



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 390 of 2016

Date of Decision: 31.07.2024

Smti. Supiya Khatun (Head Teacher) wife of Shri Moktal
 Hussain resident of Sakmal, P.O Rajabala P.S Phulbari,
 West Garo Hills District, Meghalaya

::: Petitioner

-Versus-

1. State of Meghalaya
 Represented by the Secretary to the Government of Meghalaya,
 Education Department, Meghalaya
2. Director of School Education and Literacy, Meghalaya Shillong
3. The state Project Director, SSA Meghalaya, Shillong
4. The District Mission Coordinator, SSA West Garo Hills, Tura
5. The Sub-Divisional School Education Officer/Jt. District Mission
 Coordinator, Dadenggri, West Garo Hills
6. The Block Mission Coordinator SSA, Selsalla, West Garo Hills
7. Smti. Oleda Sheikh daughter of Dilmohammad Sheikh resident of
 Rajabala P.S Phulbari, District West Garo Hills Meghalaya

::: Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.A. Sheikh, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA (For R 1-6)



Mr. B. Khyriem, Adv. (For R 7)

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| 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. Vide order dated 24.10.2016 issued by the Joint District Mission Coordinator, Dadenggre, West Garo Hills through Memo No. JDMC-D/SSA/APPROVAL/2016/672 the respondent No. 7/Smti. Oleda Sheikh was approved as the Headmistress of Tillapara Girls SSA LP School and the petitioner herein was directed to immediately hand over all the charges to the approved Headmistress, that is, the respondent No. 7 herein.

2. Being thus aggrieved with the order passed, the petitioner has now approached this Court with an application under Article 226 of the Constitution of India seeking enforcement of her fundamental and constitutional rights said to have been infringed by the said impugned order dated 24.10.2016, the prayer being to set aside and quash the said order.

3. Heard Mr. S.A. Sheikh, learned counsel for the petitioner who has submitted that the historical background of this case is that the said Tillapara Girls LP School was established by the villagers of the Tillapara village in the year 2000 with the approval of the Director of Elementary and Mass Education, Meghalaya, such approval being conveyed by the



Deputy Inspector of School, Dadenggre, West Garo Hills vide order dated 07.11.2000.

4. At that point of time the Managing Committee of the school appointed two teachers, namely Shri. Dilwar Hussain who was appointed as Headmaster and the respondent No. 7 herein was also appointed as Assistant Teacher.

5. It is also the submission of the learned counsel that due to the resignation of the Headmaster of the school on 05.11.2001, the Managing Committee of the school had issued an advertisement dated 11.11.2001 inviting applications from local candidates to fill up the post of Headmaster of the said school.

6. The petitioner had responded to the said advertisement and had offered her candidature for the same. On being selected, she was accordingly appointed as the Head Teacher of the School on the strength of the office order No.TGPS/1/4-6/01 dated 20.11.2001 issued by the Secretary of the said Tillapara Girls LP School.

7. The petitioner as the Headmistress of the school, the school being a recognised private school receiving grant-in-aid from the Education Department under the SSA scheme, it is therefore governed by the provisions of the Meghalaya School Education Act, 1981 and the rules laid therein. The petitioner is also functioning as the Secretary of the Managing Committee of the School.

8. As the Secretary of the Managing Committee, it was incumbent upon the petitioner to ensure that the Managing Committee was duly



constituted from time to time and as such, the last Managing Committee was in place for a period of 3(three) years w.e.f. 01.09.2011 to 31.08.2014.

9. Thereafter, on the expiry of the term of the Managing Committee, the petitioner had convened a meeting of all concerned and a new Managing Committee was constituted on 22.10.2014. However, this Managing Committee was not approved by the Sub-Divisional School Education Officer/Joint District Mission Coordinator, Dadenggri, West Garo Hills who is also the respondent No. 5 herein and even the subsequent reconstituted School Managing Committee, constituted on 19.08.2015 was also met with disapproval by the respondent No. 5. The school is, therefore, functioning without a Managing Committee till the time this petition was filed.

10. In such an impasse, the respondent No. 5 vide order dated 16.04.2016 had authorised Shri. Abdur Rahman Sk. CRC Coordinator Kashiabari to draw and disburse salaries of the teaching staff of the said Tillapara Girls SSA LP School till the recommendation of a new Managing Committee.

11. The learned counsel has further submitted that it was during this period when there was no functional Managing Committee that the respondent No. 5 had issued the said impugned order dated 24.10.2016 whereby the petitioner was downgraded from her post as Headmistress to that of Assistant Teacher. A representation dated 14.11.2016 filed by the petitioner seeking revocation of the said impugned order also went unheeded by the respondent No. 5. Hence this petition.



12. The learned counsel has further submitted that the Tillapara Girls SSA LP School is a recognised private school receiving grant-in-aid from the State Government and also grant under the centrally sponsored scheme called the Sarva Shiksha Abhiyan (SSA). However, as far as the functioning of the school is concerned, the same is governed by the provisions of the Meghalaya School Education Act, 1981. The contention of the State respondent that the school is guided by the Meghalaya Right of Children to Free and Compulsory Education Rules, 2011 under the Right to Education Act, 2009 is refuted by the petitioner, who would contend that there are no rules under the RTE Act as far as the service conditions of employees of Government Aided Schools are concerned. All aided schools in the State are governed by the Meghalaya School Education Act, 1981. The case of *Holland Wanniang v. State of Meghalaya & Ors.*, (2013) 1 NEJ 90, para 6.1, 6.2, 7 and 9, the case of *Liodrekshon Nongsiang v. State of Meghalaya & Ors.*, (2011) 2 NEJ 290, para 3 and 4 and the case of *Barnabas R. Marak v. State of Meghalaya & Ors.*, 2019 SCC Online Megh 122, para 7 and 10 have been cited in support of this contention.

13. The next contention of the learned counsel for the petitioner is that under the provision of the Meghalaya School Education Act, 1981 in Chapter IV of the same is found the terms and conditions of service of employees of recognised private schools. Under Section 9, such terms and conditions of service have been enumerated. Again, as far as appointment and dismissal of an employee of Government Aided School is concerned, the learned counsel has referred to the Service Rule for Employees of Government Aided Schools with special reference to Rule 1- appointment



and dismissal and Rule 5 where a list of penalties which may be imposed on an employee of an aided school by the Managing Committee as far as conduct and discipline is concerned is found and has submitted that these rules are applicable to the case of the petitioner.

14. In this regard, the learned counsel has submitted that the effect of the impugned order upon the petitioner whereby she has been punished on reduction of her post, the same was issued without giving her any opportunity to show cause or to defend her case and as such, gross violation of natural justice has occurred.

15. The learned counsel has also submitted that nowhere in the said rules referred to herein is seen that the power for conducting disciplinary proceedings or imposition of punishment and penalties has been bestowed upon the Government authorities since such power is the exclusive domain of the Managing Committee, even in the absence of the Managing Committee an Administrator is appointed by the concerned authority to look after the affairs of the school, such Administrator has never been invested with the power to impose such penalty as has been done in the case of the petitioner who was downgraded from Head Teacher to Assistant Teacher on the strength of the order of the Joint District Mission Coordinator/respondent No. 5. In support of this contention, the case of Chander Pal Jain & Anr. v. Delhi Administration Etc., 1996 SCC Online Del 74, para 10 and the case of B.S. Verma v. Delhi Administration & Ors., 1992 SCC Online Del 182 have been cited.

16. Again, the learned counsel has submitted that the petitioner having been appointed directly as the Head Teacher, she cannot be



reverted to a lower post since it is only a promotee who can be reverted to the lower post he was promoted from. The case of Hussain Sasan Saheb Kaladgi v. State of Maharashtra, (1988) 4 SCC 168, para 2 was relied upon by the petitioner in this regard.

17. The final argument of the petitioner is that having been appointed as the Head Teacher since the year 2001 and continuing to hold the post till the passing of the impugned order in the year 2016, the claim of the respondent No. 7 for promotion and the impugned order passed after a long period of 15 years would attract the principle of delay and laches. The case of Shiba Shankar Mohapatra & Ors v. State of Orissa & Ors., (2010) 12 SCC 471, para 18, 19, 21, 22, 23, 25, 29 & 30 as well as the case of Union of India & Ors. v. Tarsem Singh, (2008) 8 SCC 648, para 7 has been cited in support of this contention.

18. Mr. K.P. Bhattacharjee, learned GA appearing for the State respondent has submitted that the stand of the respondent No. 7 is justified inasmuch as the fact that she is senior in service to the petitioner, on the vacancy of the Head Teacher having arisen, she ought to have been appointed as such. However, the petitioner was directly appointed as the Head Teacher in spite of the protest of the respondent No. 7 which went unheeded by the School Managing Committee.

19. Even the said advertisement for filling up the post of Head Teacher was issued by the School Managing Committee without the knowledge of the respondent No. 7 as almost all the members of the said School Managing Committee are the family members of the petitioner and as such, the whole process was manipulated to suit the petitioner.



20. The learned GA has also submitted that the relevant Department had no knowledge of the said advertisement and there was also no approval of the same as well as of the appointment of the petitioner as Head Teacher as no specific information or details of the whole process, such as the number of candidates who have applied for the post was ever made known to the concerned authority in the Education Department.

21. As to how the respondent No. 7 was appointed as the Head Teacher, the learned GA has submitted that even when the SMC was functioning, the respondent No. 7 had filed several representations which were not considered and it was only when the SMC was replaced by an Administrator, did the representation of the respondent No. 7 received a response and an inquiry was conducted by the Department which led to the finding that firstly, there could not have been any direct recruitment to the post of Head Teacher as the norm was that it was only the senior most teacher who is usually appointed to that position and following such precedent, the respondent No. 7 being the senior most teacher was accordingly appointed as the Head Teacher.

22. The second limb of argument advanced by the learned GA is that the claim of the petitioner that the provisions of the Meghalaya School Education Act, 1981 is applicable to the case of the petitioner since the said school though being a private educational institution, however is receiving grant-in-aid from the State Government cannot be accepted since the school is funded under the SSA scheme which scheme is the outcome of the Right of Children to Free and Compulsory Education Act, 2009 also known as Right to Education Act, which fact has not been controverted by the petitioner.



23. It is also submitted that under the Right to Education Act specific provisions have been made dealing with certificate of recognition of schools found in Section 18 of the Act and also at Section 21 which provides for the constitution of School Management Committee. Rule 13 of the “Meghalaya Right of Children to Free and Compulsory Education Rules, 2011” provides for the mechanism for the composition and functions of the School Management Committee which mandates that every school other than an unaided school shall have a School Management Committee to manage its affairs.

24. The next contention of the learned GA is that the petitioner if aggrieved by the impugned order dated 24.10.2016, instead of coming directly to the High Court she ought to have approached the Grievance Redressal Forum or Tribunal set up in accordance with the provision of Rule 20 of the Meghalaya Right of Children to Free and Compulsory Education Rules, 2011. The petitioner having an alternative forum to air her grievances at the first instance, this petition is therefore not maintainable and the same is liable to be dismissed on this ground alone.

25. Again, the learned GA has submitted that it is not the case that the petitioner has been terminated from service but, she continues to remain a teacher of the said school and as such, the authorities cited by the petitioner in this regard, that is the case of Holland Wanniang (supra), Liodrekshon Nongsiang (supra) and Barnabas R. Marak (supra) which deals with termination of service of teachers of aided school are not applicable to the case of the petitioner herein.



26. Since the petitioner is an employee of an SSA school and hence is governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the related rules under the Meghalaya Right of Children to Free and Compulsory Education Rules, 2011, a look at Section 23 of the Act would show that the same provides for qualifications for appointment and terms and conditions of service of teachers, nothing in the Act or the related rules is mentioned about direct recruitment to the post of Head Teacher/Headmaster/Headmistress. The claim of the petitioner in this regard is made without basis and her earlier appointment was made de hors the rules, by reverting her position to that of Assistant Teacher, the relevant authorities have not violated any law or procedure, submits the learned GA. It is, therefore, prayed that this petition may be dismissed as devoid of merits.

27. Mr. B. Khyriem, learned counsel for the respondent No. 7 has submitted that records which cannot be controverted would show that this respondent was appointed as Assistant Teacher of the said school vide office order No.TPS/1/1-/3/00 dated 29.01.2000 while the petitioner joined the said school in the year 2001. Therefore, this respondent is senior in service to the petitioner.

28. It is also submitted that the respondent No. 7 had no knowledge about the said advertisement for appointment of the Head Teacher of the school and it was only on a query made to the Sub-Divisional School Education Officer, Dadenggre, West Garo Hills by way of an RTI application dated 27.05.2015 did she come to know about the said advertisement.



29. Again, it is the submission of the learned counsel that the respondent No. 7 had time and again filed several representations requesting the Managing Committee to promote her to the post of Head Teacher upon the resignation of the previous Head Teacher but since the Managing Committee consists of family members of the petitioner, her request was not accepted. It was only when she made a complaint to the District Mission Coordinator, SSA, West Garo Hills, Tura vide letter dated 29.11.2014 and another letter dated 29.03.2016 that an inquiry was conducted in this regard and the concerned authorities came to the finding that this respondent is senior in service to the petitioner and accordingly, the impugned order dated 24.10.2016 was passed. There is no infirmity or illegality as far as the said order dated 24.10.2016 is concerned and as such, the same may not be set aside and quashed, further submits the learned counsel.

30. This Court on consideration of the submission and contention raised by the respective parties and on perusal of the petition and the counter affidavits filed by the respondents would understand that the case of the petitioner is against the action of the authority in the Education Department, Government of Meghalaya taken on the strength of the said impugned order dated 24.10.2016 whereby the petitioner have been demoted to the position of an Assistant Teacher from the post of Head Teacher which she was holding at the relevant point of time.

31. It is the contention of the State respondent that the school is being funded under the SSA scheme and as such, the law applicable as far as the functioning and management of the school is governed by the Right of Children to Free and Compulsory Education Act, 2009. It is also the



further contention of the learned GA appearing for the State respondent that under the said Act of 2009 the grievance redressal mechanism for teachers has been spelt out in Rule 20 of the Meghalaya Right of Children to Free and Compulsory Education Rules, 2011, wherein under sub-Rule 2 of the said Rule 20, School Tribunals have been constituted by the Government at the State, District and Block levels for redressal of the grievance of the teachers.

32. As facts would have it, the Right of Children to Free and Compulsory Education Act came into force in the year 2009. The authority in place prior to the year 2009 covering the functioning and management of schools such as the school of the parties herein would be the Meghalaya School Education Act, 1981. The fact that the petitioner was also appointed as the Head Teacher of the said school in the year 2001 only goes on to show that her services is governed by the said Act of 1981. Though the impugned order was passed in the year 2016 when the Act of 2009 is in place, nothing in the impugned order nor was any records of proceedings produced before this Court would indicate that the impugned order was passed under the provision of the Act of 2009.

33. It is also one of the pleadings of the respondent No. 7 that her claim for being promoted as Head Teacher in place of the petitioner has been addressed before the School Managing Committee on a number of occasions, such representations being dated 10.11.2001, 07.02.2002 and 12.07.2005 and thereafter she had also approached the District Mission Coordinator, SSA, West Garo Hills vide representations dated 29.11.2014 and 29.03.2016 respectively. This would only show that the respondent No. 7 had initiated her actions under the provisions of the Meghalaya



School Education Act, 1981. If this is not the case, then the respondent No. 7 should have expressed her grievances before the Block Level or District Level or even the State Level Redressal Tribunal which was not done so.

34. Therefore, this Court is convinced that there is nothing wrong with this petition being filed before this Court under Article 226 of the Constitution of India craving exercise of the extra-ordinary jurisdiction of this Court.

35. A perusal of the impugned order would also reveal that the same was passed relying on an inquiry report No.SSA/SEL/INQIRY/2014/687 dated 15.12.2014 submitted by the Block Mission Coordinator, SSA, West Garo Hills. A copy of the said Inquiry Report was also annexed as Annexure-6 to the affidavit-in-opposition on behalf of the respondent No. 5/Sub-Divisional School Education Officer/Jt. District Mission Coordinator. Perusal of the same would show that the Inquiry Officer had apparently perused the relevant school record and had come to a finding that the respondent No. 7 is senior to the petitioner herein on the basis of their year of joining, that is 2000 for the former and 2001 for the latter. The Inquiry Officer has also concluded that the petitioner had superseded the respondent No. 7 and as such, the respondent No. 7 is to be appointed as Head Mistress of the school.

36. The manner in which the inquiry was carried out would reflect callousness and non-application of mind and even scant regard to the required norms and formalities to be followed whenever an inquiry is to be conducted. No formal show cause notice was issued upon the petitioner



nor was there any statement of the relevant witnesses ever recorded. Finally, it also appears that no opportunity was given to the petitioner or the complainant/respondent No. 7 to be heard in the matter. On this ground alone, the principle of natural justice not being followed, the impugned order is liable to be set aside and quashed.

37. It may not be out of place to refer to the proceedings which ought to have been carried out by the concerned authorities while initiating the inquiry proceedings against the petitioner, the same should have to be done so under the provision of Rule 5 of the “Service Rule for Employees of Government Aided Schools” which reads as follows:

“5. Any of the following penalties may be imposed on an employee of an aided school by the Managing Committee for good and sufficient reasons –

- (i) Dismissal or removal;
- (ii) Reduction in rank;
- (iii) Recovery from pay;
- (iv) Stoppage of increment;
- (v) Censure.

Provided 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;

Provided that this clause shall not apply –

- (a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge;
- (b) Where the Inspector of schools is satisfied that for some reasons, to be recorded in writing. It is not reasonably practicable to give to that person an opportunity of showing cause; or
- (c) Where the removal of any person is ordered by Government under rule 4 above and if in such a case



Government is of the opinion that in public interest it is not expedient to give to that person such an opportunity;

- (2) An order of dismissal or removal issued as a penal measure on a member of the teaching staff will ordinarily be void unless it is passed in a meeting of the Managing Committee where at least three-fourths of the members are present.
- (3) No order of dismissal or removal passed by a Managing Committee on a member of the teaching or the ministerial staff will be given effect to without the prior approval of the Inspector of schools.”

38. Again, the relevant authorities have failed to note that the petitioner was appointed as Head Teacher on the basis of an advertisement floated in this regard. There was no challenge to the said selection process at the relevant point of time. Therefore, rightly or wrongly, the petitioner would be deemed to have been regularly appointed as Head Teacher in the year 2001. In this regard, as referred to by the learned counsel for the petitioner, the case of Hussain Sasan Saheb Kaladgi (*supra*) is found relevant and applicable to the case of the petitioner. Para 2 of the same is hereby reproduced as follows:

“2. Before the High Court it was conceded by the learned Government Pleader that the appellant was appointed to the post of ADEI as a ‘direct recruit’ and that he was not a departmental promotee who had been promoted from the post of primary teacher to the post of ADEI. This is abundantly clear from the following passage extracted from the judgment of the High Court:

Before us the learned Government Pleader conceded that the appointment of the plaintiff as ADEI appears to be a direct appointment and not a matter of departmental promotion. He may be ineligible in terms of requisite departmental service as a teacher, but he had the educational qualifications required for the post and he had directly applied for the post, though the application had to come



through proper channel in view of the fact that the plaintiff was in service.

In view of this concession, the High Court should have straightway dismissed the appeal. A direct recruit to a post, it cannot be gainsaid, cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. These propositions are so elementary that the same are incapable of being disputed and have not been disputed. The High Court presumably realised that the matter was inarguable and there was no escape from the conclusion reached by the trial court. The High Court was however carried away by an irrelevant argument which had no bearing on the issue before the Court. What was argued before the High Court was that in any case his appointment was a temporary one and it could have been terminated as per the conditions of service applicable to him. Assuming that his appointment was a temporary one and it could have been so terminated, the fact remains that in point of fact no such power had been invoked and the services of the appellant had not been terminated at all. If his services had been so terminated under the relevant rule, the question could possibly have arisen as to whether or not such termination could have been lawfully made. No such termination having taken place, the existence of the rule was altogether irrelevant. The State had passed an order which clearly was unsustainable in view of the fact that the appellant was a direct recruit and there was no question of reverting him to any lower post. The High Court should not have allowed itself to be misled by the misleading argument regarding the service condition under which the services of the appellant could possibly have been, but were not in fact, terminated. The view taken by the High Court is thoroughly unsustainable. The appeal must, therefore, be allowed. The judgment and decree passed by the High Court must accordingly be set aside and the judgment and decree passed by the trial court must be restored. The parties will bear their costs throughout.”

39. Without any detailed discussion on the other authorities cited by the petitioner as well as the respondents, some of which are found relevant to the merits of the case herein, suffice it to say that on the observation



made by this Court hereinabove, it is found that the petitioner has made out a case for interference with the impugned order.

40. Accordingly, this petition is allowed. The impugned order dated 24.10.2016 is hereby set aside and quashed. The petitioner is directed to be reinstated as the Head Teacher/Head Mistress of the said Tillapara Girls SSA LP School.

41. Petition disposed of. No costs.

Judge

