



Serial No. 18 & 19
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 340 of 2023 with
WP(C) No. 341 of 2023

Date of Decision: 27.06.2024

Shri. Silvester Lyngdoh
S/o Enes Lyngdoh,
R/o Sarikushi Marngar,
Ri-Bhoi District, Meghalaya

:::Petitioner

-Vs-

1.The State of Meghalaya represented by the
Chief Secretary to the Government of
Meghalaya

2.The Chairman, Meghalaya Public Service
Commission, Shillong

3.The Secretary, Meghalaya Public Service Commission

4.The Director, Sports and Youth Affairs, Shillong

5. Donkupar Kharjana, R/o Mawlai Umshing,
Shillong – 793008, Meghalaya

6.Fedellia Sun, R/o Mawlai MawDatbaki,
Umshyngiar Umjan, Shillong-793008, Meghalaya

:::Respondents



Smti. Ridabhahi Lapasam
W/o Banshanbor Khongmawpat
R/o Mowtyrshiah "A" Side, Lumpdang,
West Jaintia Hills District, Meghalaya-793150

:::Petitioner

-Vs-

1.The State of Meghalaya represented by the
Chief Secretary to the Government of
Meghalaya

2.The Chairman, Meghalaya Public Service
Commission, Shillong

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Shillong – 793008, Meghalaya

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Umshyangiar Umjan, Shillong-793008, Meghalaya

:::Respondents

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Ms. S. Chettri, Adv. with
Ms. D.D. Fancon, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. J.N. Rynjah, GA. (For R 1&4)
Mr. K. Paul, Sr. Adv. with
Ms. B. Kharwanlang, Adv. (For R 2&3)
Mr. K.S. Kynjing, Sr. Adv. with
Mr. G. Syngkrem, Adv.
Ms. A.D. Syiem, Adv.
Ms. B. Rapsang, Adv. (For R 5)
Ms. O. A. Bang, Adv. (For R 6).



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. These two writ petitions being similarly situated in facts are being disposed of by this common judgment and order. The petitioners herein, have put to challenge the notification dated 08.12.2022, selecting the respondents No. 5 and 6, amongst others to the post of Junior Athletic Coach conducted by the Meghalaya Public Service Commission (MPSC), and advertisement dated 14.11.2019, followed by Corrigendum dated 31.03.2021. The challenge is on the ground that the respondents No. 5 and 6, do not possess the required qualifications, as required by the corrigendum and were ineligible for appointment, as they possess qualifications from private institutes, which are not recognised by the Sports Department.

2. Ms. S. Chettri and Ms. D.D. Fancon, learned counsels for the petitioners submit that pursuant to the advertisement dated 14.11.2019, which advertised for Junior Coaches in the office of the respondent No. 4, the petitioners being Graduates and holding Diplomas in Sports and Athletics from the Sports Authority of India (SAI), Netaji Subhash National



Institute of Sports (NIS), Patiala, had applied for the said vacancies, which was as per the criteria prescribed in the said advertisement. It is further submitted that, the respondent then by corrigendum dated 31.03.2021, had broadened the scope from Diploma in Sports Coaching from NSNIS, Patiala, or its subsidiary regional institutes to 10+2, with Diploma in sports coaching in the concerned discipline. The respondents No. 5 and 6 it is contended being Diploma holders from Laxmi Bai Institute of Physical Education, Gwalior, which is not stipulated in the advertisement and further not recognised by the Sports Department, as per the RTI reply dated 18.08.2023, should not have been considered for selection, and as such, interference of this Court in the selection process is called for.

3. Mr. K. Paul, learned Senior counsel assisted by Ms. B. Kharwanlang, learned counsel for the respondents No. 2 and 3 submits that the corrigendum dated 31.03.2021, was issued to correct the position and requirement that candidates for the post of Junior Coaches should be 10+2 with Diploma in Sports Coaching. With regard to the contention that the respondents No. 5 and 6 did not possess the required qualification, the learned Senior counsel has drawn the attention of this Court to Annexure – 5 series of the affidavit, wherein which contains three memorandums dated 27.12.2007, 16.02.2016 and 09.01.2019, wherein the Ministry of Youth Affairs and Sports, Government of India has instructed the concerned



departments in the State, to treat the PG Diplomas in Coaching received from NLIPE, Gwalior, as equivalent to that of NSNIS, Patiala. Vide these directions he submits, the respondents No. 5 and 6, who had PG Diplomas from NLIPE, Gwalior, were therefore as per the advertisement and corrigendum, eligible and qualified for selection.

4. The learned Senior counsel has also submitted that the petitioners having taken part in the selection process cannot now turn around on being unsuccessful to question or challenge the same. He also submits that the petitioners were well aware about the advertisement and corrigendum which was available in the public domain, much before the selection, and therefore they are estopped at this stage from assailing the same.

5. Mr. N.D. Chullai, learned AAG assisted by Mr. J.N. Rynjah, learned GA for the State respondents No. 1 and 4, has supported the submissions made by Mr. K. Paul, learned Senior counsel for the respondents No. 2 and 3, and has submitted that the reply received from the Public Information Officer of the Sports Department, which has been relied upon by the petitioners to support their case, with regard to recognised sports institutions, is incorrect, as on examination the said information was wrongly furnished. The learned AAG has then referred to Paragraph – 11 of the affidavit-in-opposition filed on behalf of the respondents No. 1 and 4, and submits that the correct information is ‘any Institute/College/University



recognised by the Government of India through the Ministry of Youth Affairs and Sports'. He further submits that the advertisement had clearly stated the criteria, as also the corrigendum which had been published in the newspapers, whereafter the applications received, after proper scrutiny, were accepted and eligible candidates were called for personal interview. He lastly submits that there being no procedural irregularity or illegality in any manner, the writ petition is liable to be dismissed.

6. Mr. K.S. Kynjing, learned Senior counsel assisted by Mr. G. Syngkrem, learned counsel for the respondent No. 5 and Ms. O. A. Bang, learned counsel for the respondent No. 6 respectively, have endorsed the submissions made by the learned Senior counsel for the MPSC and the State, and have also taken the Court through the affidavits filed, wherein testimonials have been annexed showing that the respondents No. 5 and 6, were holders of Post Graduate Diplomas from NLIPE, Gwalior, which as per Government of India Memorandum equivalent to Diplomas from NSNIS, Patiala.

7. Ms. O. A. Bang, learned counsel in support of her contentions has also filed a short gist of written submissions, and has placed reliance on the case of *State of Uttar Pradesh vs. Karunesh Kumar & Ors.* reported in *2022 SCC OnLine SC 1706* and also in the case of *Tajvir Singh Sodhi & Ors. vs. State of Jammu and Kashmir & Ors.* reported in *2023 SCC*



OnLine 344, and submits that the respondents have since joined in service in April, 2023.

8. Having heard the learned counsel for the parties, it is seen that the main grievance of the writ petitioners, is centered around the assumption that the respondents No. 5 and 6, had been selected without being eligible and that the selection process therefore was vitiated, which called for the entire selection process being set aside, and consequently also the impugned select list dated 08.12.2022. A bare perusal of the advertisement dated 14.11.2019, shows that a candidate was required to be a Graduate in any stream with Diploma in Sports Coaching from NSNIS, Patiala, or its subsidiary, or from any Institute/University/College recognised by the Government of India or 10+2 with Diploma in Sports Coaching in the relevant sports discipline, for those achievers who are medalist at the National Championships/Recognised International Championship. The corrigendum dated 31.03.2021, further only clarified the position that the candidates should be 10+2 with Diploma in Sports Coaching in the concerned discipline. This is revealed from the communication dated 12.01.2021, wherein the respondents directed that the correct position was to be indicated.

9. Coming to the assertion of the petitioners that the respondents No. 5 and 6, were not Diploma holders from recognised institutions, it is



noted that the same has been more than adequately answered in the form of the three Memorandums namely F.No.19-2/2007/ID dated 27.12.2007, F.No.70-62/2015/SP VI dated 16.02.2016 and F.No.70-25/2019/SP VI dated 09.01.2019, wherein the Educational Secretaries as well as the Sports Secretaries and Directors of all States and Union Territories have been instructed by the Ministry of Youth Affairs and Sports, Government of India to treat the Post Graduate Diploma in Sports Coaching of NLIPE, Gwalior, and Diploma in Sports Coaching from NSNIS, Patiala, at par, or equivalent thereto. The respondents No. 5 and 6, both being holders of PG Diplomas from NLIPE, Gwalior, were therefore qualified and eligible for the selection. With regard to the other contention of the petitioners that, as per the RTI reply, annexed at Annexure – 15 series to the writ petition, that the name of the institute from where the respondents obtained the Diplomas was not mentioned, it is seen in the said RTI reply itself that NSNIS, Patiala, is on the list at No. 1. Therefore as per the above noted Memorandums, this contention of the petitioners is disregarded, as NLIPE, Gwalior Post Graduate Diploma is equivalent to Diploma from NSNIS, Patiala.

10. The writ petitioners though having a grouse with regard to the selection process have however, not challenged the advertisement or the



corrigendum, and had consciously participated in the selection process. After being unsuccessful they are seeking to overturn the selection of the respondents No. 5 and 6, who have already been appointed and since joined to their respective posts. In this context, the judgment placed by the counsel for the respondent No. 6 i.e. *State of Uttar Pradesh vs. Karunesh Kumar & Ors.(supra)*, is of great relevance, as the Supreme Court while holding that a candidate who had participated is estopped from challenging the selection process, has also digested landmark cases on this issue. Para – 21 thereof, on this issue is extracted herein below.

21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

“55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10- 2014 and the private respondents are estopped from challenging the selection process. It is a settled law



that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9)

“9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

57. In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was held as under : (SCC p. 426, para 73)

“73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-



petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper.”

58. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], it was held as under : (SCC p. 107, para 19)

“19. In Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127 : 2002 SCC (L&S) 830]

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xxx

xxx

It was further observed : (SCC p. 149, para 34)

‘34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not “palatable” to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.”

59. Same principle was reiterated in Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9] wherein, it was held as under: (SCC pp. 645-46, para 59)

“59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] The



Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise.”

11. In view of the observations and discussions made herein above, the petitioners have been unable to make out any case for interference in the selection of the private respondents or in the selection process adopted by the respondents No. 2 and 3, and as such, these writ petitions stand dismissed.

12. No order as to costs.

Judge

Meghalaya
27.06.2024
“D.Thabab-PS”