



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 455 of 2018

Date of Decision: 16.11.2023

Shri. Ibringstar Mawlong Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.K. Roy, Adv.
For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. GA
Mr. H. Kharmih, Addl. Sr. GA.
Mrs. S. Bhattacharjee, GA (For R 1-4)
Mr. S. Wahlang, Adv. (For R-5)
Mr. B. Khyriem, Adv. (For R-7)

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

J U D G M E N T

1. Heard Mr. S.K. Roy, learned counsel for the petitioner who has submitted that this petition has been preferred being aggrieved by the action of the respondent No. 5 who has passed the impugned order dated 25.01.2017 whereby the service of the petitioner as an Asst. Teacher of



Nonglyer L.P. School was terminated.

2. The learned counsel has submitted that the petitioner was recommended for appointment as Asst. Teacher in the said Nonglyer L.P. School, Nongthliew, Mairang, West Khasi Hills District by the Managing Committee of the School and the same received the approval of the competent authority, that is, the Office of the Deputy Inspector of School, Mairang Civil Sub-Division with the issuance of the Order dated 13.09.2010.

3. It is also mentioned that the appointment of the petitioner in the said school was necessitated upon the removal of the respondent No. 6 as teacher of the said school due to his conviction in a criminal case. This fact was informed by the Managing Committee in its letter dated 08.09.2010 to the Inspector of School, West Khasi Hills Nongstoin/respondent No. 3 whereupon vide order dated 13.09.2010 the Deputy Inspector of School, Mairang Civil Sub-Division has confirmed the termination of the respondent No. 6.

4. Following the termination from service of the respondent No. 6, the Managing Committee of the School vide order dated 08.09.2010 has appointed the petitioner in his place. The approval of such appointment was made by the Deputy Inspector of School, Mairang vide order dated 13.09.2010.

5. The learned counsel has further submitted that the petitioner was performing his duty as teacher of the said school diligently without any complaint from any quarters. However, after seven years of serving



in the said school, he was surprised to receive the order dated 25.01.2017 issued by the respondent No. 4/Sub-Divisional School Education Officer, Mairang whereby by such order the appointment made by the Managing Committee, Nonglyer L.P. School vide order dated 19.01.2017 to reinstate Shri. Dwik Lyngdoh/respondent No. 6 as teacher of the said school was approved. In the selfsame order, the service of the petitioner was terminated with effect from the date of joining of the said respondent No. 6.

6. The petitioner being aggrieved with the passing of the said order dated 25.01.2017 whereby his service as Asst. Teacher was terminated, he has accordingly filed a representation dated 29.06.2017 and 21.11.2017 before the I/c Sub-Divisional School Education Officer, Mairang with a prayer to revoke the impugned order but till the time when this petition was filed no response was received in regard thereto.

7. It is also the submission of the learned counsel for the petitioner that the Managing Committee had recommended the reinstatement of the petitioner as a teacher of the said school but the same was not approved by the respondent No. 4.

8. The action of the respondents authorities is clearly a case of violation of the principle of natural justice as the petitioner was never given any opportunity to be heard or to file a show cause against the said impugned termination order, even the provision of Rule 5 of the 'Service Rule for Employees of Government Aided Schools' under the 'Meghalaya Education Code' was not followed, which rule speaks of penalties which may be imposed on an employee of an aided school by



the Managing Committee for good and sufficient reasons, but as per proviso 1 of the same, what is provided is that:

‘(1) None of these penalties shall be imposed on an employee of an aided school until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him;’

9. To further stress on the fact that the termination of the petitioner was done without following due procedure as has been pointed out above, that is, that it was not done in accordance with the provision of rule 5 of the ‘Service Rule for Employees of Government Aided Schools’, the learned counsel has cited the case of ‘**State of Jharkhand & Ors. v. Ambay Cements & Anr., (2005) 1 SCC, 369**’, para 26 and the case of ‘**Captain Sube Singh & Ors v. Lt. Governor of Delhi & Ors., (2004) 6 SCC 440**’, para 29.

10. The learned counsel has submitted that in the meantime the respondent No. 6 has since retired from service on 31.03.2018 and the said post vacated by him is being manned by a teacher appointed on officiating basis with no regular appointment being made till the date of filing of this petition.

11. In course of the proceeding before this Court, the petitioner came to know that the respondent No. 7 was appointed as Asst. Teacher of the said Nonglyer L.P. School following an advertisement brought out by the respondent No. 5/Managing Committee, however, the said advertisement was never widely published to allow all eligible



candidates to participate in the selection process, but was only hanged in the school premises. Such action of the respondent/Managing Committee was only done with the purpose to accommodate the respondent No. 7 who was appointed in haste to justify the termination of the petitioner. In this regard, the case of '**State of Orissa & Anr. v. Mamata Mohanty**', (2011) 3 SCC 436', para 36 was cited by the petitioner to support this contention.

12. On the production of the Notification dated 23.08.2010, by the respondent No. 5, which notification speaks about the norms of National Council for Teacher Education (NCTE), wherein the prescribed qualifications for the post of teacher was laid down, the petitioner has submitted that the same will not be applicable to the case of the petitioner as he was terminated not on the ground of qualifications but on the ground of reinstatement of the respondent No. 6 into service. It is also the submission of the petitioner that the respondent cannot improve its case at the fag end of the proceeding. The case of '**East Coast Railway & Anr. v. Mahadev Appa Rao & Ors.**, (2010) 7 SCC 678', paras 9 & 10 was referred in support of this contention.

13. Mr. S. Sengupta, learned Addl. Sr. GA submitting on behalf of the respondents No. 1-4 respectively has submitted that the petitioner has not been able to make out a case for reinstatement of his service being terminated vide the impugned order dated 25.01.2017.

14. The learned Addl. Sr. GA has, however, admitted that the earlier incumbent to the said post was Shri. Dwik Lyngdoh/respondent No. 6 whose service has been terminated by the Managing Committee



since 28.07.2010 on his being convicted in connection with a criminal case No. FTC(S)2J/2006 under Section 302/334 IPC. The said termination action was approved by the Deputy Inspector of School, Mairang vide order dated 13.09.2010.

15. It is also not disputed that the petitioner on being recommended by the Managing Committee, his appointment as Asst. Teacher was approved by the Deputy Inspector of School, Mairang vide order dated 13.10.2010. It is, however, submitted that a perusal of the said order would show that firstly, his appointment was necessitated by the termination of the service of the respondent No. 6 and secondly, that the appointment is purely temporary and will remain in force only until further orders.

16. On the recommendation of the Managing Committee to reinstate into service the respondent No. 6, apparently on his being acquitted in the criminal case by the relevant order of the Hon'ble Supreme Court dated 27.05.2016, the Sub-Divisional School Education Officer, Mairang had passed the necessary order vide the impugned order dated 25.01.2017 reinstating the respondent No. 6 as Asst. Teacher of the said school. Here too, the learned Addl. Sr. GA has submitted that the wordings of the said order are very clear when it was stated that 'the service of Shri. Ibringstar Mawlong (petitioner) stand terminated w.e.f. the date of joining of Shri. Dwik Lyngdoh (respondent No. 6)'. Therefore, the termination of the service of the petitioner is justified and there is no illegality or infirmity in the passing of the said impugned order.



17. The challenge of the petitioner to the appointment of the respondent No. 7 as Asst. Teacher of the said Nonglyer L.P. School was also refuted by the State respondents No. 1, 2, 3 and 4 when the learned Addl. Sr. GA has submitted that on the retirement from service of the respondent No. 6, the service of the petitioner having been terminated, the Managing Committee/respondent No. 5 had issued an advertisement for filing up of the said post citing the required qualifications for the same. The petitioner not having participated in the selection process and admittedly not being qualified to apply for the same, could not have come before this Court at this juncture to challenge the selection process and the selection of the respondent No. 7 who has since been issued with the relevant appointment order and who has also joined service.

18. Mr. S. Wahlang, learned counsel for the respondent No. 5/Managing Committee while countering the submission and contention raised by the petitioner in this case has submitted that reference to the order dated 13.09.2010 issued by the Deputy Inspector of School, Mairang, copy of which has been annexed as Annexure-3 in the writ petition would show that the respondent No. 6, that is, Shri. Dwik Lyngdoh's termination from service has been approved with effect from the date of the final order in the said FTC(S)2J/2006, that is, 28.07.2010. However, it is also stated that the order will remain in force until further orders which means that the termination is only temporary in nature.

19. Similarly, a reference to the order dated 13.09.2010 issued by the Deputy Inspector of School, Mairang copy of which has been annexed as Annexure-4 to the writ petition whereby the petitioner was appointed



as Asst. Teacher in place of Shri. Dwik Lyngdoh/respondent No. 6, the same order also states that the appointment will remain in force until further orders. This too, means that the nature of appointment of the petitioner is not permanent but temporary and as such, on the respondent No. 6 being reinstated into service, the termination of the service of the petitioner as Asst. Teacher of the said school cannot be faulted, submits the learned counsel.

20. The learned counsel has also submitted that it is not a fact that the petitioner was not given an opportunity to be reinstated in the school. The Managing Committee had, in fact, approached the respondent No. 4/Sub-Divisional School Education Officer, Mairang in this regard but the approval was not forthcoming and accordingly in the interest of the students of the school, the appointment of a teacher in an officiating capacity was necessitated. In due course, the Managing Committee had issued the advertisement calling for eligible candidates to apply for the post of Asst. Teacher in the said school however, only the respondent No. 7 was found suitable and accordingly, she was appointed as Asst. Teacher of the said school.

21. It is reiterated that the petitioner having failed to take part in the selection process, and also not being qualified, having passed only Class-XII as his educational qualifications, therefore, he could not have been considered for selection to the said post. The learned counsel has also drawn the attention of this Court to the communication dated 01.04.2015 issued by the Director of School Education and Literacy, Meghalaya, informing all the District School Education Officers and Sub-Divisional



School Education Officers to abide by the norms prescribed by the National Council for Teacher Education (NCTE) as far as appointment of teachers in Lower Primary and Upper Primary Schools are concerned. The required qualifications for appointment in L.P. Schools are HSSLC passed with 45% and 2 year Diploma in Elementary Education (D.El.Ed.)/4 year Bachelor in Elementary Education (B.EE)/2 year Diploma in Education (Special Education). The case of '**Shri. Daiamonlang M. Skhemlon & Ors. v. State of Meghalaya & Ors.**' wherein this Court vide order dated 25.03.2019 passed in WP(C) No. 114 of 2018 has referred to the Notification dated 23.08.2010 wherein is found the prescribed norms issued by the NCTE for the required minimum qualifications for a person to be eligible for appointment as a teacher for various levels of classes and has held that the said prescribed norms are applicable to those teachers who are appointed after 23.08.2010, was referred to by the learned counsel in this regard.

22. The learned counsel has submitted that the petitioner has failed to make out a case for interference by this Court as far as the impugned order is concerned, this petition is liable to be dismissed.

23. Mr. B. Khyriem, learned counsel for the respondent No. 7 in his argument before this Court has submitted that the only stand of this respondent is that she has responded to the advertisement issued by the Managing Committee/respondent No.5 and has appeared for the interview held. On being found duly qualified, therefore, on her name being sent to the concerned authorities, she was accordingly found fit for appointment as Asst. Teacher in the said Nonglyer L.P. School. Though at present she



is performing her duty as a teacher in an officiating capacity, the fact that she has not be notified as a permanent teacher is only due to the pendency of this instant writ petition.

24. On what has been submitted by the counsels of the respective parties, this Court is made to understand that the petitioner has sought for reinstatement into service on the same being terminated by virtue of the impugned order dated 25.01.2017 resulting on his being ousted as a teacher of the Nonglyer L.P. School, Nongthliew under Mairang Sub-Division.

25. On perusal of this petition what is seen is that the petitioner being aggrieved by the reinstatement into service of the respondent No. 6, he has accordingly approached this Court with a prayer to set aside and quash the said reinstatement order as well as the termination of his service, which order figures in the same impugned order which included both the fact of reinstatement of the respondent No. 6 and the consequential termination of his service as teacher of the said Nonglyer L.P. School.

26. What is also noticed is that in this petition which was filed on 26.11.2018 the petitioner has made an averment at paragraph 11 stating that the respondent No. 6 has since retired from service on 31.03.2018 and the concerned authorities has appointed a teacher on officiating capacity with no regular appointment being made till then. Therefore, at the time of filing of this petition no cause of action survives against the respondent No. 6.



27. In course of this proceeding, the petitioner has orally submitted that the concerned authorities have since appointed respondent No. 7 as the Asst. Teacher in the said school which post refers to the same post wherewith the petitioner was terminated from and accordingly, prayer is made to implead the said respondent No. 7 in the proceeding which was allowed by this Court vide order dated 13.06.2022 in MC[WP(C)] No. 96 of 2022.

28. However, it is further noticed that the petitioner after being allowed to implead the respondent No. 7 in this proceeding has failed or rather chose not to amend the instant writ petition to include specific pleadings against the appointment of the respondent No. 7 to the said post of Asst. Teacher. What is seen from the records is that the fact that the said post left vacant upon the retirement from service of the respondent No. 6, Smti. Ailindalis Jarain was temporarily appointed to officiate as Asst. Teacher of the Nonglyer L.P. School with effect from 04.07.2018 vice Shri. Dwik Lyngdoh retired. This is reflected in the order dated 03.07.2018 passed by the I/C Sub-Divisional School Education Officer, Mairang.

29. It is also reflected in the affidavit-in-opposition filed by the respondent No. 5/Managing Committee that due to urgent requirement of a teacher in the said school, the matter was informed to the respondent No. 4 whereupon the process of recruitment of an Asst. Teacher was launched with the advertisement being issued finally resulting in the selection and appointment of the respondent No. 7.

30. The petitioner, as mentioned above, has chosen not to file the



amended petition to assail the appointment and the process thereof of the respondent No. 7, but, has, instead filed a rejoinder to the affidavit-in-opposition filed by the respondent No. 5 wherein the manner in which the advertisement was floated was questioned to say that the same was never published in the newspapers nor was any date mentioned therein. The qualifications stated in the advertisement for a candidate to be eligible to apply for the said post has also been set out in the said advertisement only with the intention to suit the case of the respondent No. 7. It is, however, stated that the concerned authorities are yet to approve the appointment of the respondent No. 7. The petitioner however cannot make out a case in this regard since there is no specific pleading or prayer as far as the appointment of the respondent No. 7 is concerned.

31. Again, a look at the appointment order dated 13.09.2010 whereby the petitioner was appointed as Asst. Teacher in the said Nonglyer L.P. School, it is evident that he was appointed in place of Shri. Dwik Lyngdoh/respondent No. 6 since terminated. The order further says that the said appointment will remain in force until further orders. This clearly indicates that the said appointment is purely temporary in nature. As is normally the norms, the petitioner has not been appointed to the said post following a proper selection process, that is, on advertisement being issued, applications was called for from eligible candidates and after the process of conduct of a written test or a personal interview, the meritorious candidate(s) was appointed. Hence his nature of employment is that of a temporary or casual employee.

32. The prayer of the petitioner for reinstatement can also be



interpreted as one seeking regularization of service which cannot be granted to him in view of the settled law in this regard. The case of **‘Secretary, State of Karnataka & Ors v. Umadevi (3) & Ors. reported in (2006) 4 SCC, 1’**, more particularly at para 45 of the same would elucidate this point vis-à-vis the case of the petitioner herein. The same reads as follows:

“45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm’s length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the



consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.”

33. In view of the authority cited hereinabove, it can be said that the petitioner cannot demand reinstatement in service as of right, his appointment having been affected vide the said impugned order dated 25.01.2017 resulting in termination of the same. On the appointment of the respondent No. 7 to the said post, here too, the petitioner is prevented from challenging the said appointment as he has not taken part in the selection process and even otherwise, he is not qualified to apply for the said post in terms of the advertisement (supra).

34. The NCTE norms has laid down specific qualification criteria for those who are to be appointed as teachers in Lower Primary and Upper Primary School level and the petitioner definitely is not qualified to be so considered or appointed as a teacher of either a L.P. or U.P. School. The NCTE notification dated 23.08.2010 prescribes minimum qualifications for appointment as teachers which is as follows: –



i) Classes I-V

- a) Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 - year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 - year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Education (Special Education)

AND

- b) Pass in the Teacher Eligibility Test (TET), to be conducted by appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

35. The reference of the petitioner to the provision of Rule 5 of the 'Service Rule for Employees of Government Aided Schools' to say that the same is application to his case is not well founded inasmuch as firstly, his employment is that of a contractual or temporary nature, when the rule would be applicable only to those employees whose service is permanent in nature. Secondly, that the application of the said rule contemplates a disciplinary proceeding already initiated against such employee, which is not found present in the case of the petitioner. Therefore, reliance on this rule will not help the petitioner and the related authorities cited by him in this regard are, therefore, not found relevant and applicable to his case.



36. In the light of the above observations, this Court is of the considered opinion that the petitioner has not been able to make out a case which calls for interference thereto. This petition is liable to be dismissed which is done so herein.

37. Petition disposed of. No costs.

Judge

Meghalaya

16.11.2023

"Tipriynti-PS"

