

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 566 of 2023

Shri Shamurailatpam Devadutta Sharma, aged about 30 years, S/o Shri Sh. Indrajit Sharma, resident of Thoubal Khekman Wangma Taba Makha Leikai, P.O. & P.S. & District Thoubal, Manipur.

... PETITIONER

-VERSUS-

1. The State of Manipur through the Chief Secretary-cum-Commissioner/Secretary (Department of Personnel & Administrative Reforms), Govt. of Manipur, Manipur Secretariat South Block, Imphal West, Manipur – 795001.
2. The Department of Higher and Technical Education, through the Principal Secretary/ Commissioner/ Secretary (Higher & Technical Education) Govt. of Manipur, Manipur Secretariat, Imphal West, Manipur-795001.
3. The Department of Education (S) through the Principal Secretary/ Commissioner/ Secretary Education (S), Govt. of Manipur, Manipur Secretariat South Block, Imphal West, Manipur – 795001.
4. The Department of Law and Legislative Affairs, through the Principal Secretary/ Commissioner/ Secretary, Govt. of Manipur, Manipur Secretariat, Imphal West, Manipur – 795001.

... RESPONDENTS

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner :: Mr. S. Athoi, Adv.
For the Respondents :: Mr. M. Devananda, Addl. AG
Date of Hearing and
reserving Judgment & Order :: 14.08.2023
Date of Judgment & Order :: **30.08.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, ACJ)

Heard Mr. Sh. Athoi, learned counsel for the petitioner and perused the records.

2. This writ petition has been filed by the petitioner for issuance of a quo-warranto by declaring the impugned notification dated 1.3.2023 as ultra vires.

3. Mr. Sh. Athoi, the learned counsel for the petitioner submitted that the impugned notification was issued with an ulterior motive and mala fide intention to defeat the very purpose of W.P.(C) No.783 of 2022 for the reasons that the private respondent No.5 therein has to discharge his duties as Chairman of the Board of Secondary Education, Manipur till he attain the age of 65 years, which is in total violation of the provisions of the Manipur Elementary and Secondary Education Act, 1972 as well as the Rules framed thereunder. In fact, the fifth respondent is

not eligible for serving as Chairman, Board of Secondary Education on attaining the age of 60 years. Therefore, the motive for issuance of the impugned notification is vague and also bad in law.

4. The learned counsel further submitted that the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, issued an Office Memorandum dated 30.5.1998 in respect of the age of retirement of Autonomous Bodies/Organisations. In the said Memorandum, it was specifically provided that there shall be a complete ban for grant of extension in service beyond the age of superannuation except in case of medical and scientific specialist, who can be granted extension on a case to case basis up to the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service.

5. The learned counsel added that the authorities of the University Grants Commission have revised the age of superannuation of the Colleges and Universities up to the age of 65 years. The enhancement of the said age of superannuation is applicable to the employees serving in teaching faculties and the same cannot be applied to an employee of the teaching faculties who has been on deputation to the post other than

teaching faculties in view of the letter dated 23.3.2007 of the Ministry of Human Resource Development, Department of Higher Education to the Secretary, UGC. The impugned notification is also in total violation of the conditions provided by the Ministry of Human Resource Development.

6. The learned counsel submitted that the third respondent has right to amend the Rules, however, such amendment has to be made in the interest of general public and the same has to be made in consultation with the Department of P&AR as well as the Department of Law and Legislative Affairs, Government of Manipur. However, in the case on hand, there is no picture for consulting the said Departments and the said amendment of Rules under the Manipur Elementary and Secondary Education Act, 1972 was made by the Commissioner (Edn-S) at his own accord so as to protect a particular person. The motive of the third respondent is against the principles of natural justice and the constitutional mandate for which, the impugned notification is not sustainable in the eye of law.

7. According to the learned counsel, the post of Chairman of the Board of Secondary Education, Manipur, is an administrative post. It is impermissible for extension of the year of a deputationist to an Office/Board/Council beyond the age of

60 years, by an employee whose substantive post is teaching profession. In case, such an employee who is under deputation to a Board/Council/Public Sector Undertaking is desired to serve beyond the age of 60 years, he/she has to be repatriated to his/her parent Department. Otherwise, he/she has to retire from service on attaining the age of superannuation i.e. 60 years. In view of the above, there is no room for existence of the impugned notification.

8. The learned counsel then submitted that the impugned notification has no role to play in respect of the employees of the Department of Higher and Technical Education who is/are under deputation to other departments/offices including the Board of Secondary Education as the service condition of the employees of the Department of Education (U), Government of Manipur, who are on deputation etc. to other departments are governed by the terms and conditions of the order dated 29.10.2014 issued by the Commissioner, Higher and Technical Education.

9. The learned counsel further submitted that the Commissioner (Edn-S) has no power to appoint the present Chairman of the Board of Secondary Education, Manipur, to his present post as the said person is a regular employee of the

Department of Higher and Technical Education, Government of Manipur. Therefore, the Commissioner (Edn-S) has no power for issuance of the order of appointment. Thus, a prayer has been made to set aside the impugned notification dated 1.3.2023.

10. We have considered the submissions.

11. The grievance of the petitioner is that he has filed W.P.(C) No.783 of 2022 challenging the order dated 11.11.2021 issued by the Joint Secretary, Education (S), whereby a person whose substantive post is Associate Professor in Electronics and posted at the DM College of Science was allowed to discharge his duties as Chairman of the Board of Secondary Education, Manipur on deputation for a period of three years in total violation of the provisions of the Manipur Secondary Education Act, 1972 as well as the Rules framed thereunder and the amendments made vide order dated 27.1.2000 and also the Corrigendum dated 1.9.2022. During the pendency of the said writ petition, the Commissioner, Education (S) issued the impugned notification thereby amending the Rule which was framed under the Manipur Secondary Education Act by revising the upper age limit for deputation from 60 years to 65 years and also by making eligibility for deputation by an Associate Professor of a

Government College in addition to the eligibility as provided earlier.

12. The impugned notification dated 1.3.2023 reads thus:

“No.DAB-1/8/2022-EDN(S)-EDN(S): Under the powers conferred by the Section 12(2) of the Manipur Elementary and Secondary Education Act, 1972 as amended from time to time, the Governor of Manipur is pleased to amend Rule 5 and Rule 6(a) of the “Recruitment and Conditions of the services of the Chairman of the Board of Secondary Education, Manipur Rule, 1979” as follows:-

I. Amendment of Rule 5 of the Recruitment and conditions of Service of the Chairman of the BoSEM Rules, 1979, by inserting the following after the last line,

‘In case of appointment by deputation, deputation will be allowed till the age of 65 years or upto the date of retirement whichever is earlier, subject to the term of deputation as notified vide Order No.3/19/79-SE(S) dated 27/01/2000.

II. Amendment of Rule 6(a) of Mode of Recruitment and Conditions of Service of the Chairman of the BoSEM Rules, 1979 as under:

‘6. Mode of recruitment: Method of appointment may be either by promotion or deputation.

(a) Deputation: The Director of Education (Schools) or a Professor of a Government College or an Associate Professor of a Government College with 10 years experience in the Grade as the Chairman of the Board’.”

13. According to the petitioner, there is no provision under Section 12(2) of the Act for amendment of Rules framed thereunder. Despite that, the amendment was purportedly made which is *ultra vires*.

14. The prayer in the writ petition is for issuance of quo-warranto and/or any other appropriate writ/order/direction by declaring the impugned notification dated 01.03.2023 as ultra-vires, as the same is violative of the constitutional mandate.

15. The very framing of the prayer in the writ petition is not legally sustainable. The petitioner seeks issuance of a quo-warranto to declare the impugned notification as ultra-vires. Such a prayer was made by the petitioner without impleading the person against whom quo-warranto is prayed .

16. The maxim “quo warranto” means “by what authority” and this writ is issued to prevent a ‘usurper’ from wrongfully occupying a substantive public office, enjoying certain privileges and franchise from that public office, when he does not have the authority to do so. The person being appointed to the public office must show by what authority he occupies it, in order to consider it to be a valid appointment.

17. The following conditions are required to be considered by the Court to issue a writ of quo-warranto:

1. There is no bar or restriction on who can apply. Any person can apply as long as their fundamental or any other legal right is being breached. In cases where there is no breach of right, a question of public interest must arise with respect to the application.

2. The application made by the applicant should be bona fide.

3. The application should not be made for the sake of certain hidden political struggle or undercurrent. The applicant should act in public interest, and not expect any benefit or unethical gain through making the application.

18. The writ of quo-warranto can be issued under the following cases:

“1. When a public office (created by law or the Constitution) is occupied by a private person, who does not actually have the authority to do so.

2. The public office must be substantive in character. The duties connected to the office must also be public in nature.

3. The usurper, whose authority is being challenged, must be holding his position at the time the challenge is made.

4. Even if a person was qualified at one point of time, the writ of quo warranto can be issued against him if he loses his qualifications.”

19. The case of the petitioner is that the Commissioner has no power to appoint the present Chairman of the Board of Secondary Education, Manipur, as the Chairman is a regular employee of the Department of Higher and Technical Education.

20. In paragraph 17 of the writ petition, the petitioner averred that the Commissioner has no power for issuance of the order of appointment dated 11.12.2021 and, therefore, the said appointment order is null and void in the eye of law. Apart from this, the term ‘deputation’ is a tripartite agreement i.e. lending department, borrowing department and the employee concerned. In the instant case, there is no picture for having

such an agreement for which the said appointment order has also no role to play.

21. Though the petitioner contended that the impugned notification was issued for the benefit of a particular person according to the choice, no proof has been produced to establish the same. When the petitioner is levelling serious allegations against the respondent authorities attacking the impugned notification, it is his bounden duty to prove that the impugned notification was issued only to support a particular candidate and not in public interest.

22. Admittedly, the office of the Chairman of the Board of Secondary Education, against whom writ of quo-warranto is sought has not been made as party. When the petitioner is questioning a particular person eligibility to hold the post, it is the duty of the petitioner to array the said person as respondent, as any order passed without hearing the particular party is nullity.

23. When the petitioner seeks quo-warranto, it is his bounden duty to show how his fundamental and other legal rights are breached by issuance of the impugned notification. As admitted by the petitioner, he is an unemployed person and is not connected with the Departments concerned.

24. It is pertinent to note that a person cannot apply for quo-warranto when he does not have even the remotest connection to the appointment of the public office which is being challenged. Even if the locus standi is relaxed, there must be certain connection between the petitioner and the appointment to the public office. In the case on hand, nothing has been produced by the petitioner to connect him with the appointment order, impugned notification and the Department.

25. Coming to the impugned notification, the petitioner is challenging the impugned notification dated 1.3.2023 on the ground that the impugned notification has no role to play in respect of the employees of the Department of Higher and Technical Education, Government Manipur who are under deputation to other departments, including the Board of Secondary Education, as the service condition of employees of the Department of Education (U), Government of Manipur, who are on deputation etc. to other departments are governed by the terms and conditions of the order dated 29.10.2014 issued by the Commissioner, Higher & Technical Education.

26. The challenge made to the impugned notification is not well founded and the petitioner is not an aggrieved person to challenge the impugned notification.

27. Article 226 of the Constitution of India empowers the High Court to issue to any person or authority including the Government within its territorial jurisdiction, directions, orders or writs in the nature of mandamus, certiorari, prohibition or quowarranto for the enforcement of fundamental rights or for the enforcement of the legal rights and for any other purpose. The founding fathers of our Constitution have couched the Article in comprehensive phraseology to enable the High Court to remedy injustice wherever it is found, but it is equally true that a person invoking the extraordinary jurisdiction of this Court should be an aggrieved person. If he does not fulfill the character of an aggrieved person and is a stranger, the Court will, in its discretion, deny him the extraordinary remedy.

28. It is the plea of the petitioner that in order to give benefit to the present Chairman, Board of Secondary Education, the impugned notification was issued. When such being the plea, the present Chairman of the Board of Secondary Education has to be made as party. However, the petitioner has failed to array the Chairman, Board of Secondary Education as party respondent in the writ petition.

29. Though the petitioner contended that there is no power for amendment of the provision of the Rules framed under

the Act, nothing has been produced by the petitioner. On the other hand and as stated supra, in the impugned notification itself it has been stated that under the power conferred under Section 12(2), the Governor is pleased to amend Rules 5 and 6(a) of the Recruitment and Conditions of the services of the Chairman of the Board of Secondary Education, Manipur Rule, 1979. Admittedly, no aggrieved person in the Department has challenged the impugned notification.

30. We are of the view that the impugned notification has been issued considering all the relevant provisions of the Act. No valid grounds have been made to interfere with the same. Thus, writ petition fails.

31. The writ petition is dismissed at the admission stage itself. No costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil