



**Serial No.01**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C). No. 52 of 2022

Date of Order :14.08.2023

Ms. Larisha Shabong

Vs. State of Meghalaya & Ors.

**Coram:**

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

**Appearance:**

For the Petitioner/Appellant(s) : Mr. H.L.Shangreiso, Sr. Adv. with  
Mr. T.Dkhar, Adv.

For the Respondent(s) : Mr. R.Gurung, Addl. Sr. GA with  
Ms. S.Shyam, GA for R 1-3.  
Mr. K.Paul, Sr. Adv. with  
Mr. S.Chanda, Adv. for R 4.  
Dr. N.Mozika, Sr. Adv. with  
Ms. S.Rumthao, Adv. for R 5.

- i) Whether approved for reporting in Law journals etc: Yes/No
- ii) Whether approved for publication in press: Yes/No

**JUDGMENT AND ORDER**

1. The petitioner being aggrieved with the Notification dated 22-12-2021 which recommended the name of the private respondent No.5 to the



post of Social Officer at the Meghalaya Institute of Mental Health and Neurological Sciences (MIMHANS) is before this Court by way of the instant writ petition. The grounds set forth for the challenge is that respondent No. 5, lacked the eligibility criteria mentioned in the advertisement and further also lacked experience to be considered for the said post, whereas, the writ petitioner was eminently qualified as she possessed a degree of Master in Social Work with specialization/concentrated courses, coupled with experience, in the field of Mental Health.

2. Mr. H.L.Shangreiso, learned Senior counsel assisted by Mr. T. Dkhar, learned counsel for the petitioner submits that the advertisement for the post of Social Officer had provided that a candidate was to possess a Master Degree in Social Work preferably with 5 years' experience in the field of Mental Health from recognised Institutions. The learned Senior counsel has then taken this Court to the Certificates of the petitioner, to show that she, in the course of her study for Masters in Social Work, taken papers dealing with Mental Health, apart from possessing experience in the said field, and on 03-11-2021 was appointed to officiate against the advertised post for a period of 59 days. The respondent No. 5 on the other hand, he submits, as per information received from RTI replies, does not possess any experience in the field of



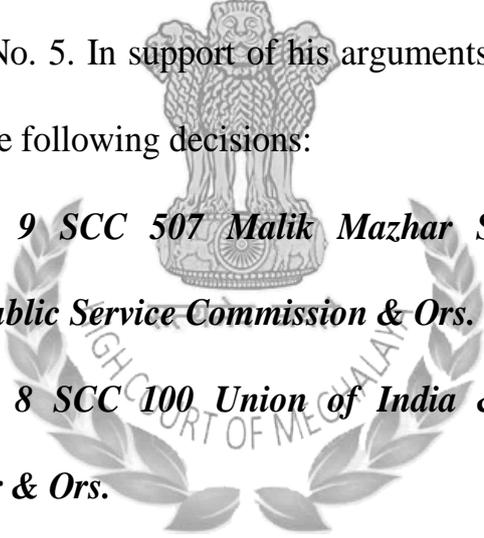
Mental Health and that further the University where the Degree was obtained from, did not offer any specialized course on Mental Health.

3. On another limb of submission, the learned Senior counsel has raised another issue by contending that the draft advertisement as provided by the requiring department in this case, the Director of Health Services (MI) vide letter dated 22-03-2016, had specifically indicated that applicants should have more than 5 years' experience in the field of Mental Health from recognised Institutions, whereas the respondent No. 4 (Meghalaya Public Service Commission) had altered this criteria in the advertisement, by inserting the word preferably. The respondent No. 4, he asserts, had no authority to change, or alter the criteria that had been prescribed by the requiring department in the advertisement, and as such, the selection of the respondent No. 5, based on the altered advertisement was irregular. It is further submitted that, had the advertisement been published as given in the draft advertisement, the petitioner having more experience would have been selected and not the respondent No. 5.

4. Learned Senior counsel submits that there has been no reply in the affidavits with regard to the alteration of the criteria, with regard to the mandatory experience of 5 years that was required as per the draft advertisement. He submits that though challenge has been put to the selection process after the same had been concluded wherein the



petitioner had also taken part, there can be no estoppel, since the deviation in the criteria came to the knowledge of the petitioner subsequent to the selection process. He further submits that though there are no service rules or executive orders governing the eligibility of candidates to the said post, the same cannot take away the right of the appointing authority to formulate the necessary criteria as has been done by way of the draft advertisement. The criteria he contends, having been diluted, such dilution would not confer any right on the selected candidate that is respondent No. 5. In support of his arguments, the learned Senior counsel has cited the following decisions:

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- (i) *(2006) 9 SCC 507 Malik Mazhar Sultan & Anr. vs. U.P.Public Service Commission & Ors.*
  - (ii) *(2007) 8 SCC 100 Union of India & Ors. vs. Vinodh Kumar & Ors.*
  - (iii) *(2008) 4 SCC 619 Sadananda Halo & Ors. vs. Momtaz Ali Sheikh & Ors.*
  - (iv) *(1997) 9 SCC 527 Raj Kumar & Ors. vs. Shakti Raj & Ors.*

5. Mr. K.Paul, learned Senior counsel assisted by Mr. S.Chanda, learned counsel on behalf of the respondent No.4, has at the outset submitted that the petitioner was aware about the criteria given in the advertisement, took her chances and has now sought to challenge the



same on being unsuccessful, in a selection process that has been concluded. He also submits that there has been no dilution in the criteria, inasmuch as, the draft advertisement provided by the requiring department, was not final and will not and cannot confer any right on any party. The advertisement, he submits, was based on the materials before the Public Service Commission and in this regard, clarification had also been sought from the requiring department which had replied that there was no service rules or office memorandum, regarding the post of Social Officer at MIMHANS, Shillong. He however, has made a reference to an office memorandum annexed to the affidavit, wherein it has been mentioned that the qualification was that an applicant, must have passed Masters in Social Work (MSW)/Ph.D. in the field of Mental Health preferably with 5 years' experience in the field of Mental Health from recognised institutions. However, he submits, the same is inconsequential in the present case, inasmuch as, the writ petitioner in the prayer has sought quashment of the recommendations issued by the respondent No. 4, for a mandamus to make a fresh recommendation in favour of the writ petitioner, and also for directions to offer the appointment to the writ petitioner against the post of Social Officer. This he contends, is untenable and there was no question of the recommendation being vitiated, as the respondent No. 5 was found to be eligible as per the



advertisement and was found to be more meritorious than the writ petitioner in the selection, as he had scored higher marks. He submits therefore, the petitioner cannot at this stage challenge the concluded process of selection especially in the light of the prayer so made.

6. Dr. N.Mozika, learned Senior counsel assisted by Ms. S.Rumthao, learned counsel for the respondent No. 5, submits that the case put up by the writ petitioner that she having undertaken specialized courses on Mental Health should have been the natural choice is illusory, as specialisation in Mental Health has not been mentioned anywhere. The baseline required qualification he submits, was that of Masters in Social Work which the respondent No. 5 possessed, and in the selection had scored more than the petitioner. On the point of the preference clause, the learned Senior counsel submits that it is only when all things are equal such as two candidates securing equal marks, that this clause will come into play to decide who should be the selected candidate, which is not the case in the present matter, as respondent No. 5 has scored more marks. The rule of estoppel he further submits, will surely come into play as the advertisement was already published before the selection, and it is not a case that the same was altered subsequently in the course of the selection process. There being a clear distinction between challenging an advertisement and a challenge to the recruitment process, the writ



petitioner he contends, cannot seek to club these two aspects and seek the relief of annulling the recommendations made by respondent No. 4. On the point of preferential qualification, the learned Senior counsel has placed the following decisions:

- (i) *(1996) 6 SCC 282 Secy. (Health) Deptt. Of Health & F.W. & Anr. vs. Dr. Anita Puri & Ors.*
- (ii) *(2003) 5 SCC 341 Secretary, A.P. Public Service Commission vs. Y.V.V.R.Srinivasulu & Ors.*
- (iii) *(2019) 6 SCC 362 Maharashtra Public Service Commission vs. Sandeep Shriram Warade & Ors.*

7. Mr. R.Gurung, learned Addl. Sr. GA for the respondent Nos. 1-3, has in his submissions supported the arguments made on behalf of the respondent Nos. 4 & 5, and reiterated the point that once having taken part in the selection, one cannot turn around and challenge the same on being unsuccessful.

8. Having heard learned counsel for the parties, it is noted that the issues raised before this Court is the question of eligibility of the respondent No. 5 and whether the advertisement as published, had deviated from the qualifications necessary to the post of Social Officer, MIMHANS. It has been argued at length, apart from materials being placed, to demonstrate that the writ petitioner apart from possessing the



basic qualification of Master of Social Work had also undertaken specific courses dealing with Mental Health and was also experienced having worked in this field. At this juncture therefore, it is necessary to examine the advertisement which for the sake of convenience is extracted and reproduced hereinbelow:

<i>Sl. No.</i>	<i>Name of Posts, Pay Scale and Required Qualification</i>	<i>No. of vacancies</i>	<i>Age &amp; Relaxation as on 1.1.2018</i>
9.	<p><i>Social Officer at MIMHANS, Meghalaya, Shillong.</i></p> <p><i>Rs.14,700-370-17290-EB-480 - 21,610 - 650-28,760/-pm. (Pre-revised)</i></p> <p><i>Master Degree in Social Work (MSW)/PHD in the field of Mental Health preferably with 5 years experience in the field of Mental Health from recognized Institutions.</i></p> <p><i>Additional Qualification: Knowledge of either Khasi, Jaintia or Garo as one of the language is necessary.</i></p>	1	<p><i>Candidates should not be less than 18 years and not more than 27 years. Upper age limit is relaxable by 5 years for candidates belonging to SC / ST. No upper age limit for candidates already in Meghalaya Government Service provided they entered Service within the prescribed age limit.</i></p>

9. An examination of the advertisement clearly reflects that the requirement is a Master Degree in Social Work (MSW) or a Ph.D. in the field of Mental Health, preferably with 5 years' experience in the field of Mental Health from recognised institutions. Both the writ petitioner and the respondent No. 5 therefore, being holders of Degrees of Master of



Social Work as required, possessed the requisite educational qualification to apply for the post of Social Officer, MIMHANS. It is to be noticed that the advertisement, has nowhere prescribed that the holder of a MSW Degree is to have specialized in Mental Health, as has been asserted by the writ petitioner to make out a case of her being more suitable. Further, the clause of preference to those having experience, as has been rightly argued by the counsel for the respondent No. 5, will come into consideration if some additional weightage be given to a candidate with higher qualification, and it cannot mean that a person who possesses higher or specialized qualification, is automatically to be selected and appointed. As held in the case of the *Secy. (Health) Deptt. of Health & F.W. & Anr. (supra)*, an expert body like the respondent No. 4, in the absence of statutory criteria, has the discretion of evolving its mode of evaluation of merit and selection of the candidate. Further, the preference clause, when a selection is made on the basis of merit, will come into play only if all other things are equal, and as such, a candidate possessing additional qualification would be preferred. The respondent No. 5 having undisputedly scored more marks than the writ petitioner, the preference clause would therefore have no application.

10. On the question of whether there was any deviation in the advertisement published from the draft advertisement supplied by the



requiring department i.e., respondent No. 2, in the considered view of this Court, in the absence of any statutory rule or guidelines as noted above in the earlier paragraph, and the clarification provided by the respondent No. 2 to this effect, the advertisement cannot be held to be faulty or that the criteria had been altered in the course of selection. Moreover, the fact that the petitioner did not choose to question the same at the time of its publication, but only after the selection process was over, clearly creates an estoppel in law.

11. The stand of the petitioner taken in the course of arguments, however, is belied by the prayer in the writ petition itself, inasmuch as, the same is directed only against the selection and nowhere is the advertisement impugned. Infact, directions have been sought for quashing the recommendation and for a direction that a fresh recommendation be made in favour of the writ petitioner. Further, a mandamus is also sought to direct the State respondents to consider and offer the appointment to the writ petitioner against the post of Social Officer. The petitioner therefore, while on one breath impugning the selection process, cannot by the same breath, seek any relief from the same selection process.

12. This being a clear case of challenging a selection process after willingly taking part in the same, therefore, cannot be sustained. Courts' interference with the decision of the selection by an expert body, will



only be called for, on very limited circumstances or grounds, such as illegality or patent material irregularity which has vitiated the selection process. In the instant case, the challenge being only on criteria therefore, no cause for any interference has been made out and as such the writ petition is liable to be dismissed.

13. Accordingly, the instant writ petition being devoid of any merit stands dismissed, however, with no order as to costs.

Meghalaya  
14.08.2023  
"Samantha PS"



**Judge**