents to promote the petitioner to the higher grade i.e. Stenographer Grade I. During the pendency of the present writ petition, the State respondents promoted the respondents No. 5 to 12 to the Stenographer Grade I vide Notification (impugned Notification) dated 09-07-2014. By the same Notification (impugned Notification), the 8(eight) posts of Stenographers Grade II along with incumbents were upgraded to Stenographer Grade I, and the petitioner is one of the Stenographer Grade II upgraded to Stenographer Grade I. By necessary amendment of the writ petition i.e. WP(C) No. 215/2014, the private respondents No. 5 to 12 had been impleaded as respondents and also by amendment of the prayer portion of the writ petition, prayer was also made in the writ petition for quashing the Notification dated 09-07-2014.

9. The respondent No. 4, the Under Secretary, Personnel & A.R.(A) Department, Govt. of Meghalaya, Shillong had filed the affidavit on behalf of the respondents No. 1, 2, 3 and 4. In para 14 of the affidavit-in-opposition, it is stated that an application was submitted by the President and the General Secretary of the Meghalaya Stenographers Service Association dated 11-10-2011 for relaxing the provision for passing the departmental examination to the existing serving Stenographers Grade I, II, III. Without giving any rational reasons, the respondents in their affidavit-in-opposition simply stated that State Respondent relaxed provision of the Rules as one time relaxation since the MSS Service Rules, 2011 had just come into force, involved a change in principles of placements and accordingly issued the Notification dated 27-06-2014 for relaxation of the provision for passing the departmental examination on Speed

Test and Drafting. The name of the petitioner who had already passed the said examination is also included at Sl. No. 9. The said order dated 27-06-2014 read as follows:

"GOVERNMENT OF MEGHALAYA ORDERS BY THE GOVERNOR

.....

NOTIFICATION

Dated Shillong, the 27th June, 2014

No. PER.11/91/Pt.II/9 - In exercise of the powers conferred under Rule 20 of the Meghalaya Secretariat (Gazetted) Stenographers Service Rules, 2011, the Governor of Meghalaya is pleased to relax the requirement of passing the Departmental Examination of Speed Test and Drafting under Rule 6(2)(a) of the Meghalaya Secretariat (Gazetted) Stenographers Service Rules, 2011 to the following Stenographers Grade-II who are due for promotion as a one-time relaxation.

1. Shri. Buc Charles Basan (Respondent No. 5)
2. Smti. Deilang Lamare (Respondent No. 6)
3. Smti. Trinity Doneth Bell Lyngdoh (Respondent No. 7)
4. Shri. Donkupar Lyngdoh (Respondent No. 8)
5. Smti. Luckymon Shullai (Respondent No. 9)
6. Smti. Icy Linda Lamare (Respondent No. 10)
7. Smti. Liberal Dora Kharlyngdoh (Respondent No. 11)
8. Shri. Teiborlang Nongkynrih (Respondent No. 12).
9. Smti. Sunity Nongbri (*Petitioner)
10. Smti. Grethelda Rynjah.
11. Smti. Banribha Nongkhaw.
12. Smti. Remiss Rymbui.
13. Shri. Primbor Sohtun.

Sd/- D. Rynjah Under Secretary to the Govt. of Meghalaya, Personnel & A.R.(A) Department."

10. Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner contended that there was non-application of mind of the State Government in relaxing the requirement of passing the Speed Test and Drafting. The petitioner who had already passed the departmental examination had been included in the list of the Stenographers Grade II for whom the said requirement of passing the

departmental examination of Speed Test and Drafting had been relaxed. Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner further reiterated that relaxing a provision could be resorted only if eligible candidates are not available. There is not even a whisper in the affidavit-in-opposition in the present writ petition that eligible candidates are not available for promotion to the post of Stenographers Grade I and also for not resorting to proviso to Rule 6(2)(b) of the MSS Service Rules, 2011. The relaxation power cannot be exercised at pleasure without any reason for simply giving undue benefit to the candidates who did not pass the required departmental examination. It is the further submission of Mr. H.S. Thangkhiew, learned Sr. counsel that in such cases the government has to sacrifice the efficiency in service only for the purpose of giving undue benefit to the unqualified candidates. Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner contended that even in the list of the promotees who had been promoted to the post of Stenographer Grade I by the impugned Notification dated 09-07-2014, the name of the petitioner appears at Sl. No. 4 of the Stenographers who had been upgraded to Stenographer Grade I and therefore according to the learned Sr. counsel that the name of the petitioner is wrongly placed below the unqualified candidates i.e. respondents No. 5 to 12, who had been promoted to the post of Stenographer Grade I by resorting to the relaxation clause in the Seniority list of Stenographers Grade I. It is fairly settled law that the employees who had been promoted to the higher post by resorting to relaxation clause cannot be above the employees who are promoted after qualifying the essential criteria for promotion under the relevant rules in Seniority lists of promotees.

11. Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner by placing heavy reliance on the decision of the Apex Court in Jagdish Prasad Vs. State of Rajasthan and Others, AIR 2011 SC 3189 : (2011) 130 FLR 784 : (2011) 7 JT 384 : (2011) 7 SCALE 552 : (2011) 7 SCC 789 : (2011) 2 SCC(L&S) 302 : (2011) 12 SCR 1 : (2011) AIRSCW 4449 contended that the promotion/appointment should be in strict compliance with the rules. Para 23 and 36 of the SCC in Jagdish Prasad's case (Supra) read as follows:

"36. Having discussed in detail the infirmities and illegalities from which the selection process suffers, we, though for different reasons, have come to the same conclusion as the High Court while also issuing directions. Therefore, while setting aside the selection/promotion order dated 8-7-1994, we further issue the following directions for strict compliance by all the authorities concerned and without any further delay:

1. Fresh process of selection shall be held by the competent authority in accordance with Rules, as expeditiously as possible and in any case not later than three months from today;
2. The selection by promotion for the yearwise vacancies shall be filled in compliance with Rule 24(6) of the Rules, 1979. The authorities shall fill 50% of the promotion vacancies purely by merit, for which it will evolve a methodology,

either by holding a qualifying examination as was being conducted prior to 1992, or by any other examination which would satisfy the basic criteria of selection by merit.

3. Remaining 50% of the promotion posts shall be filled by seniority-cum-merit for which the DPC shall meet within the stipulated time as afore-directed.

4. The Secretary (Transport), Government of Rajasthan is hereby directed to conduct an enquiry personally and fix responsibility on all the officers/officials responsible for not conducting qualifying examination in accordance with Rules from 1983 to 1994 and subsequent thereto in accordance with law. In other words, the officers must be held responsible for their lapses and be punished in accordance with law.

5. The vacancies would be clubbed only for the purposes of calculating an arithmetical figure but, will be filled in accordance with yearwise vacancies and considering the officers eligible for promotion to the post of DTO in accordance with seniority cum merit rule for 50% of the promotion post.

6. All remaining 50% posts shall be filled up purely on merit and by holding an examination.

7. The persons who have already been promoted would not be reverted and none of them would be entitled to claim any financial benefits, if they have already retired from the post of DTO.

8. The candidates now selected in furtherance to the directions contained in the judgment shall not be entitled to any arrears of pay because though their promotion may be relatable to a previous year, such promotion shall be notional without any consequential benefits."

12. Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner contended that there is distinctive difference between "promotion and upgradation". In the case of upgradation of a post involves the transfer of a post from the lower to the higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection. He also reiterated that by resorting to methods of upgradation of post, the unqualified candidates cannot be upgraded. Para 31 of the SCC in Union of India (UOI) Vs. Pushpa Rani and Others, (2008) 8 JT 474 : (2008) 10 SCALE 567 : (2008) 9 SCC 243 : (2008) 2 SCC(L&S) 851 : (2009) 1 SLJ 1 read as follows:

"31. In legal parlance, upgradation of a post involved the transfer of a post from the lower to the higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment - D.P. Upadhyay v. N.R. Baroda House: (2002) 10 SCC 258: 2003 SCC (L&S) 250."

13. In this writ petition assailing the impugned Notification dated 09-07-2014, the following issues are called for decision:--

"i) Whether the private respondents No. 5 to 12 can be promoted by relaxing the requisite qualification for promotion to the post of Stenographer Grade I while eligible candidates are available and also without taking recourse to proviso to Rule 6(2)(b) that in the event of non availability of qualified and suitable persons for appointment under clause (a) of Rule 6(2), the shortfall in the quota may be filled up by qualified suitable persons under clause (b) irrespective in the proportion prescribed in a year?

ii) Whether the eligible criteria for promotion to the post of Stenographer Grade I which is clearly provided under Rule 6(2)(a) can be violated indirectly by upgrading the posts of Stenographer Grade II along with the unqualified incumbents to the Stenographer Grade I?

iii) Whether the requirement of passing the Departmental examination on Speed Test and Drafting as provided under Rule 6(2)(a) of the MSS Service Rules, 2011 can be relaxed as a reward to the private respondents No. 5 to 12 and 4(four) others for their refusal to appear the Departmental examination on Speed Test and Drafting conducted on 02-07-2013?

iv) Whether the writ petitioner who in faithful compliance of the said order of the Govt. of Meghalaya, dated 27-06-2013 appeared the Departmental examination on Speed Test and Drafting on 02-07-2013 and successfully passed the Departmental examination shall be promoted to the post of Stenographer Grade I in the given case that the State Government needs the service of the Stenographer Grade I and also the vacancy in the post of Stenographer Grade I is available?

v) Whether Rule 20 of the MSS Service Rules, 2011 does not provide for relaxation of essential conditions/recruitment conditions for the posts under the Rules except the experience of the employee for promotion?"

14. It is well settled law that wish and desire of the Legislature has to be given full effect [Ref: State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd., (1996) 8 AD 473 : AIR 1997 SC 1815 : (1996) 10 JT 116 : (1996) 8 SCALE 71 : (1997) 1 SCC 326 : (1996) 8 SCR 193 Supp : (1997) AIRSCW 1188]. It is settled rule of interpretation of statute that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all. In other words, where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. For this settled principle of law, it would be sufficed to refer to the decisions of the Apex Court in (i) Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, AIR 1963 SC 1077 : (1963) 2 SCR 812 Supp (ii) State of

Gujarat Vs. Shantilal Mangaldas and Others, AIR 1969 SC 634 : (1969) 1 SCC 509 : (1969) 3 SCR 341 and; (iii) Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, AIR 1976 SC 789 : (1976) 2 SCC 128 : (1976) 2 SCR 1060 .

The relevant portion of Para 12 of the AIR in Patna Improvement Trust case (Supra) reads as follows:--

"12. A combined effect of the said two principles may be stated thus: a general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way. Under the Act, the Trust is authorized to implement the improvement schemes in a particular way and for the purposes of implementing them to acquire the land in a prescribed manner."

The relevant portion of Para 55 of the SCC in Shantilal Mangaldas's case (Supra) reads as follows:--

"55. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation that when the power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all."

Para 18 of the SCC in Hukam Chand Shyam Lal's case (Supra) reads as follows:--

"18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice."

15. The Apex Court in Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, AIR 2007 SC 1746 : (2007) 114 FLR 920 : (2007) 6 JT 471 : (2007) 6 SCALE 531 : (2007) 10 SCC 260 : (2008) 1 SCC(L&S) 492 : (2007) 5 SCR 1131 : (2008) 3 SLJ 236 : (2007) AIRSCW 2867 held that the recruitment to a post must be made strictly in terms of the Rules operating in the field. Paras 21 & 22 of the SCC in Kaila Kumar Paliwal's case (Supra) read as follows:--

"21. Recruitment to a post must be strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date. (See Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, (1997) 4 JT 99 : (1997) 1 LLJ 1160 : (1997) 2 SCALE 707 : (1997) 4 SCC 18 : (1997) SCC(L&S) 913 : (1997) 2 SCR 896 : (1997) 2 UJ 15 , U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, (1994) 68 FLR 750 : (1994) 1 JT 94 : (1994) 1 SCALE 98 : (1994) 2 SCC 723 :

(1994) 1 SCR 131 : (1995) 1 SLJ 183 : (1994) 1 UJ 330 and Harpal Kaur Chahal v. Director, Punjab Instructions: 1995 Supp (4) SCC 706).

22. Even where there exists a provision for relaxation, for example relaxation in age, the same must be strictly complied with. (See Kendriya Vidyalaya Sangathan and Others Vs. Sajal Kumar Roy and Others, (2006) 111 FLR 912 : (2006) 9 JT 292 : (2006) 10 SCALE 422 : (2006) 8 SCC 671 : (2007) 1 SCC(L&S) 23 : (2006) 7 SCR 607 Supp : (2007) 2 SLJ 64 and P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, AIR 1984 SC 541 : (1984) LabIC 301 : (1984) 1 LLJ 314 : (1983) 2 SCALE 1060 : (1984) 2 SCC 141 : (1984) 2 SCR 200 : (1984) 1 SLJ 474 : (1984) 16 UJ 44)."

16. The Apex Court (Constitution Bench) in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 held that in the name of individualising justice, it is also not possible for the Supreme Court to shut its eyes to the constitutional scheme and the rights of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. Paras 5 & 51 of the SCC in Uma Devi's case (Supra) read as follows:--

"5. This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises, equity to whom? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life,

would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution."

17. From the ratio decidendi of the cases discussed above, it is crystal clear that wish and desire of the legislature has to be given full effect and the appointment/promotion should be in strict compliance of the Rules. So for deciding the issues involved in the present writ petition, it may be required to relook Rule 20 of the MSS Service Rules, 2011 and accordingly, for the sake of the petitioner Rule 20 of the MSS Service Rules, 2011 is quoted:

"20. Power of the Governor to dispense with or relax any Rules - The Governor, if satisfied that the operation of any of the provisions of these Rules causes undue hardship in any particular case or cases or result in any particular post or posts being left unfilled for want of person (s), possessing the minimum experience as specified by these Rules for promotion to such post (s), may dispense with or relax the requirement of any of these Rules to such extent and subject to such condition, as it may consider necessary for dealing with the case in a just and equitable manner, or, for meeting the exigencies of public interest."

On bare perusal of Rule 20 of the MSS Service Rules, 2011, any prudent person will clearly understand that the power of relaxation under Rule 20 would be exercised only when:

"(i) Operation of any provision of this Rule causes undue hardship in any particular case or cases or result in any particular post or posts being left unfilled, (ii) for want of person possessing the minimum experience as specified by these Rules for promotion to such posts, and (iii) in such cases may relax the requirement of possessing of minimum experience for promotion or any of these Rules."

In the present case, the essential requirement or essential condition of recruitment of passing the specified Departmental examination on Speed Test and Drafting as provided under Rule 6(2)(a) had been relaxed. It is so simple that the essential condition of promotion of passing of specified Departmental examination on Speed Test and Drafting cannot be equated to possessing of the

minimum experience for promotion to Stenographer Grade I. It is settled law that by exercising the relaxation power under Rule 20 of the MSS Service Rules, 2011, the essential condition of recruitment or promotion of passing specified Departmental examination on Speed Test and Drafting as provided under Rules 6(2)(a) cannot be relaxed.

It is now well settled law that the power to relax the Rule does not include the power to relax the Recruitment Rules, conditions of Recruitment Rules cannot be relaxed to such an extent so as to render the condition of recruitment nugatory or non est in its entirety and also no relaxation of the basic and fundamental Rules of Recruitment. It is also equally well settled law that the relaxation should be for specific reasons even if there is power for relaxation and is subject to judicial review. The Division Bench of the Gauhati High Court in the case coming from the State of Meghalaya i.e. M. Laitphlang (Dr.) v. State of Meghalaya, clearly held that there can be no relaxation of basic and fundamental Rules of Recruitment reported in Dr. M. Laitphlang and Others Vs. State of Meghalaya and Others, (2004) 2 GLR 546 : (2004) 1 GLT 308 .

Regarding this settled position of law, this Court may not be required to cite a number of decisions. It would be suffice to refer to the decisions of the Apex Court and erstwhile Gauhati High i.e. Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others, AIR 2000 SC 2386 : (2000) 5 JT 413 : (2000) 4 SCALE 268 : (2000) 7 SCC 561 : (2000) SCC(L&S) 977 : (2000) AIRSCW 2439 : (2000) 3 Supreme 637 : Om Prakash Pathak and Another Vs. State of Arunachal Pradesh and Others, (2006) 1 GLT 28 : Dr. M. Laitphlang and Others Vs. State of Meghalaya and Others, (2004) 2 GLR 546 : (2004) 1 GLT 308 in M. Laitphlang (Dr.) v. State of Meghalaya : Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, (2005) 2 ESC 246 : (2005) 105 FLR 464 : (2005) 3 JT 468 Supp : (2005) 4 SCC 154 : (2005) SCC(L&S) 452 : (2005) 2 SCR 991 : (2005) 2 SLJ 331 : Sodagar Singh Vs. State of Punjab and Others, (1997) 2 JT 99 : (1997) 1 LLJ 916 : (1997) 1 LLJ 196 : (1997) 1 SCALE 529 : (1997) 2 SCC 554 : (1997) SCC(L&S) 547 : (1997) 1 SCR 523 : Jai Prakash Sharma Vs. State of U.P. and others, AIR 1997 SC 2550 : (1997) 5 JT 187 : (1997) 3 SCALE 358 : (1997) 4 SCC 377 : (1997) SCC(L&S) 961 : (1997) 3 SCR 154 : (1997) AIRSCW 2496 : (1997) 3 Supreme 637 : CSIR and Others Vs. Ramesh Chandra Agrawal and Another, (2009) 1 JT 562 : (2009) 1 SCALE 551 : (2009) 3 SCC 35 : (2009) 1 SCC(L&S) 547 : (2009) 3 SLR 424 .

18. When Law ends, Tyranny begins; Legislation begins where Evil begins. The function of the Judiciary begins when the function of the Legislature ends. Law is made not to be broken but to be obeyed. (Ref: Kartar Singh Vs. State of Punjab, (1994) 2 JT 423 : (1994) 3 SCC 569 : (1994) 2 SCR 375).

19. The State respondents had denied the promotion to writ petitioner who in faithful compliance of the said order of the Govt. of Meghalaya dated 27-06-2013 appeared in the Departmental examination on Speed Test and Drafting conducted on 02-07-2013 and successfully passed the test to the vacant post of

Stenographer Grade I. It is fairly settled law that the selected candidates has no vested right to be appointed to the post for which the candidates had been selected, and also at the same time the appointing authority cannot arbitrarily deny the claim of the selected candidate for appointment to the vacant post.

20. In the given case, it is clear that there is no rational reason for relaxing the requirement of passing the Departmental examination on Speed Test and Drafting as provided under Rule 6(2)(a) of the MSS Service Rules, 2011 for the private respondents. There cannot be relaxation of the requirement of appearing the Departmental examination on Speed Test and Drafting as provided under rule 6(2)(a) of the MSS Service Rules, 2011 as a reward to the private respondents for their refusal to appear in the Departmental examination on Speed Test and Drafting inasmuch as "When Law ends, Tyranny begins; Legislation begins where Evil begins. The function of the Judiciary begins when the function of the Legislature ends".

Moreover, neither the affidavit-in-opposition for the State respondents nor the State counsel informed this Court the rational reasons as to why the proviso to Rule 6(2)(b) of the MSS Service rules, 2011, was not followed before relaxing the requirement of passing the Departmental examination on Speed Test and Drafting under Rule 6(2)(a) for the private respondents.

21. For the reasons discussed above, this Court had no alternative but to interfere with the impugned Notification dated 09-07-2014. Accordingly, the impugned Notification dated 09-07-2014 is hereby quashed. The writ petitioner who in faithful compliance of the order of the Govt. of Meghalaya dated 27-07-2013 appeared in the Departmental examination on Speed Test and Drafting conducted on 02-07-2013 and was found successful in that test is to be considered for promotion to Stenographer Grade I keeping in view of observations made in the above para No. 19. In the peculiar circumstances of the present case, it is directed that within a period of 2(two) weeks from the date of receipt of the certified copy of this order, the State respondents shall consider the petitioner for promotion to the post of Stenographer Grade I in view of the above observations and also in the event of promoting to Stenographer Grade I there shall not be any break in the service of the writ petitioner as Stenographer Grade I w.e.f 09-07-2014 i.e. the date of passing the impugned Notification for upgrading the writ petitioner to the post of Stenographer Grade I.

22. It is also made clear that the Stenographers Grade II promoted to Stenographers Grade I by relaxation of the Rules in extreme circumstances cannot be senior to the Stenographer Grade II promoted to Stenographer Grade I after fulfilling all the requirements under the MSS Service Rules, 2011. In consequence of this order the State respondents shall not allow the private respondents No. 5 to 12 to function as Stenographers Grade I within 2(two) weeks from the date of receipt of the certified copy of this judgment and order. However, the cases of the private respondents No. 5 to 12 shall be considered for promotion to the Stenographer Grade I according to the MSS Service Rules, 2011

as expeditiously as possible.

23. Writ petition is allowed to the extent indicated above.