

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

WA No.9/2020 with  
MC (WA) No.9/2020

Date of Order: 28.02.2022

Smti. Manjusree Dutta Vs. Smti. Sujata Deb Roy & ors

**Coram:**

**Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice**  
**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. HL Shangreiso, Sr.Adv with  
Mr. A Syiem, Adv  
For the Respondent(s) : Mr. LR Das, Adv with  
Ms. M Chakraborty, Adv for R/1  
Mr. ND Chullai, AAG with  
Mr. S Sengupta, Addl.Sr.GA for R/2&3  
Mr. R Choudhury, Adv for R/4

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

**JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)**

The appeal is directed against a judgment and order of January 28, 2020 by which the writ petition instituted by the first respondent has succeeded and, in effect, the writ court has held that in view of several previous instances of teachers in government-aided schools having been appointed at a time that they had crossed 35 years of age, the writ petitioner in this case is entitled to the same benefit.

2. The facts fall within a short compass. The writ petitioner, the present appellant and several others were engaged by the respondent school, which is government-aided, upon the school's perception that additional teachers, other than the posts sanctioned for the relevant subject, were

necessary in view of the number of students in the school. The salary or honorarium or money that is paid to such teachers engaged in addition to the sanctioned posts, is not borne by the State and it is clearly a private affair of a particular school and the extent that it is able to afford to engage teachers outside the posts approved by the government. The government aid comes only in respect of the approved posts. The government is not involved in the process of selection or otherwise of the temporary teachers, nor is any sanction of the government taken for such purpose. Unlike for sanctioned posts, the qualifications for engagement as additional teachers are not fixed by the government.

3. In the present case, an advertisement was issued in the year 2014 inviting applications for interested persons to be appointed as a Bengali teacher in the respondent school. The relevant advertisement only required that Bengali should have been a subject in which the candidate received education up to the graduate level. More specifically, the advertisement did not refer to any age.

4. It also appears that in the examination that was conducted for the selection of the most suitable candidates to fill up the vacancy, the writ petitioner was head and shoulders above the rest of the field and the present appellant came a distant second in such examination. Upon concluding the entire process, the respondent school duly applied to the State, recommending the appointment of the writ petitioner as the most suitable candidate as discovered in course of the selection process. However, such recommendation of the school was rejected by the Sub-Divisional School

Education Officer, Shillong by a letter dated November 6, 2014. The effective sentence in the short letter is the following:

“... I regret to inform you that the proposal for appointment cannot be accepted, as the candidate is overage.”

5. The relevant candidate, whose candidature was not accepted, approached this Court under Article 226 of the Constitution and the writ petition succeeded. However, the appellant herein, who was the second-placed candidate in the selection process, challenged the order passed on the ground that she was a necessary party to the writ petition as the right to fill up the vacancy had vested in her upon the candidature of the writ petitioner being rejected by the State. By a judgment and order of October 11, 2017, the appellate court set aside the order passed on the original petition on June 1, 2016 and returned the writ petition to the board of the writ court for its fresh consideration after the appellant herein was impleaded as a party thereto.

6. It is here that a point of some interest has to be noted. It appears that an altogether fresh writ petition was filed by incorporating the appellant as a party thereto and by substantially amending the original petition that was filed. It is such amended writ petition that came to be taken up for consideration and has culminated in the judgment and order of January 28, 2020 impugned herein.

7. The appellant points out that a chart that had been relied upon in the original petition by the writ petitioner and which referred to several appointments of school teachers being made beyond the age of 35, was not relied upon in the amended writ petition. This is of some significance,

particularly since the entirety of such chart has been set out in seriatim in the impugned judgment and the principal consideration that weighed with the writ court was what appeared from such chart. The fundamental point that the appellant makes is that the writ petition that the appellant came to answer was the amended writ petition which did not contain any reference to the chart that had been previously relied upon; but the Court looked into the original petition and the chart contained therein despite the writ petitioner not having pressed such chart into service in course of the amended petition. It may have been a mistake on the part of the writ court, but it has a material bearing herein.

8. According to the appellant, it has been the practice in the State for quite some time and, at any rate, prior to 2014 when the advertisement for the relevant post was issued, that teachers in government-aided schools would be appointed only if they had not crossed the age of 35, subject to certain relaxations for scheduled castes, scheduled tribes and other backward castes candidates. The appellant refers to the letter of rejection of November 6, 2014 and submits that at least the letter of the State would indicate that there was a stipulated age-limit and that the writ petitioner in this case did not meet such stipulation to be entitled to the appointment. The appellant also refers to a letter issued by the then Director of School Education and Literacy to the Deputy Inspector of Schools, Shillong on June 8, 2010 stipulating as follows:

“With reference to the above, I am to inform you that upper age limit for appointment to Government aided School is 35 + 5 for Scheduled Caste/Scheduled Tribe and 35 + 3 for OBC. Kindly take necessary actions accordingly.”

9. The “above” in the relevant letter pertains to the “upper age limit for OBC” candidates to be appointed as teachers in government-aided schools. It is clear from such communication that the upper age-limit for general category candidates was set at 35 and a five-year latitude was given to scheduled castes and scheduled tribes candidates, while OBC candidates enjoyed an age relaxation of three years. There can be no ambiguity as to the interpretation of the relevant communication of June 8, 2010 and it must be noticed that it was a communication exchanged within the Directorate of School Education and Literacy or, at any rate, within the relevant Ministry in the State without being marked or circulated to, particularly, the government-aided schools.

10. According to the appellant, in the light of there being a practice upon the issuance of the instructions in 2010 of 35 years being the upper age-limit for general category candidates to be appointed as teachers in government-aided schools, the writ petitioner’s candidature could not have been considered as, admittedly, she was above the age of 35 as on the day the advertisement was issued. The appellant also claims that the appellant was somewhat below the age of 35 years as on the relevant date.

11. On behalf of the writ petitioner, it is submitted that there is no age-limit applicable as the relevant regulations governing the field not only did not provide for an age-bar but Sub-rule (2) of Rule 1 of the Assam Service Rules, which have been adopted in this State, provides that “no person over 60 years of age” shall be retained in the teaching staff except on production of a certificate of physical fitness.

12. The writ petitioner asserts that it has been rightly accepted by the writ court that when there is no bar even to a 60-year-old continuing to teach in government-aided schools in the State, there can be no age-bar of 35 years followed as the relevant rules do not specify as such. It is further pointed out on behalf of the writ petitioner and the respondent school, which supports the case of the writ petitioner, that the relevant advertisement did not indicate any age qualification and the only requisite qualification was to have carried Bengali as a subject right up to the graduation level.

13. The respondent school says that it has always been the practice in government-aided schools in the State to augment the teaching staff by spending out of their own funds for engaging additional teachers since the number of sanctioned posts, ordinarily, is below the desirable level. The school also suggests that it has also been the usual practice that the most qualified additional teacher dealing with the relevant subject would be accommodated upon a vacancy arising. The school seeks to demonstrate that it was the same rational procedure which was adopted in this case as applications were invited and, after a transparent process of scrutiny, the writ petitioner emerged as the most eligible candidate. The school says that the writ petitioner's candidature was recommended since the school was not aware of there being any age-bar pertaining to the appointment and the regular practice having been to fill up any vacancy that may arise by the same method as was adopted in the present case.

14. It is the further contention of the respondent school that a mere communication issued from one table of the ministry or department to another would not become binding on government-aided schools unless the

same was duly notified and circulated and made known to the government-aided schools.

15. Apart from the grounds that appealed to the writ court in allowing the writ petition, the writ petitioner also seeks to rely on Article 166 of the Constitution to assert that for a regulation of such kind to be made, the appropriate notification had to be published in accordance with law and circulated to all government-aided schools. The writ petitioner says that in the absence of the “publication” of a suitable notification in such regard in accordance with law and in adherence to the rules of business, the stipulation as to age-bar contained in a letter circulated internally in the relevant Department would have no effect.

16. It is such issue that needs to be addressed before dealing with the other aspects of the matter. For a start, this was not a point which was canvassed in the writ petition. Secondly, and more importantly, Article 166 of the Constitution does not mean that every notification or instruction or decision of the executive has to contain the signature of the Governor in the State or has to be made under the express authority of the Governor. It may do well to refer to Article 166 (3) of the Constitution that provides for other modalities apart from the Governor signing a particular order or the same being signed by an officer authorised in such regard by the Governor. Ordinarily, matters of State functioning are conducted by persons manning various posts and it is not always necessary for lesser matters or any decision in such regard to be contained in a notification whether signed by the Governor or under the express authority of the Governor.

17. In the present case, the matter pertains to the fixation of the upper age-limit for any candidate to be appointed as a teacher in a government-aided school. Such a matter does not require an Act of the State legislature and, indeed, as there is specific reference to the Assam Service Rules, which have been adopted in the State, these matters are incorporated in the rules of the State and under the delegated authority, these regulations can be amended and altered by the executive without requiring the formal imprimatur of the Governor or of any officer specifically authorised in such regard by the Governor.

18. The entire confusion has been created by the manner in which the State has conducted itself and, despite the State, its legislature and the bureaucracy now being in place for more than 50 years, there is a level of maturity that seems to be lacking in its functioning.

19. If a matter as to fixation of age-limit for appointment in posts as important as teachers in government-aided schools has to attain a degree of sanctity, the relevant Government decision in such regard ought to have been widely circulated and, at any rate, to all the government-aided schools. In a sense it is possible for a government-aided school to stand up to the State and contend that since the relevant government instruction had not been forwarded to such school, the school would not be governed thereby. It is only to ensure that a state of anarchy that the State has brought about due to its ineptitude is not perpetuated that such argument by the government-aided respondent school is not accepted in public interest. It would not do for a State to make an order and keep the same in some minion's drawer. When the State makes a decision that is required to be adhered to, there must



be widespread publication thereof and, at least, communication directly to all government-aided schools as in a matter of the present kind.

20. However, the age rule which has been in place since 2010 was not set aside by the writ court on the ground that it had not been circulated or properly made or otherwise. The writ court's approach was completely different in referring to a list that was relied upon by the writ petitioner in course of the original petition but was not incorporated while an amended petition was filed pursuant to the appellate order which set aside the original order of June 1, 2016 passed on the writ petition.

21. More significantly, even if a list that was not relied upon by the writ petitioner in course of the second stage of the proceedings had been inadvertently referred to by the writ court, it does not appear that relevant considerations were taken into account while referring to the list or drawing any inference therefrom. As has been noticed earlier, the communication of June 8, 2010 clearly indicated the upper age-limits for the candidates belonging to the general category, candidates belonging to the scheduled castes and scheduled tribes and the candidates belonging to the OBC category. Thus, on the basis of such Government instruction of June 8, 2010, it was possible for a 39-year-old person to be appointed in a government-aided school, provided she belonged to a scheduled caste or a scheduled tribe, as the age relaxation of five years would apply in such a case. Similarly, it was possible for a 37-year-old from the OBC category to be appointed as the age relaxation for OBC candidates was three years. Further, the chart appearing at pages 15 to 17 of the impugned judgment indicates that several of those whose names appear in the chart as being appointed

after the age of 35 were appointed prior to 2010 when the final decision as to the age-limit may have been taken by the relevant Department or the Ministry. It is only in one case, that of Smti. B. Lyngdoh appointed at age 43 years in the Christ Church L.P. School at Mawlai, that there seems to be an anomaly since no one could have been appointed at the age of 43 years even with the benefit of age relaxation. Thus, what is evident is that of all the names in the chart set out in the impugned judgment, the only aberration pertained to the appointment of Smti. B. Lyngdoh in Christ Church L.P. School at Mawlai. In respect of all the other names in the list, they were either appointed prior to 2010 or there is no consideration as to whether the others who were below the age of 40 at the date of appointment, were entitled to the age relaxation as indicated in the said communication of June 8, 2010.

22. At this stage, it is necessary to deal with the rather substantial submission on the part of the writ petitioner and the school to the effect that the school would only be guided by the rules contained in the applicable rules and, in the absence of any age-bar in the Assam Service Rules which has been adopted in the State, the uncirculated communication of June 8, 2010 would have no effect.

23. While it is true that in the ideal situation, the service rules ought to have been amended or, at any rate, the 2010 communication ought to have been circulated to all government-aided schools, it is evident that the 2010 communication or the decision reflected therein has been acted upon consistently and even the respondent school herein did not protest the decision of November 6, 2014 by which the school's recommendation was

scotched on the ground of the candidate being over-aged. The school may not have given effect to the State's response of November 6, 2014 in the light of the writ petitioner having challenged the same before this Court, but the school itself did not question the decision contained in the relevant communication.

24. Article 14 of the Constitution does not operate in the negative sense, in that if a mistake is committed or if an ineligible candidate is afforded an undeserving benefit, that cannot be cited as an instance or example for others similarly ineligible to be entitled to the same benefit. The writ court's decision in the present case appears to rely solely on the possible irregular appointment of Smti. B. Lyngdoh in the Christ Church L.P. School at Mawlai as the other names in the list pertained to appointments either made prior to 2010 or appointments which could have been made with age relaxation and there is no discussion in such regard.

25. The State has filed an affidavit and clearly indicated therein that appointments could not be compared with regularisation and in the present case, it was a case of appointment and not one of regularisation. There would be a case of regularisation when a person is engaged on a temporary basis to do a job that is usually done by an employee and continues in such temporary position for a long period of time. Upon such a person serving in the temporary post and discharging the same duties as a regular employee, the question of regularisation would arise. However, there are strict rules as to regularisation, particularly after the judgment reported at (2006) 4 SCC 1 (*State of Karnataka vs. Uma Devi (3)*). Unless the initial process of

engagement was in accordance with the selection process to a regular post, the person engaged casually cannot claim a right of regularisation.

26. In this case, the State was not involved in the selection process nor did the State sanction the engagement of additional teachers over and above the sanctioned posts for the respondent school. The respondent school perceived that it required more teachers in the relevant subject than the number of sanctioned posts and privately made an arrangement to engage the writ petitioner, the appellant and several others to impart training in the subject of Bengali. Accordingly, as far as the State was concerned, it could not recognise such privately engaged additional teachers and, for the State, it was only the selection process conducted upon the vacancy arising that was of relevance. This, clearly, was a case of appointment as far as the State Government was concerned and the fact that the recommended candidate had been privately engaged and continued as an additional teacher prior to the selection process being conducted, could carry no weight with the State Government.

27. It is possible that the State government may authorise government-aided schools to engage teachers in addition to the number of sanctioned posts to meet the requirements of the particular schools, at no cost to the State. The State may even recognise the rights of such privately engaged teachers to subsequent appointment upon vacancies arising; in which case, the age-bar may not apply. However, when the State had nothing to do with the engagement of the private teachers at the respondent school and the State did not sanction or otherwise authorise the same, the number of years spent in engagement or the age at the initial time of

engagement would be of no relevance in the matter of appointment upon a regular vacancy arising.

28. For the reasons aforesaid, the judgment and order dated January 28, 2020 cannot be sustained and the same is set aside in its entirety. The respondent school will abide by the communication dated November 6, 2014 and treat the cut-off date to be the date when applications were invited.

29. The State should be careful in future and ensure that its decisions that affect government-aided schools are immediately communicated to such bodies for them to adhere thereto. Otherwise, needless confusion, such as the present one, would arise.

30. Though the writ petition was unworthy, in view of the fact that the entire anomaly was created by the State government in not circulating its decision of June 8, 2010, the writ petitioner is spared the costs that she would otherwise have deserved.

31. WA No.9 of 2020 is allowed. WP (C) No.40 of 2015 is dismissed upon the judgment and order dated January 28, 2020 being set aside.

32. MC (WA) No.9 of 2020 is disposed of.

**(W. Diengdoh)**  
**Judge**

**(Sanjib Banerjee)**  
**Chief Justice**

Meghalaya  
28.02.2022  
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