

Serial No. 01
Supplementary List 1

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 369 of 2020 with
WP(C). No. 56 of 2021
WP(C). No. 83 of 2021
WP(C). No. 84 of 2021
WP (C) No. 400 of 2020
WP (C) No. 401 of 2020
WP (C) No. 402 of 2020
WP (C) No. 403 of 2020
WP (C) No. 404 of 2020
WP (C) No. 405 of 2020
WP (C) No. 406 of 2020
WP (C) No. 407 of 2020
WP (C) No. 408 of 2020
WP (C) No. 409 of 2020
WP (C) No. 410 of 2020
WP (C) No. 414 of 2020
WP (C) No. 415 of 2020
WP (C) No. 416 of 2020
WP(C). No. 432 of 2020
WP(C). No. 438 of 2020
WP(C). No. 458 of 2020
WP(C). No. 462 of 2020
WP(C). No. 465 of 2020
WP(C). No. 470 of 2020



Date of Decision: 28.10.2022

Shri. Bloomingstar J.Diengdoh & Anr.	Vs.	State of Meghalaya & 2 Ors.
Smti. Ruma Sumer	Vs.	State of Meghalaya & 6 Ors.
Phikirbha Khariah	Vs.	State of Meghalaya & 5 Ors.
Arbihlang Suchiang	Vs.	State of Meghalaya & 5 Ors.
Smti. Laljoy Darnei	Vs.	State of Meghalaya & 3 Ors.
Smti. Laljoy Darnei	Vs.	State of Meghalaya & Ors.
Smt. Lalsami Darnei	Vs.	State of Meghalaya & 3 Ors.
Shri. Thlamuana Darnei	Vs.	State of Meghalaya & Ors.
Shri. Livingstone Nampui	Vs.	State of Meghalaya & 3 Ors.
Smti. Blessing Sukhlain	Vs.	State of Meghalaya & Ors.

Shri. Khama Pangamte	Vs.	State of Meghalaya & 3 Ors.
Smt. Mary Jone Ngamlai	Vs.	State of Meghalaya & 3 Ors.
Shri. Zalena Nampui	Vs.	State of Meghalaya & 3 Ors.
Smti. Lalchonpari Theite	Vs.	State of Meghalaya & 3 Ors.
Shri. Lalsaula Nampui	Vs.	State of Meghalaya & 3 Ors.
Shri. Samiran Rishi	Vs.	State of Meghalaya & Ors.
Shri. Rajeev Shrestha	Vs.	State of Meghalaya & Ors.
Shri. Bipul Roy	Vs.	State of Meghalaya & Ors.
Smti. Metilda Marwein	Vs.	State of Meghalaya & 5 Ors.
Smti. Dioris Wahlang	Vs.	State of Meghalaya & 6 Ors.
Smti. Jubanda Sumarlyne @ Sumarlin	Vs.	State of Meghalaya & 5 Ors.
Smti. Merry Shyrkon	Vs.	State of Meghalaya & 5 Ors.
Smti. Binaris Kanai	Vs.	State of Meghalaya & 5 Ors.
Smti. Pressiful Lyngkhoi	Vs.	State of Meghalaya & 5 Ors.

Coram:

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

Appearance:

For the Petitioner/Appellant(s) :	Mr. P. Yobin, Adv. Mr. H.R. Nath, Adv. Ms. S. Deb, Adv. vice Mr. S. Dey, Adv.
For the Respondent(s) :	Mr. A. Kumar, AG with Mr. N.D. Chullai, AAG Ms. R. Colney, GA Ms. Z.E. Nongkynrih, GA Mr. H. Kharmih, Addl. Sr. GA Ms. S. Bhattacharjee, GA Mr. H. Abraham, GA Mr. A.H. Hazarika, GA Mr. K.P. Bhattacharjee, GA Ms. A. Thungwa, GA.

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

JUDGMENT AND ORDER

1. This batch of writ petitions, assailing the advertisement dated 04.06.2020, Addendum dated 28.10.2020, and Notification dated 17.11.2020, for selection of MTET passed candidates for the post of Assistant Teachers, which are on similar grounds are being disposed of by this common judgment and order. The central theme or grievance, that runs through all these writ petitions is that, the writ petitioners are all teachers appointed in various institutions as Assistant Teachers on contractual basis, prior to the implementation of the Right of Children to Free and Compulsory Education Act, 2009, and the NCTE notification No. 76-4/2010/NCTE/Acad dated 23rd August, 2010. With the coming into force of the NCTE norms, w.e.f., 23rd August, 2010, only those teachers who fulfilled the said norms, in this case, the Meghalaya Teachers Eligibility Test (MTET) were to be considered eligible for appointment as Assistant Teachers in Lower and Upper Primary Schools, which the petitioners apart from petitioners in WP(C) Nos. 400, 403, 407, 409, 414 of 2020, and WP(C) Nos. 83 and 84 of 2021, do not possess. The prayers however, in all these writ petitions are common, inasmuch as, all the writ petitioners, firstly, pray that the

NCTE norms, be not made applicable to them, as they were all appointed before the date of implementation that is, 23rd August, 2010, and secondly, that in view of their service which is over 10 years, they be regularized in their said posts.

2. For the sake of convenience, the details of each of the writ petitioners is set out in the table below for easy reference;

Case No.	Name of the Petitioner(s)	Educational Qualification	Date of Appointment	Last Date of Appointment
WP(C) No. 369 of 2020	No. 1. Shri. Bloomingstar J. Diengdoh	HSSLC, IGNOU	18.05.2007	30.07.2007 to 30.11.2020
WP(C) No. 369 of 2020	No. 2. Emel Sangma	HSSLC, NEHU	09.08.2010	09.03.2020
WP(C) No. 400 of 2020	Smti. Laljoy Darnei	SSLC, HSSLC, D.El.Ed, MTET	12.03.2010	18.08.2020 to 15.10.2020
WP(C) No. 401 of 2020	Smti. Laljoy Darnei	SSLC, HSSLC, D.El.Ed	12.03.2010	20.04.2020 to 17.06.2020
WP(C) No. 402 of 2020	Smti. Lalsami Darnei	SSLC, HSSLC, D.El.Ed	30.10.2006	18.08.2020 to 15.10.2020
WP(C) No. 403 of 2020	Shri. Thlamuana Darnei	SSLC, HSSLC, BA, D.El.Ed, MTET	03.09.2008	18.08.2020 to 15.10.2020
WP(C) No. 404 of 2020	Shri. Livingstone Nampui	SSLC, HSSLC, D.El.Ed	01.05.2007	18.08.2020 to 15.10.2020
WP(C) No. 405 of 2020	Smti. Blessing Sukhlain	SSLC, HSSLC, BA, D.El.Ed	15.06.2010	18.08.2020 to 15.10.2020
WP(C) No. 406 of 2020	Shri. Khama Pangamte	SSLC, HSSLC, D.El.Ed	31.10.2005	18.08.2020 to 15.10.2020
WP(C) No. 407 of 2020	Smti. Mary Jone Ngamlai	SSLC, HSSLC, D.El.Ed, MTET	12.03.2010	18.08.2020 to 15.10.2020
WP(C) No. 408 of 2020	Shri. Zalena Nampui	SSLC, HSSLC, D.El.Ed	07.07.2005	18.08.2020 to 15.10.2020
WP(C) No. 409 of 2020	Smti. Lalchonpari Theite	SSLC, HSSLC, BA, D.El.Ed, MTET	12.03.2010	18.08.2020 to 15.10.2020
WP(C) No. 410 of 2020	Shri. Lalsaula Nampui	SSLC, HSSLC, BA, D.El.Ed	12.08.2008	18.08.2020 to 15.10.2020
WP(C) No. 414 of 2020	Shri. Samiran Rishi	SSLC, HSSLC, B.Com, M.Com, D.El.Ed, MTET	10.07.2007	19.10.2020 to 15.12.2020
WP(C) No. 415 of 2020	Shri. Rajeev Shrestha	SSLC, HSSLC, B.Sc, D.El.Ed	29.06.2007	19.10.2020 to 15.12.2020
WP(C) No. 416 of 2020	Shri. Bipul Roy	SSLC, D.El.Ed, SET	17.05.2010	19.10.2020 to 15.12.2020
WP(C) No. 83 of 2021	Phikirbha Khariah	BA, MA, D.El.Ed, SET, MTET	27.03.2008	15.12.2020

WP(C) No. 84 of 2021	Arbihlang Suchiang	BA, D.El.Ed, SET, MTET	08.09.2008	15.12.2020
WP(C) No. 432 of 2020	Metilda Marwein	BA, D.El.Ed, SET	01.03.2006	15.10.2020
WP(C) No. 462 of 2020	Merry Shyrkon	BA, D.El.Ed, SET	01.03.2006	19.10.2020
WP(C) No. 465 of 2020	Binaris Kanai	BA, MA, D.El.Ed, SET	31.10.2007	21.10.2020 (stated to be still serving)
WP(C) No. 470 of 2021	Pressiful Lyngkhoi	BA, D.El.Ed, SET	15.02.2011	15.12.2020
WP(C) No. 458 of 2020	Jubanda Sumarlyne @ Sumarlin	BA, D.El.Ed, SET	15.11.2011	15.10.2020
WP(C) No. 438 of 2020	Dioris Wahlang	BA, D.El.Ed, SET	15.02.2011	16.04.2020
WP(C) No. 56 of 2021	Ruma Sumer	SSLC, HSSLC, D.El.Ed	05.03.2012	15.12.2020

3. It is to be noted that, this subject of eligibility of teachers on the benchmark of MTET qualification and the cut-off date, thereto, of its implementation, that is, 23rd August, 2010, has been the subject matter of a number of writ petitions before this Court. An important case which will have a bearing on the instant writ petitions is the case of *Probirth D. Marak & Ors. vs. State of Meghalaya & Ors. [WP(C) No. 98/2020]*, and other connected matters, wherein a Single Bench of this Court by judgment and order dated 05.10.2020, held that adhoc or temporary teachers cannot seek regularization, when they lack the essential qualification of passing the MTET examination. This judgment on appeal, being W.A No. 21 of 2020, was upheld by order dated 10.12.2020, which dismissed the appeal. The matter then travelled before the Hon'ble Supreme Court, by way of *Special Leave Petition (Civil) No. 9151 of 2021*, which was disposed of by order dated

30.09.2022, by directing that the State respondents, that for the candidates who may not be in service presently, but who were in service at the relevant time, be considered for giving age relaxation.

4. In the instant case, it is noted that the substantial prayer of the petitioners herein, is similar to the above-mentioned case, which is a prayer for regularization of the services of the petitioners, on the ground that, they have served over a period of 10 years, on contractual service, and that, their appointment, though not regular was not an illegal appointment.

5. Mr. P. Yobin, Mr. H.R. Nath and Mr. S. Deb, learned counsels appearing for the petitioners, in the series of writ petitions, have jointly advanced their submissions on the foundation of legitimate expectation of the petitioners, who have served for periods of approximately over 10 years. It is contended that, as most of the petitioners except for petitioners in WP(C) Nos. 470 and 56 of 2021, and WP(C) Nos. 458 and 438 of 2020, were appointed before the cut-off date of 23.08.2010, and they possessing other valid qualifications, the requirement of MTET passed, should not apply to them. It has been further contended that, though the appointments were temporary in nature, none of them were illegal, and that all the petitioners, for the duration of their service since the initial engagement, before it was not renewed, served

continuously without any break. Shelter is sought to be taken by the petitioners, under the judgment of the Hon'ble Supreme Court in the case of *State of Karnataka and Others vs. Umadevi (3) and Others* reported in (2006) 4 SCC 1, wherein it is submitted by the learned counsels that Para - 53, has carved out an exception, which will be applicable to the petitioners. The learned counsels have also placed reliance on the judgment of *Daiamonlang M. Skhemlon vs. State of Meghalaya and Others* reported in 2019 SCC OnLine Megh 49, to buttress their arguments that the NCTE norms (i.e., MTET passed) will not be applicable to teachers who have been appointed prior to 23.08.2010. It is finally prayed that, as the petitioners have been serving for a considerable period of time, they be not thrown out of service and that their services, be regularized in terms of their own qualifications before the advent of MTET.

6. Mr. A. Kumar, learned Advocate General with Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA and Ms. Z.E. Nongkynrih, learned GA for the State respondents submits that the petitioners do not possess the basic minimum qualification of passing the Teacher Eligibility Test (TET), and as such, cannot be considered for regularization, inasmuch as, it goes against the mandate, as stipulated in the Right of Children to Free and Compulsory Education

Act, 2009, (for brevity the Right to Education Act, 2009) that it is mandatory to possess the minimum qualification as laid down, by the academic authority, authorized by the Central Government. The learned AG then submits that, in terms of Section 2 and 23(1) of the Right to Education Act, especially in the first proviso to Section 23(2), it has been provided that, a teacher who at commencement of the Act, does not possess minimum qualification, should acquire the same within a period of 5 years. He further submits that, by subsequent amendment in 2017, it has been further provided that, 4 years' time, with effect from 01.04.2015, is allowed to every teacher appointed or in position of a teacher as on 31.03.2015, for acquiring the minimum qualification.

7. It is submitted that, the State respondents have to adhere to the regime created by the Right to Education Act, 2009, the NCTE Act, 1993, and has referred to a judgment of the Supreme Court in *State of UP and Another vs. Anand Kumar Yadav and Others* reported in (2018) 13 SCC 560, wherein he submits that the State cannot derogate and relax the minimum qualifications prescribed by the NCTE. With regard to the applicability of NCTE norms, it is submitted that, as per the notification dated 23.08.2010, Clause 4 thereof, which deals with the categories of teachers appointed before the dated of notification, who were not required to acquire the minimum qualifications, has

limited the same to three categories, of which the first category is relevant for the present case. This category, learned AG submits, concerns teachers who were appointed on or after 3rd September, 2001, the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001, came into force before 23.08.2010, but under the said Regulations of 2001, were exempted from the prescribed minimum qualification. The petitioners it is submitted, cannot seek exemption, as they do not fall in any of the categories, as they were only temporarily engaged for 59 days at a time, and the same was not regular, or continuous appointment based on any selection. It is further submitted that, the engagements of the petitioners were also not in compliance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001.

8. The learned AG has placed reliance on the judgment of ***Probirth D. Marak & Ors. vs. State of Meghalaya & Ors. [WP(C) No. 98/2020]***, passed by this Court, which was upheld by the Division Bench and also the order of the Supreme Court in ***Special Leave Petition (Civil) No. 9151 of 2021***, arising from the same case. It is also further submitted that, in the light of the statutory provisions of Right to Education Act, and the NCTE Act, it is mandatory for the petitioners

to qualify the MTET exam, to be eligible for consideration. The petitioners, he submits, were appointed temporarily and not on regular basis, and as such, cannot seek regularization of their services. With regard to the application of the exception of the judgment of *State of Karnataka and Others vs. Umadevi (3) and Others (supra)*, the learned AG submits that, the same will be no assistance, as the petitioners from the initiation of the contract, were fully aware of the temporary nature of their employment and that, it would expire at the end of the stipulated period. Reference is made to Para – 47 of the same judgment, in support of his argument, which he contends that, in view of the terms of engagement of the petitioners, there can be no legitimate expectation for regularization. Learned AG concludes his arguments by submitting that, in view of the statutory requirements, and the situation of the petitioners, no relief as claimed will be permissible.

9. Having heard learned counsels for the parties, it is firstly noted that, as observed herein before, the case of *Probirth D. Marak & Ors. vs. State of Meghalaya & Ors. (supra)*, has a direct bearing, inasmuch as, the statutory scheme governing the issue of regularization of teachers and the requirement of passing the MTET examination has been analyzed, by this Court. Reliance has been placed in the said judgment also on the case of *State of UP and Another vs. Anand*

Kumar Yadav and Others (supra), that teachers who have not passed the examination cannot seek regularization of their services. With respect to the statutory requirements, by the said judgment, it has been held that, the State respondents are bound by the Right to Education Act, 2009, and the NCTE Act, 1993. Paras 15 and 18 which are the relevant paragraphs concerning statutory compliance and regularization, are quoted herein under:

“15. In the light of the mandatory provisions of the Right to Education Act, 2009, the NCTE Act and notification and guidelines issued thereunder, the State of Meghalaya was bound to conduct the MTET examination and include it as necessary qualification for eligibility to appointing teachers at Lower and Primary level schools. Annexure R/5 to the affidavit in reply of the Government is a copy of letter of the Director of School Education & Literacy, Meghalaya dated 01-04-2015 which was issued to the District School Education Officers and Sub-Divisional School Education Officers. The Director by this letter insisted that the District School Education Officers and Sub-Divisional School Education Officers should appoint persons for Lower and Upper Primary Schools only in accordance with the norms laid down by NCTE. It is the case of the respondent Government that teachers like petitioners were appointed on temporary basis to meet the exigencies of time and to ensure that there is no break in the education. It is further the case of the respondents that petitioners were appointed on adhoc

basis as stop-gap arrangement for teaching children in Lower and Upper Primary Schools and therefore, a short term contractual appointment has been made.

18.The Government of Meghalaya in the light of the decision of the Apex Court in Anand Kumar Yadav (Supra) must follow the Right to Education Act, 2009 and NCTE Act, 1993. As stated earlier, the State of Meghalaya has taken steps in this regard and conducted the MTET examination. Though in some petitions, it was not disclosed that the petitioners therein also appeared for the MTET examination, but during the course of arguments, it is accepted that almost all the petitioners had appeared for the said examination, however, they failed. Thus, though the petitioners were continued as temporary/adhoc teachers in the schools run by the Government of Meghalaya, they are not eligible to be appointed as permanent teachers for lack of essential qualification namely, MTET. If the petitioners are not qualified to be appointed as permanent teachers for want of essential qualification namely, MTET, then in my considered view their services also cannot be regularized.”

10. The above noted judgment of the Single Bench, was thereafter upheld by the Division Bench of this Court, and the Hon’ble Supreme Court on the SLP preferred against the orders, by order dated 30.09.2022, had not interfered with the said judgments, but only directed for consideration for age relaxation for being eligible to sit for

the MTET examinations. The operative part of the said judgment at Paras 18 and 19, is reproduced herein below:

“18. Be that as it may, para 2.2(b) of the notification of the State Government dated 22 April, 2021 specifies that there will be no age bar for in-service candidates. We are of the view that the candidates such as the petitioners who technically may not be in service today as a result of the termination, but who were in service at the relevant time may be sympathetically considered for giving an age relaxation. In any event, the age limit is relaxable up to 37 years in the case of SC/ST candidates and for persons with disabilities.

19. We request the State Government to consider whether a similar age relaxation which is available to in-service candidates should be granted to persons such as the petitioners who had in the past served for several years and who may now become age barred. If such a concession is granted, it would substantially assuage the grievance of the petitioners that the inability of the State to hold the TET at more frequent intervals in the past had disabled them from appearing for the examination. In the event that the State grants a concession, it may be granted on an even footing to all similarly placed candidates.”

11. From what has been discussed above, in view of the judgment of this Court, in the case of *Probirth D. Marak & Ors. vs. State of Meghalaya (supra)*, this Court at this stage, need not delve any further

to the issues raised by the petitioners or to address the requirements of statutory compliance as mandated by the Right to Education Act, 2009 and the NCTE Act, 1993. However, it would be apposite to observe herein, that the judgments relied upon by the petitioners cannot come to their aid, as in *Umadevi (supra)*, it has been held in Paras 47 and 49, as follows:

“47. When a person enters a temporary employment or gets engagements as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

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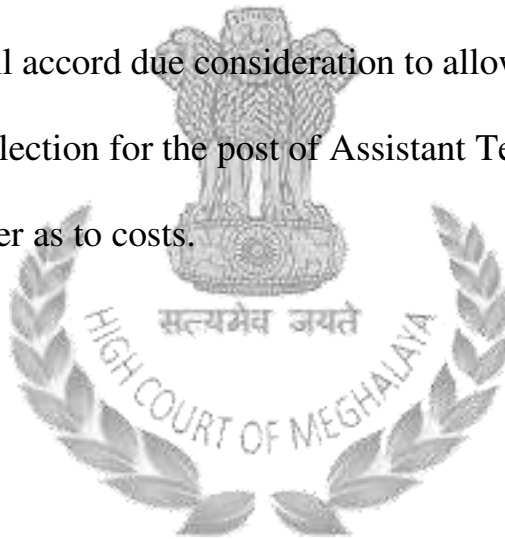
49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and Courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

12. The ratio of *Daiaomonlang M. Skhemlon and Others vs. State of Meghalaya and Others (supra)*, will also not be helpful, as the case concerns teachers who were regularly appointed and in service.

13. For the aforesaid reasons, these writ petitions in view of the earlier judgment of this Court, and the fact that, the petitioners are all on contractual service, no grounds have been made out, or are available for grant of any the reliefs, as prayed.

14. The writ petitions accordingly stand dismissed. However, before parting with the records, as the petitioners in WP(C) Nos. 400, 403, 407, 409, 414 of 2020, and WP(C) Nos. 83 and 84 of 2021, are stated to have since qualified the MTET examination, the State respondents shall accord due consideration to allow them to participate in any further selection for the post of Assistant Teacher.

15. No order as to costs.



Judge

Meghalaya
28.10.2022
"D. Thabab- PS