

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 83 of 2023

Laiphprakpam Tombi Singh, aged about 71 years, S/O (L) Laiphprakpam Sura Singh, resident of Kha-Naorem Leikai, P.O. Canchipur, P.S. Singjamei and District Imphal West, Manipur-795003.

..... Petitioner/s

- Versus -

1. The State of Manipur, represented by the Commissioner/Secretary, Hr. and Tech. Education, Government of Manipur, old Secretariat Building, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur-79501.
2. The Chancellor, Manipur Technical University, Governor's Secretariat, Raj Bhawan, Imphal, Manipur-795001.
3. Manipur Technical University, represented by its Registrar, Government Polytechnic Campus, Takyelpat, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
4. Shri H. Gyan Prakash, IAS, Commissioner, Higher & Technical Education, Government of Manipur, Old Secretariat building, Imphal, Manipur-795001.

.....Respondent/s

With

MC(WP(C) No. 58 of 2023

The State of Manipur, represented by the Commissioner/Secretary, Hr. & Tech. Education, Govt. of Manipur, Old Secretariat Building, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur.

.....Applicant

-Vs-

1. Laiphprakpam Tombi Singh, aged about 71 years, S/O (L) Laiphprakpam Sura Singh, resident of Kha-Naorem Leikai, P.O.

Canchipur, P.S. Singjamei and District Imphal West, Manipur-795003.

.....Respondent

2. The Chancellor, Manipur Technical University, Governor's Secretariat, Raj Bhawan, Imphal, Manipur-795001.
3. Manipur Technical University, represented by its Registrar, Government Polytechnic Campus, Takyelpat, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
4. Shri H. Gyan Prakash, IAS, Commissioner, Higher & Technical Education, Government of Manipur, Old Secretariat building, Imphal, Manipur-795001.

....Proforma Respondents

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner :: Mr. BP. Sahu, Sr. Adv. assisted by Mr.
DP. Sahu, Adv.

For the Respondents :: Mr. M. Devananda, Addl. A.G. assisted by Ms. N. Jyotsana, Adv., Dr. RK. Deepak, Sr. Adv. assisted by Mr. L. Rajesh, Adv and Ms. Th. Bandana, Adv. representing Mr. L. Shashibushan, Sr. Adv.

Date of Hearing :: 03.10.2023

Date of Judgment and Order :: **30.11.2023**

ORDER (CAV)

[1] Heard Mr. BP. Sahu, learned senior counsel assisted by Mr. Deepak Prasad Sahu, learned counsel on behalf of the petitioner; Mr. M.

Devananda, learned Addl. A.G. assisted by Ms. Jyotsana Naorem, learned counsel for respondent No. 1; Dr. RK. Deepak, learned senior counsel assisted by Mr. L. Rajesh, learned counsel for respondent Nos. 2 & 3 and Ms. Th. Bandana, learned counsel for respondent No. 4.

[2] It is the case of the petitioner that he was the first regular Vice-Chancellor of the newly established Manipur Technical University (in short MTU) and retired on attaining the age of superannuation in the month of October, 2020. After his retirement, no Vice-Chancellor was appointed and the said post of Vice-Chancellor was held by the then Commissioner, Higher Education, Government of Manipur. Vide order dated 17.08.2021, the petitioner was appointed as Vice-Chancellor as a stop-gap arrangement for a period till the appointment of regular Vice-Chancellor. Since the power of the petitioner as stop-gap Vice-Chancellor was curtailed, he filed a writ petition being WP(C) No. 602 of 2021 and vide order dated 05.10.2021, the learned Single Judge allowed the writ petition with a direction to the respondents to allow the petitioner to function as Vice-Chancellor as per the Manipur Technical University Act and Rules framed thereunder till the appointment of regular VC. The operative part of the judgment and order dated 05.10.2021 @ Para 24 is reproduced herein below:

“24. For the foregoing discussions, a) the writ petition is allowed; b) the impugned UO note dated 23.08.2021 issued by the Minister, Education, Manipur and the communication of the Deputy Secretary to the Registrar of Manipur Technical University dated 03.09.2021 are set aside except Clause No. 1; (c) As a consequence, the respondent authorities are

directed to allow the petitioner to function as Vice-Chancellor as per Manipur Technical University Act and the Rules framed thereunder till the regular Vice-Chancellor is appointed; (d) *There will be no order as to costs. Consequently, connected miscellaneous petition, if any, is closed."*

[3] Thereafter, the petitioner ceased to function as the Vice Chancellor after one Dr. Bhabeswar Tongbram was appointed as the regular Vice-Chancellor. The appointment of Dr. Dr. Bhabeswar Tongbram was challenged by several persons before this Court on various grounds and the writ petitions were heard together. Vide a detailed judgment and order dated 27.01.2023 passed in WP(C) No. 805 of 2021, WP(C) No. 791 of 2021, WP(C) No. 825 of 2021 & WP(C) No. 807 of 2021, the appointment of Dr. Bhabeswar Tongbram to the post of Vice-Chancellor, Manipur Technical University was set aside by this Court. Upon the setting aside of the appointment of Dr. Bhabeswar Tongbram as Vice-Chancellor of MTU, the Governor of Manipur issued the impugned order dated 27.01.2023 appointing Shri H. Gyan Prakash, IAS, Commissioner, Higher & Technical Education, Government of Manipur (Respondent No.4 herein) as Vice-Chancellor of MTU as stop-gap arrangement till appointment of a regular Vice-Chancellor.

[4] Being aggrieved by the impugned order dated 27.01.2023, the petitioner approached this Court challenging the order dated 27.01.2023 on the ground that it is in violation of the provisions of Manipur Technical University Act and also in violation of the law settled by the Apex Court. It is stated that the Commissioner, Higher & Technical Education, Government

of Manipur does not possess the required eligibility criteria. It is also stated that since the appointment of Dr. Bhabeswar Tongbram as regular VC of MTU was set aside by this Court as illegal, the petitioner ought to have been appointed as VC as stop-gap till the appointment of regular VC in pursuant to para 24 of the judgment and order dated 05.10.2021 passed by the learned Single Judge in WP(C) No. 602 of 2021.

[5] Mr. BP Sahu, learned senior counsel for the petitioner, submits that once the appointment of regular VC has been held to be illegal, there is no appointment in the eye of law and as such, the petitioner who was permitted to function as stop-gap VC till the appointment of regular VC by an order dated 05.10.2021 passed by this Court, has to be given charge to function as Vice-Chancellor till appointment of a regular VC. It is stated that the order dated 27.01.2023 appointing the Commissioner (Hr. Education) as VC is illegal and void ab initio and in violation of the directions passed by this Court. Learned senior counsel relies upon the judgment of the Honb'le Supreme Court in the case of **Nabam Rebia and Bamand Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Ors.: (2016) 8 SCC 1** to the point that once an order is not sustainable in the eyes of law and set aside by the Court, the position that existed prior to the issuance of the order so set aside, is to be restored.

[6] Mr. B P Sahu, learned senior counsel has emphasised that in the present case, since the appointment of Dr. Bhabeswar Tongbram as regular VC has been set aside by this Court as illegal, the position prior to

such appointment, i.e., continuation of the petitioner as stop-gap VC of MTU has to be restored.

[7] Mr. M. Devananda, learned Addl. A.G., has raised objection to the maintainability of the writ petition by filing a misc. application being MC[WP(C)] No. 58 of 20223 stating that the petitioner has no locus to challenge the impugned order dated 27.01.2023 appointing the Commissioner, Hr. & Tech. Education, Government of Manipur as stop-gap VC of MTU as the petitioner is not eligible in terms of Section 14 (2) of Manipur Technical University Act, 2016 as he is over 70 years of age. It is also further stated that respondent No. 4, Commissioner, Hr. & Tech. Education, Government of Manipur was appointed as stop-gap VC as provided in MTU Act, 2016 by the competent authority and in terms of the direction passed by this Court in WP(C) No. 791 of 2021 and the connected matters wherein official respondents were directed to make stop-gap arrangement in accordance with law till fresh appointments are made for the post of VC. Learned Addl. A.G. submits that once Dr. Bhabeswar Tongbram was appointed as regular VC, the direction issued by the learned Single Judge in Para 24 of WP(C) No. 602 of 2021 in the order dated 05.10.2021 has been complied and setting aside of the appointment of Dr. Bhabeswar Tongbram in subsequent judicial proceedings cannot be a ground for re-implementing the direction in para 24 in WP(C) No. 602 of 2021. Reliance is placed on the decision in the case of **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Assn.** reported as (2006) 11 SCC 731 @ Para 43 to emphasise that even a writ of quo warranto

is not maintainable in challenging appointments made as 'until further orders'. It was held that jurisdiction under Article 226 of the Constitution of India to challenge such order can be exercised only by the aggrieved person. It is prayed that writ petition may be dismissed with exemplary costs.

[8] Dr. RK. Deepak, learned senior counsel for respondent Nos. 2 & 3 (MTU), has raised the preliminary objection to the maintainability of the writ petition on the ground that the petitioner has no locus to challenge the appointment of respondent No. 4 as stop-gap VC. It is stated that the petitioner has neither lien to the post of VC nor a legal obligation that he should only be appointed as VC in case of temporary vacancy to the post. No injury or damage has been caused to the petitioner by stop-gap arrangement of appointing respondent No. 4 as VC and the same is in the interest of the student of the university for smooth running of the institute. Writ petition is not maintainable as the petitioner is not an eligible person for appointment to the post of VC and he is over-aged as per the Rules. It is submitted that the writ of certiorari can be exercised only at the instance of a person who is qualified and eligible for the post at the relevant time. It is also stated that the impugned order dated 27.01.2023 has been issued in pursuance to the direction in the common judgment and order dated 27.01.2023 passed by this Court in WP(C) No. 805 of 2021, WP(C) No. 791 of 2021, WP(C) No. 825 of 2021 & WP(C) No. 807 of 2021. On merit, Dr. RK. Deepak, learned senior counsel, submits that vide order dated 05.10.2021 passed in WP(C) No. 602 of 2021, the petitioner was allowed to function as VC of MTU till appointment of a regular VC and his appointment

as V.C. on stop-gap arrangement ceased to exist with the appointment of Dr. Bhabeswar Tongbram as regular VC on 08.11.2021. It is stated that setting aside of the appointment order of Dr. Bhabeswar Tongbram by a judgment and order dated 27.01.2023 cannot revive the direction passed in Para 24 in WP(C) No. 602 of 2021. It is prayed that writ petition be dismissed on the ground of non-maintainability as well as on merit as the direction issued in WP(C) No. 602 of 2021 has no longer survived after the appointment of Dr. Bhabeswar Tongbram as regular VC.

[9] Respondent No. 4 has also filed counter affidavit stating that as per Section 14 of the MTU, the tenure of Vice-Chancellor is 5 (five) years or till the incumbent attains the 70 years of age or whichever is earlier. It is stated that once the incumbent attains 70 years of age, he cannot be considered for re-appointment to the post of VC either temporary or stop-gap arrangement. It is also pointed out that the direction in Para 24 in WP(C) No. 602 of 2021 for appointing the petitioner as VC till appointment of regular VC, ceased to have any effect once Dr. Bhabeswar was appointed as regular VC. It is further submitted that under the 2nd proviso to Section 14(2) of the MTU Act, the Administrative Secretary of the Higher and Technical Education, Govt. of Manipur shall be the ex-officio VC till the appointment of first VC and the Administrative Secretary had actually functioned as VC till appointment of first VC. Accordingly, it is submitted that appointment of the respondent No.4 as stop gap VC till appointment of a regular VC cannot be faulted. It is prayed that writ petition may be rejected.

[10] This Court has considered the submissions made at bar and the materials on record.

[11] The case of the petitioner is that he was permitted by an order dated 05.10.2021 passed by this Court in WP(C) No. 602 of 2021 to function as Vice-Chancellor till the appointment of regular VC. The petitioner relinquished the stop-gap arrangement of being a VC on the appointment of one Dr. Bhabeswar Tongbram as regular VC. However, in a subsequent batch of writ petitions, the appointment of Dr. Bhabeswar Tongbram as regular VC was set aside by this Court vide order dated 27.01.2023 and in the same order, this Court directed the respondent authorities to make stop-gap arrangement to function as Vice-Chancellor till fresh appointment to the post of VC is made. In compliance of the direction passed by this Court in order dated 27.01.2023 in the batch of writ petitions, the State authority appointed respondent No. 4 as Vice-Chancellor of MTU as stop-gap arrangement till the regular VC is appointed.

[12] This Court does not find any merit in the submission of Mr. BP Sahu, learned senior counsel that once the appointment of Dr. Bhabeswar Tongbram as regular VC was set aside by this Court, the status prior to such appointment ought to be restored. This Court is of the firm opinion that with the appointment of Dr. Bhabeswar as regular VC, the direction in para 24 of the judgment and order dated 05.10.2021 passed by this Court in WP(C) No. 602 of 2021 directing the respondents to appoint the petitioner as stop-gap VC till the appointment of regular VC, has fully been complied and the same cannot be enforced in perpetual. It may be noted that the direction in para

24 of the judgment is not perpetual one and it does not give any direction to the effect that whenever there is a vacancy in the post of VC of MTU, only the petitioner has to function as VC as stop-gap arrangement. Being over the stipulated 70 years of age, the petitioner has no locus to challenge the appointment of VC of MTU by way of a writ of certiorari and/or mandamus as he is not eligible person to challenge such appointment. The appointment of stop-gap VC as stop-gap arrangement is also contemplated under Section 14 (5) of the MTU Act, 2016. Hon'ble Supreme Court held in the case of **Umakant Saran v. State of Bihar** reported as **(1973) 1 SCC 485** that a person who is not eligible for consideration for appointment at the relevant point of time has no right to question the appointment since he is not an aggrieved person. Admittedly, the petitioner is not eligible for appointment as VC as he has exceeded the age of 70 years and he has no locus to challenge the appointment of VC, whether regular one or otherwise.

[13] Accordingly, writ petition is dismissed being devoid of merit. No cost.

[14] In view of the above, the misc. application is also disposed of.

JUDGE

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