

IN THE HIGH COURT OF MANIPUR : AT IMPHAL

W.P.(C) No. 258 of 2019

Shri Thongam Sanatomba Singh, aged about 30 years, S/o Th. Ibochouba Singh, a resident of Pombikhok Village, P.O. Moirang & P.S. Kumbi, Bishnupur District, Manipur-795133.

...Petitioner

-Versus-

1. The State of Manipur, represented by the Commissioner/ Secretary, Education(S), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Director, Education(S), Govt. of Manipur, Lamphelpat, Imphal -795004.
3. The Zonal Education Officer, Zone-IV(B), Govt. of Manipur, Bishnupur, P.O & P.S. Bishnupur, Pin-795133.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

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| For the petitioner | :: Smt. G. Pushpa, Advocate |
| For the Respondents | :: Shri Th. Vashum, Govt. Advocate. |
| Date of Hearing | :: 27-04-2021 |
| Date of Judgment & Order | :: 10-05-2021 |

JUDGMENT AND ORDER

[1] Heard Ms. G. Pushpa, learned Advocate appearing for the petitioner and Mr. Th. Vashum, learned Government Advocate for the respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a direction to the respondents to include the name of the petitioner in the list of employees of Pombikhok Government Aided

Junior High School so as to consider his appointment to the post of Hindi Matriculate Teacher.

[3.1] According to the petitioner, he is a Graduate in English (Honours) as well as a Graduate in Hindi and is eligible for appointment as a Matriculate Teacher in Hindi. He was initially engaged as an Under Graduate Teacher at Pombikhok Government Aided Junior High School (hereinafter referred to as **“the School”**) on the recommendation of the School Management Committee (hereinafter referred to as **“the Committee”**) and his engagement was approved as an unapproved teacher in the said School vide order dated 20-01-2014 issued by the Secretary of the Committee.

[3.2] While the petitioner was working in that capacity, the Committee issued an order dated 02-03-2014 allowing him to pursue further study by granting study leave and the period of study leave was extended till 31-08-2015 vide order dated 26-12-2014 issued by the Committee. Sometime in the year 2016, the petitioner learnt from the reliable sources that the office of the Secretary of the Committee of the School submitted the details and particulars of Shri Kh. Dhanajit Singh, son of the then ZEO, for appointment to the post of Hindi Matriculate Teacher. As no concrete information about it was available with him, the petitioner filed an application dated 12-05-2016 under the RTI for furnishing information as regards the conduct of a DPC which was kept in cold storage for some months which compelled the petitioner to prefer a RTI Appeal dated 26-08-2016. The Addl. Director of Education (S)/ SPIO, Government of Manipur wrote a letter dated 10-10-2016 to

the petitioner furnishing the information that the DPC was held on 26-09-2016 and that although the result thereof had been declared, the appointment order had not been issued, as the Committee was non-functional due to pending Court case. On coming to know about the illegal DPC being held, the petitioner got a legal notice dated 22-10-2016 being sent by his Advocate.

[3.3] The petitioner filed a writ petition being WP(C) No.139 of 2017 wherein this Court passed an interim order dated 22-02-2017 directing that no appointment should be made in terms of the impugned notice dated 12-09-2015 till the returnable date which was extended from time to time by this Court. In spite of the said interim order being passed by this Court, the State Government prepared the pay and allowances under the name of Shri Kh. Dhanajit Singh which was brought to the notice of this Court by the petitioner by way of filing Misc. Case No.105 of 2017. Ultimately, with the interference of this Court, the Government of Manipur had to recover the money from Shri Kh. Dhanajit Singh.

[3.4] During the pendency of the WP(C) No.137 of 2017, the State Government issued a Notification dated 30-11-2018 to the effect that a meeting of the State Level Selection Committee for appointment of un-approved teacher/ staff against the vacancies caused by retirement/ resignation/ new creation posts in Aided Schools would be held at the office chamber of the Director of Education(S), Lamphelpat from 10:00 am daily as per schedule mentioned therein. As per the said Notification, the date of DPC for filling up one post of Hindi Matriculate

Teacher (MHT) with respect to the School was to be held on 18-12-2018. The petitioner filed a writ petition being WP(C) No.1175 of 2018 seeking for a direction to allow the petitioner to take part in the DPC but it became infructuous as the Government Advocate informed the Court that the proposed meeting of the DPC had been cancelled. Till date, no DPC has been held.

[3.5] In the meantime, a notice dated 08-01-2018 was issued by the Director of Education(S), Manipur inviting claims and objections from the concerned parties. At the time of issuing the said notice dated 08-01-2018, the Committee of the School was lying non-functional as the appointment of the Secretary and President thereof could not be finalized in view of the interim order dated 12-02-2016 passed by this Court in WP(C) No.114 of 2016. As the Committee was non-functional, the name of the petitioner could not be included in the list of Teacher (unapproved) till the date of filing the writ petition and the Committee continued to remain non-functional. The State Government was to take steps for filling up the vacant posts in respect of the Government Aided Schools vide Notification dated 08-01-2018. Only on the basis of the disposal of the WP(C) No.114 of 2016 vide interim order dated 17-07-2018, a Memorandum dated 06-10-2018 was issued by the office of the ZEO appointing respondent Nos.5 & 6 as the Chairman and Secretary of the Committee. However, the said Memorandum had been stayed vide order dated 14-11-2018 passed by this Court in WP(C) No.1033 of 2018 and therefore, the Committee continued to remain non-functional. Hence the writ petition has been filed by the petitioner.

[4] In the affidavit filed on behalf of the respondent No.1 & 2, it has been stated that the vacant post in respect of Hindi Matriculate Teacher had not been filled up. It has further been stated that the appointment of unapproved teacher is a matter of the Committee of the School and since the appointing authority of an employee of the School is the Secretary of the Committee, the respondents have nothing to do with it. The respondents were not aware of the appointment of the petitioner as unapproved teacher and the inclusion of his name in the list of the School was subject to the submission of necessary proposal by the Committee. Moreover, the consideration of the claim of the petitioner shall be subject to the outcome of the writ petition being WP(C) No.139 of 2017 which is still pending for disposal by this Court.

[5] In the rejoinder affidavit, it has been stated by the petitioner that this Court while issuing notice to the respondent, passed an order dated 28-03-2019 directing that the post of Hindi Teacher of the School should not be filled up till the returnable date which remains in operation. As regards his appointment, it has been stated by the petitioner that it has been approved by the Circle, DI as is evident from the resolution of the Committee in its meeting held on 31-07-2020.

[6] What do the expressions “**approved teacher**” and “**un-approved teacher**” mean ? They appear to have not been expressly defined in the Manipur Education Code, 1982. Admittedly, they have arisen in the context of the Government Aided Private Schools. What does the expression “**Government Aided Private Schools**” mean ? It is nothing but the Private Schools which do receive grant-in-aid from

the State Government for running them systematically and effectively in public interest and they are governed by the provisions of the Manipur Education Code, 1982. From some of the cases which came up before this Court in the recent past, the expression “**un-approved teacher**” can be categorized into two groups-one, the teachers of a Private School who were appointed by the Committee and would continue to be the teachers at the time when the School is approved by the State Government for providing grant-in-aid or in other words, when the School is converted into a Government Aided Private School and two, after a Private School being approved for providing grant-in-aid or being converted into a Government Aided Private School, a new teacher appointed by the Committee after a serving teacher of the School having retired or resigned or one or more teachers appointed by the Committee in view of the increase in the number of students or opening of new subjects. Such appointment requires the prior permission of the Director of Education (S), Manipur and after such a teacher being appointed, he is considered to be an un-approved teacher. It may be noted that the salary of an un-approved teacher will have to be paid by the School authority. The expression “approved teacher” means a teacher who is appointed from amongst the un-approved teacher or the senior most un-approved teacher against the posts sanctioned by the State Government on the basis of a recommendation of a DPC. The sanctioned posts are those posts created by the State Government for a particular School depending upon certain factors including the number of students on roll and the

subjects offered therein. The salary of an approved teacher is paid by the State Government. An un-approved teacher appointed in the manner as has been stated hereinabove with the prior permission of the Director of Education(S), Manipur does not become automatically an approved teacher, as long as he or she is not appointed against the posts sanctioned/ created by the State Government. An approved teacher is as good as a Government employee/ teacher, so far as his salary is concerned. A Government School teacher draws a salary of about Rs.25000/- per month and similarly, an approved teacher may have drawn a similar amount as the salary. A graduate teacher may have drawn a higher salary than the said amount being drawn by an under graduate teacher. But in view of the ground reality prevailing in the State, certain allegations appear to have surfaced as regards the salary amount being paid by the School authority, so far as the Government Aided Private Schools are concerned. As seen from the above, the teachers of a Government Aided Private Schools are of two kinds-one, approved teachers and two, un-approved teachers. The salary of an un-approved teacher is nominal to be paid by the School authority, as compared to the salary to be drawn by an approved teacher. The allegation is that the exact salary amount sanctioned by the State Government for the approved teachers, is not paid to them. The total amount received by the School authority towards the salary of the approved teachers, is used for equal payment of salary to all the teachers consisting of approved and un-approved teachers. Be that as

it may, this Court cannot take cognizance of it in the absence of material documents.

[7] In the present case, the petitioner was appointed as an un-approved teacher, as his appointment is alleged to have been approved by the State Government. His grievance is that at the time when the list of employees of the School [both approved and un-approved] was sent to the State Government, his name was not included with the result that when a DPC was held for appointment of a Hindi Matriculate Teacher against the post vacated by Shri Th. Ibochaoba Singh who retired on attaining the age of superannuation, he was not considered and on the contrary, Shri Kh. Dhanajit Singh, son of a ZEO was considered and recommended. The petitioner questioned it and in view of the order passed by this Court, the appointment of Shri Kh. Dhanajit Singh could not be materialized and the amount drawn by him was recovered by the State Government. When the Director of Education(S), Manipur issued a notice dated 08-01-2018 inviting claims and objections for inclusion in the list, the Committee of the School was non-functional due to litigation pending before the Court and therefore, the error could not be rectified at all. The further grievance of the petitioner is that in the event of his name not being included in the list of teachers, he will not get the opportunity of being considered for appointment as the Hindi Matriculate Teacher as and when the DPC is held for that purpose. What is the procedure prescribed in law to be followed for inclusion in the list of teachers maintained by the State Government ? In terms of the stand taken by

the State Government, it is the Committee of the School which has to furnish the list of its employees [approved and un-approved] to the State Government, on the basis of which the State Government shall prepare a consolidated list, which can be used at the time when the DPC is held for appointment against the sanctioned posts. In order to finalise such a consolidated list, the notice dated 08-01-2018 was issued by the Director of Education(S), Manipur inviting claims and objections. If that be the case, no direction can be issued to the State Government to include the name of the petitioner automatically, unless his name is proposed or recommended by the Committee but it is not clear to this Court as to whether the Committee of the School has started functioning or not. Had the name of the petitioner been included in the list of employees earlier furnished by the Committee to the State Government, the present controversy would not have arisen at all. In fact, it is the fault of the Committee for having not done so and the reason why it has not been done so by it is best known to it. The petitioner has suffered hardship and humiliation for some years for no fault of his compelling him to approach this Court again and again for redressal of his grievance. The petitioner cannot be left with no remedy at all and in fact, he being an employee of the School, he is entitled to his name being included in the list of employees of the School.

[8] In view of the above, the instant writ petition stands disposed of with the directions:

- (a)** If the Committee of the School has started functioning, the petitioner shall submit an application to the Committee with a

request to include his name in the list of employees of the School within a week from the date of receipt of a copy of this judgment and order and in the event of such an application being received by the Committee, it shall submit a revised list of employees of the School including the name of the petitioner to the State Government and in particular, the Director of Education(S), Manipur within two weeks from the date of receipt of the application from the petitioner;

(b) If the Committee of the School remains still non-functional due to litigation, the petitioner can submit such an application to the Headmaster of the School within a week as aforesaid in the direction (a) and in the event of such an application being received by the Headmaster, he/ she shall submit the revised list of employees of the School including the name of the petitioner to the State Government and in particular, the Director of Education(S), Manipur within two weeks from the date of receipt of the application from the petitioner;

(c) After the receipt of a revised list of employees of the School either from the Committee or the Headmaster of the School, the Director of Education(S), Manipur or his subordinate officers shall incorporate the same in its consolidated list reflecting the name of the petitioner therein within a month from the date of receipt of a revised list of employees from the Committee or the Headmaster of the School so that the petitioner can also be considered for appointment as the

Hindi Matriculate Teacher in the School, as and when DPC is held by the State Government.

JUDGE

Dhakshori