



Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Review Pet. No.3 of 2018

Date of Order: 14.12.2018

All Meghalaya Primary Vs. State of Meghalaya & ors
Schools Teachers Association & ors

Coram:

Hon’ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon’ble Mr. Justice S.R. Sen, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. A Saraf, Sr.Adv
Mr. KV Kharlyngdoh, Adv
For the Respondent(s) : Mr. R Gurung, GA
Mr. VK Jindal, Sr.Adv with
Ms. P Biswakarma, Adv for CBI

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Optional |

Per Mohammad Yaqoob Mir, ‘CJ’

1. Petitioners seek review of the judgment dated 02.11.2017, passed by this Court in bunch of writ appeals with lead appeal, WA No.52 of 2011.
2. The main contention of the petitioners (Assistant Teachers) is that their appointments having been found untainted, were not required to be disturbed so were required to be permanently absorbed. The judgment under review harshly operates against them, before passing such judgment they should have been impleaded as party respondents and given opportunity of being heard.
3. One of the directions of this Court in terms of the judgment dated 02.11.2017 under review provide that “**the candidates who have been treated as untainted/unblemished both in the reports of Central Bureau of Investigation (CBI) and High Level Scrutiny Committee**



(HLSC) and are in service, may be allowed to continue as stop-gap arrangement until fresh selection takes place”.

4. The direction to the extent it provides “**may be allowed to continue as stop-gap arrangement until fresh selection takes place**” is an error apparent on the face of the record because selection and consequent appointments of the petitioners were found to be untainted/unblemished, therefore, there was no cause for punishing them for the mistakes or errors or irregularities committed in connection with the selection and appointment of the candidates whose selection and appointment was allegedly found tainted by the CBI and HLSC.

5. For appreciating the aforesaid contention of review petitioners, factual background of the case shall be advantageous to be noticed precisely.

Precise factual background:

6. Vide advertisement notice dated 10.12.2008 applications were invited from the citizens of India for recruitment to the post of Assistant Teachers in Government Lower Primary Schools in the scale pay of Rs.3450-80-3930-EB-90-4650-100-5650/- PM. The process of selection culminated in appointment of 749 candidates which include the review petitioners.

7. The entire process including the appointment was challenged by the non-selected aggrieved candidates by medium of nine (9) petitions with lead petition WP(C) No.106 (SH) of 2010, same were filed before the Shillong Bench of Gauhati High Court. Up to 22nd March 2013, Gauhati High Court was the common High Court for North Eastern States including the State of Meghalaya, with a Bench also at Shillong. The said writ petitions were disposed of by a common judgment dated 21.10.2011 by the Shillong Bench of Gauhati High Court as it then was.

8. In the judgment, it had been noticed that under the Right to Information Act, 2005, the Public Information Officer in the Directorate of Elementary and Mass Education, Meghalaya vide letter dated



01.02.2010 supplied the information to the writ petitioners based on which, the writ petitioners had alleged widespread manipulation, favouritism and illegality. There was also widespread condemnation and criticism, even one NGO had lodged an FIR against the officers/officials responsible for illegal alteration, addition and overwriting the score sheets and for the irregular allocation of marks to the favourite candidates having political backing.

9. After considering the respective pleadings and submissions made by their counsel, petitions were allowed. The CBI was directed to enquire into the allegations and to submit the report within a period of three months from the date of receipt of the copy of the judgment. Then, in the judgment it has been concluded as under:-

“The respondent authorities shall take necessary and consequential actions on the basis of the inquiry report submitted by CBI including cancellation of the entire selection processes and the appointments already made in connection therewith and re-starting of the recruitment process to fill up the posts in question within a period of two months thereafter.”

10. Aggrieved by the said judgment dated 21.10.2011, bunch of writ appeals were filed by the aggrieved parties including the State of Meghalaya with lead writ appeal No.52 (SH) of 2011 before the Gauhati High Court, same were decided vide judgment dated 16.08.2012. The judgment of the learned Single Judge was mainly challenged regarding legality of the order providing for CBI inquiry which was answered in favour of the appellants, but it was noticed that since the CBI inquiry as was ordered by the learned Single Judge, in the meanwhile had been completed therefore, even if it is held that direction for CBI inquiry was not proper or warranted but it is only after CBI enquiry report had been filed, the appellants challenged the order regarding CBI inquiry, then it has been opined as under:-

“But an exercise of investigation having been undertaken under a judicial order of this Court at the expense of public exchequer by CBI cannot be and should not be allowed to go waste. Therefore, same cannot be brushed aside nor can be quashed.”

11. In para 28 of the said judgment, it has been opined as under:-



“It is the duty of the Court to see that the cases of tainted candidates are segregated from the non-tainted. This is essentially a job of expertise assigned normally to the employer. Under the circumstances where there is no specific allegations of any bias against any authority of the employer i.e. the Education Department of the Government of Meghalaya, we are inclined to accept the submission of Mr. S Dey, appellant’s counsel to the extent of a **high level Independent Scrutiny Committee may be directed to be constituted** by the Government of Meghalaya in the Education Department to review and re-scrutinize the records pertaining to the candidature of the selected and un-selected candidates involved within the parameters of all the writ petitions.” (Emphasis added)

12. Finally in para 29 of the said judgment, the Court has opined, “for balancing the matter and for advancing cause of justice, the Principal Secretary to the Government of Meghalaya, Education Department, shall constitute a HLSC who shall review the records regarding the candidature of the selected and unselected candidates and to ascertain the legality/basis of such selection or non-selection. Further, **to segregate the tainted candidates from the non-tainted and to take appropriate actions in accordance with law, to offer appointment/confirm appointments of duly selected candidates whether already appointed or not** and also to terminate the candidature/appointment of ineligible candidates and to appoint eligible candidates including the writ petitioners, if were found suitable. The exercise was to be completed within a period of six months”. The judgment under challenge dated 21.10.2011 passed by the learned Single Judge was modified accordingly. (Emphasis added)

13. The said judgment of the Division Bench dated 16.08.2012 was assailed before the Hon’ble Supreme Court by medium of Special Leave to Appeal (C) No(s).11357 of 2014. The Hon’ble Supreme Court has disposed of Civil Appeal No.4565 of 2017 (Special Leave Petition No.11357 of 2014) vide order dated 24.03.2017. After noticing that the CBI inquiry has already been concluded and report received by the High Court which is lying in a sealed cover and that the Committee appointed



in terms of the impugned order has also submitted its report, has concluded as under:-

“We are of the view that the High Court ought to have a fresh look at the matter in the light of the two reports which have already been submitted and after hearing the parties concerned.

Accordingly, we set aside the impugned order. The matter is remitted back to the Meghalaya High Court for fresh decision in accordance with law.”

14. The Division Bench of this Court vide detailed judgment dated 02.11.2017 on the basis of conclusion drawn issued various directions. Directions No.1 (a) and 3 for the purpose of this review petition are advantageous to be quoted:-

1. (a) The whole of selection process under the advertisement dated 10.12.2008, as issued by the Deputy Inspector of Schools in pursuance of Notification dated 24.11.2008, is held vitiated in relation to Shillong Sadar, Jowai, Amlarem, Tura and Dadengre Centres; and is annulled subject to the proviso that only the candidates **who have been treated as untainted/unblemished both in the reports of CBI and HLSC and are in service, may be allowed to continue as stop-gap arrangement until fresh selection takes place.** सत्यमेव जयते (Emphasis added)

3. So far the Centres other than Shillong Sadar, Jowai, Amlarem, Tura and Dadengre are concerned, it is directed that:

(a) CBI shall carry out similar nature inquiry, as carried out earlier in pursuance of the order dated 21.10.2011 and shall similarly segregate **the tainted and untainted candidates** and submit its report to the Chief Secretary within six months from today. For this purpose, the State Government shall, within two weeks from today, hand over the entire record relating to all the Centres to the CBI without fail.

(b) As soon as the report is submitted by the CBI, it shall be required of the Chief Secretary to act on such report of CBI through the same Committee as ordered hereinabove. In this regard, it is provided that:

i) The said Committee headed by the Chief Secretary shall examine the report of CBI and shall carry out such further inquiry as deemed fit and necessary but shall make final recommendation to the State Government within 3 months of receipt of the report from CBI.

ii) If large scale manipulations and/or interference of public representative or any other person are found,



the Committee may recommend scrapping of whole of the selection process of that Centre too; and the State Government shall act accordingly. In such an eventuality, **the directions in the foregoing paragraphs 1 and 2 shall apply.** (Emphasis added)

iii) If no illegalities and manipulations are found in any Centre or if the extent of irregularities in any particular Centre are not of higher magnitude and no case of interference by any public representative or any other person is found, the selection process of such Centre may be approved by the Committee subject to appropriate orders relating to the tainted or blameworthy candidate, if any; and the State Government shall act accordingly.”

15. Aggrieved by the said judgment dated 02.11.2017, Special Leave to Appeal (C) No(s).33995-34027 of 2017 were filed by the State as well as other aggrieved parties. In addition thereto, the review petitioners herein also filed I.A. No.18297 of 2018 for leave to appeal which has been shown as Diary No(s).42552 of 2017 (XIV). Vide order dated 06.04.2018, the Hon’ble Supreme Court has dismissed SLP (C) No(s).33995-34027 of 2017 whereas, petition of the review petitioners herein i.e. SLP (C) No. Diary No.40348 of 2017 has been disposed of, order as passed therewith is quoted hereunder:-

“Permission to file special leave petition is granted.

Grievance of the petitioners is that they were not heard by the High Court. If it is so, they are at liberty to move the High Court within two weeks from today so that the High Court may hear their grievance, if they were not heard earlier. After hearing the parties, it will be open to the High Court to pass any further order in accordance with law.

The special leave petition (s) is accordingly disposed of.

Pending applications, if any, shall also stand disposed of.”

16. We have perused the entire records which reveal that the petitioners were not the parties to the writ petitions or writ appeals, as such were not heard. Even learned counsel for the parties have stated that the review petitioners were not heard at the time when the writ petitions and writ appeals were decided. That being so, in view of the order of Hon’ble Apex Court, this review petition stands entertained and registered as Review Petition No.3 of 2018.



17. In the interim order dated 31.07.2018 passed in the review petition, position of the case was noticed and while taking note of the fact that the investigation by CBI as ordered vide judgment dated 02.11.2017 under review is in progress, conclusion of the investigation may have bearing on the position of the review petitioners numbering 101 who as per earlier CBI as well as HLSC reports were untainted.

18. The investigation of the case has now been completed. Out of 101 earlier found untainted candidates only fifty (50) candidates on conclusion of the investigation by CBI have been found untainted, whose list has been submitted in a sealed cover. Names of the untainted candidates (Assistant Teacher) as per the said list are as follows:-

Sl. No.	Name of candidates	Name of Centre/sub-Division
1.	Mr. Louis Lawai Lyngdoh	Shillong
2.	Mrs. Joycebell Rapsang	Shillong
3.	Mrs. Aldoris G. Kharmyndai	Shillong
4.	Mrs. Banri Mary Lyngdoh	Shillong
5.	Smti.Deimonmi Paswet	Jowai
6.	Mr. Saintfield Ch. Marak	Dadenggre
7.	Miss. Goma R. Marak	Dadenggre
8.	Mr. Arseng N. Sangma	Dadenggre
9.	Mr. Melbourne Ch. Marak	Dadenggre
10.	Mr. Rongsang Marak	Dadenggre
11.	Mr. Ziaur Rahman	Dadenggre
12.	Mrs. Farida Ahmed	Dadenggre
13.	Mr. Shohidur Rahman Mondol	Dadenggre
14.	Mr. Palson A. Sangma	Dadenggre
15.	Mr. Pelton Ch. Marak	Dadenggre
16.	Mr. Biswajit Saha	Dadenggre
17.	Mr. Babul Sarkar	Dadenggre
18.	Smt. Farmida R. Marak	Tura
19.	Shri. Tengkam A. Sangma	Tura
20.	Shri Converson R. Marak	Tura
21.	Shri Ezekiel Ch. Marak	Tura
22.	Shri Zico Silcheng G. Momin	Tura
23.	Smt. Dalyna Ch. Marak	Tura
24.	Shri Adrian Racha M. Sangma	Tura
25.	Smt. Sumitha A. Sangma	Tura
26.	Smt. Elthina A. Sangma	Tura
27.	Smt. Alta Mary D. Areng	Tura
28.	Smt. Tamarina A. Sangma	Tura



29.	Smt. Adhina S. Marak	Tura
30.	Smt. Corina M. Marak	Tura
31.	Smt. Merolish T. Sangma	Tura
32.	Smt. Changme W. Momin	Tura
33.	Smt. Lovelina N. Sangma	Tura
34.	Smt.Tengchina D. Shhira	Tura
35.	Smt. Candila (Candida) Ch. Marak	Tura
36.	Shri Leslie R. Marak	Tura
37.	Smt. Monalisa N. Marak	Tura
38.	Shri Samson D. Sangma	Tura
39.	Shri Waiding T. Sangma	Tura
40.	Smt. Griksie B. Marak	Tura
41.	Shri Manseng G. Momin	Tura
42.	Smt. Sonali Ch. Marak	Tura
43.	Shri Wilthing Ch. Marak	Tura
44.	Smt. Liza Tavvyo A. Sangma	Tura
45.	Smt. Nokme A. Sangma	Tura
46.	Smt. Sentilla S. Marak	Tura
47.	Smt. Shermona R. Marak	Tura
48.	Smt. Chongje B. Marak	Tura
49.	Shri Foulstin N. Marak	Tura
50.	Shri Riknen B. Marak	Tura

19. Now the important question which arises for consideration is as to whether the appointment of these fifty (50) untainted candidates could be disturbed or they are required to be directed to be continued and absorbed.

20. When against the fifty (50) untainted candidates’ selection and appointment is found to be without any illegality and do not fall within the allegations as were levelled, should they be made to suffer for the acts, omissions, irregularities and illegalities allegedly noticed against tainted candidates, the answer has to be no.

21. As referred to hereinabove, there were **repeated directions for segregating the tainted and untainted candidates. When the untainted have been segregated from tainted candidates**, their selection and appointment should have been protected. In this behalf learned counsel for the review petitioners has rightly placed reliance on two judgments rendered by the Hon’ble Apex Court one passed in the



case of “Joginder Pal & ors v. State of Punjab & ors”: (2014) 6 SCC 644. Paras 33 and 40 of the judgment are advantageous to be quoted:-

“33. The question that falls for consideration is as to whether the entire process could be labelled as vitiated because of purported manipulations, forgery and fraud? Or, to put it otherwise, **once the non-tainted persons are segregated from tainted ones**, would it still be justified to quash the entire selection, even when non-tainted persons made into the service because of their merit?”

(Emphasis added)

40. In view of the above, the issue of entire selection process having been vitiated would have arisen only if the findings of the Committee were that **it was not possible to distinguish the cases of tainted from the non-tainted ones** and there was a possibility that all of them would have got the benefit of wrong doings of Mr. Sidhu and his accomplices. **Fortunately for these appellants, it is not so as they have been found innocent. The appellants get ensconced, earning a safe place, once they are removed from the category of nefarious persons.** Though the tainted candidates have rightly received their comeuppance, **but the innocent persons cannot be punished with them.** Thus, it is difficult to accept the fallible conclusion of the High Court.”

(Emphasis added)

22. Para 44 and first portion of para 45 of another judgment rendered by the Hon’ble Apex Court in the case of “Onkar Lal Bajaj & ors v. Union of India & ors”: (2003) 2 SCC 673 are also advantageous to be quoted:-

“44. Regarding the probity in governance, fair play in action and larger public interest, except contending that as a result of media exposure, the Government in public interest decided to cancel all allotments, nothing tangible was brought to our notice. On 5-8-2002 the only reason was that “a controversy” had been raised. In order dated 9-8-2002 the reasons given are that facts and circumstances considered and to ensure fair play in action and in public interest, it was passed. In the counter affidavit, the aspect of probity in governance has been brought in. Be that as it may, the fact remains that admittedly, no case was examined, not even from a prima facie angle to find out whether there was any substance in the media exposure. **None examined the impact that was likely to result because of en masse cancellation.** Many had resigned their jobs. It was necessary because of such a stipulation in LOI. Many had taken huge loans. There were many Schedule Castes/Schedule Tribes, war widows and those whose



near relation had died as a result of terrorist activities. **The effect of none was considered. How could all those large number against whom there was not even insinuation be clubbed with the handful of those who were said to have been allotted these dealerships/distributorships on account of political connection and patronage? The two were clearly unequals. The rotten apples cannot be equated with good apples.** Under these circumstances, the plea of probity in governance or fair play in action motivating the impugned action cannot be accepted. The impugned order looked from any angle cannot stand the scrutiny of law. (Emphasis added)

45. The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. **Equal treatment to unequals is nothing but inequality. To put both the categories - tainted and the rest – on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution.”** (Emphasis added)

23. Applying the law as has been laid down by the Hon’ble Supreme Court, fifty (50) candidates out of the review petitioners who are finally found to be untainted and having been segregated from the tainted cannot be denied the vested right of reaping the fruits of their toil. By now they having been in service for a long period, some may have crossed the age bar, some may have married life, why should they be exposed to unfortunate situation for no fault of theirs. After having competed, properly selected, appointed and found untainted, to deny them right to continue would offend Article 14 of the Constitution.

24. For the stated reasons and the law as referred to above, in our considered opinion, in the judgment under review dated 02.11.2017, direction 1 (a) providing that **“the candidates who have been treated as untainted/unblemished both in the enquiry reports of CBI and HLSC and are in service, may be allowed to continue as stop-gap arrangement until fresh selection takes place”** to the extent as underlined is an error apparent on the face of the record which error is further compounded by the fact that on completion of the investigation by CBI, fifty (50) candidates have been finally found untainted. How could such candidates be directed to continue **as stop-gap arrangement**. Such untainted/unblemished candidates cannot be denied



their right to continue as per their valid selection and orders of appointment.

25. The direction No.1 (a) of the judgment dated 02.11.2017 to the extent “**as stop-gap arrangement until fresh selection takes place**” indicated and underlined hereinabove at para 24 is recalled. Review petition accordingly succeeds and is disposed of with a direction to the respondents (authorities) that the selection/appointment of fifty (50) untainted candidates named and referred to in para 18 hereinabove shall not be disturbed and shall be allowed to continue and absorbed as per the terms and conditions of their selection and consequent appointment orders.

26. Disposed of as above.

(S.R. Sen)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
14.12.2018
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