

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

WP(C)No.694 of 2020

Sanasam Bindashakhi Devi, aged about 52 years, W/O Salam Nehru Singh, resident of Moirang Ward No.10 Khoiru Leikai, PO & PS Moirang and District Bishnupur, Manipur-795133.

...Petitioner

– Versus –

1. The State of Manipur, through the Principal Secretary/Commissioner, Secretary, Education(S), Govt. of Manipur, Secretariat Building, Babupara, PO & PS Imphal, District Imphal West, Manipur Pin-795001.
2. The Director of Education(S), Govt. of Manipur, Office of the Directorate of Education (S), Lamphelpat, PO & PS Lamphel, Imphal West District, Manipur. Pin-795004.
3. The Department of Personnel and Administrative Reforms through its Principal Secretary/Commissioner/Secretary (DP) Govt. of Manipur, Secretariat Building, Babupara, PO & PS Imphal, District Imphal West, Manipur. Pin-795001.

...Respondents

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner : Mr Anjan Prasad Sahu, Advocate,

For the Respondents : Ch. Sundari, GA
Date of Reserved : 31.01.2023
Date of Judgment & Order : 21.02.2023.

JUDGMENT & ORDER
(CAV)

1. The instant writ petition has been filed by the petitioner seeking the following relief:

- (i) *Call for the records of the case and issue rule nisi calling upon the respondents to show cause as to why the prayer prayed for by the petitioner shall not be granted. And, after hearing them make the rule absolute.*
- (ii) *Issue writ of Certiorari and/or any other appropriate writ/order/direction to the respondents directing them to review the order dated 11.10.2018 (Annexure-A/8) in respect of the petitioner.*
- (iii) *Issue writ of Mandamus and/or any other appropriate writ/order/direction to the respondents directing them to regularize/absorb the petitioner in her ad-hoc service by linking up her service period with retrospective effect within a stipulated period as have been done in respect of other ad-hoc employees of other departments and also to direct them to release the pay and allowances of the petitioners w.e.f. 01.03.2007 till her service is regularized.*

2. The case of the petitioner is that she was appointed as adhoc Primary Teacher (substitute) in WangooNaodakhong Girls L.P. School against one of the posts created vide Government Order dated 30.5.1987 for a period until further orders vide order dated 15.12.1989. Since her initial appointment, she has been continuously serving in her respective post without any break till date. Further, vide order dated 25.4.2004, the Director of Education (S), allowed the petitioner to appear before the DPC for consideration of Primary Teacher and her appointment was to be adjusted against the vacancy in the said school vice Ibochou Singh retired, as and when the ban on direct recruitment was lifted by the Government. Thereafter, the said school was upgraded to Wangoo Sabal Naodakhong Upper Primary School.

3. Further case of the petitioner is that the Department of Personnel & Administrative Reforms, Government of Manipur, vide Memorandum dated 3.10.2013 directed regularization of all adhoc employees of other Departments, excluding the Education Department. However, the Education Department failed to formulate such policy for regularization of the services of the petitioner along with other persons till date. Being aggrieved, the petitioner and other adhoc teachers have filed W.P.(C) No.461 of 2015 before this Court to regularize their adhoc appointments in the Department of Education. By the order dated 14.12.2015, the said writ petition was disposed of directing the petitioner and others to submit a representation to the Deputy Secretary (Education/S), Government of Manipur within a week and with further direction to the consider the same by the said authority within a period of two months.

4. According to the petitioner, pursuant to the order of this Court, the petitioner along with others submitted a representation and since the respondents have not consider the same, the petitioner and others have filed Contempt Case No.60 of 2016. Pending contempt case, the respondents produced by the impugned order dated 11.10.2018 issued by the Commissioner, Education (S), Government of Manipur stating that the petitioners therein are unfit for regularization to the post in which they were working as adhoc/substitute teachers. Challenging the order dated 11.10.2018, the petitioner has filed the present petition.

5. Respondents 1 and 2 filed affidavit-in-opposition stating that no such posts against which the petitioner along with others were appointed were allotted to the schools where they were posted and as such their appointments were considered irregular and also to have been appointed against no posts and, therefore, appointment order of the petitioner along with others were cancelled vide order dated 26.3.1999. It is stated that in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 and in pursuance of the notification dated 31.3.2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council of Teacher Education has laid down minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VIII in a school referred to in Clause (n) of Section 2 of the Act with effect from the date of its notification dated 23.8.2010.

6. It is stated that the Director of Education (S) without obtaining approval of the Government issued an order dated 24.5.2004 to the effect that the petitioner shall be allowed to appear before a DPC for consideration of her appointment as Primary Teacher and her appointment is adjusted vice Ibochou Singh and the order dated 25.4.2004 has been rendered as void ab-initio vide Government Order dated 8.10.2008 and the said fact has been concealed by the petitioner in the writ petition. The petitioner and 170 others have filed W.P.(C) No.461 of 2015 praying *inter alia* for a direction to the respondents to make necessary process for regularizing the adhoc services of the petitioner therein. The present petitioner is petitioner No.29 in the said writ petition. The petitioner concealed the filing of W.P.(C) No.105 of 2012 wherein she has challenged the order dated 8.10.2008. Therefore, there is no question for reviewing the impugned order dated 11.10.2018.

7. Assailing the impugned order, the learned counsel for the petitioner submitted that the petitioner has been serving in her respective post till date without any break since her initial appointment by discharging her duties as Primary Teacher by attending the school punctually. No order for discontinuing the adhoc service of the petitioner was issued till date. He would submit that the petitioner was initially appointed to the post of Primary Teacher of the Department of Education (S) in the year 1989 and she has completed 31 years of continuous service as Primary Teacher.

8. The learned counsel for the petitioner further submitted that the only hope of the petitioner in her life is to get regularized/absorbed as Primary Teacher, which she has been holding since more than three decades back by linking up her adhoc service with retrospective effect. Though she has been continuously serving in her respective post, she has been serving without pay and allowances with effect from 1.3.2007 till date.

9. The learned counsel for the petitioner urged that the act of the respondents in not regularizing the services of the petitioner as Primary Teacher despite the fulfillment of all the requisite qualifications and by formulating/publishing a scheme/policy as have been done in respect of other adhoc employees of other Department has caused great injustice to her. Thus, a prayer has been made to allow the writ petition.

10. Per contra, the learned Government Advocate for the respondents submitted that no post against which the petitioner was appointed was allotted to the school where the petitioner was posted and, as such, the appointment of the petitioner is irregular one and also to have been appointed against no post and moreover her appointment order was cancelled vide order dated 26.3.1999.

11. The learned Government Advocate further submitted that the Director of Education (S) without obtaining approval of the Government issued the order dated 25.4.2004 thereby allowing the petitioner to appear before the DPC for consideration of her appointment as Primary Teacher and her

appointment is adjusted vice Ibochou Singh retired as and when the ban on direct recruitment is lifted by the Government. In fact, the order dated 25.4.2004 has been rendered void ab-initio vide Government Order dated 8.10.2008 and challenging the order dated 8.10.2008, the petitioner has filed W.P.(C) No.105 of 2012 and the said facts have been concealed by the petitioner in the instant petition. Therefore, there is no question for reviewing the Government Order dated 11.10.2018. Thus, a prayer has been made to dismiss the writ petition.

12. This Court considered the rival submissions and also perused the materials available on record.

13. According to the petitioner, she is serving as Primary Teacher in the Department of Education (S), Government of Manipur for the last more than 31 years. The grievance of the petitioner is that the State Government used to frame scheme from time to time for regularization of the adhoc services of the employees of various Government Departments. However, the Department of Education (S), Government of Manipur has failed to formulate any such policy for regularization of the services of the petitioner and similarly situated persons till date. According to the petitioner, the order dated 11.10.2018 has been passed in order to escape from the contempt proceedings initiated against the official respondents. Without analyzing the ground reality, the order dated 11.10.2018 came to be passed by the Commissioner rejecting the claim of the petitioner and similarly situated persons on the ground of lack of fulfillment of

requisite qualification and their initial appointment being made in violation of the rules for public recruitment.

14. It appears that earlier the petitioner and similarly situated persons have filed W.P.(C) No.461 of 2015 before this Court for regularization of their services. By the order dated 14.12.2015, this Court passed the following order:

“Heard Shri N.Kumarjit, learned senior counsel assisted by Shri P.Ta.phamani, learned counsel appearing for the petitioners and Shri K.Jagat, learned G.A appearing for the State respondents.

According to the petitioners, they are serving as Primary/Graduate teachers in the Department of Education (S), Government of Manipur for the last more than 15 (fifteen) years. The case of the petitioners is that the State Government used to frame scheme from time to time for regularization of the ad-hoc services of the employees. The last scheme appears to be the one vide Office Memorandum dated 03.10.2013 issued for the purpose for regularization of 288 direct recruit ad hoc employees of various Government Departments/Offices. Under the said scheme, the cases of petitioners have not been considered, may be, on some cogent reasons. It is the further case of the petitioners that for the purpose of considering their cases by the State Government, the Deputy Secretary (DP), Government of Manipur addressed a letter dated 21.04.2014 to the Deputy Secretary (Education/S) for taking appropriate and necessary action.

In view of the above, this Court is of the view that the State respondents shall consider the cases of the petitioners, for which the petitioners are directed to submit a representation to the Deputy Secretary (Education/S), Government of Manipur within a period of one week and in the event of such a representation being submitted by the petitioners, the respondents shall consider it within a period of two months from the

date of communication of this order and issue appropriate order in respect thereof.

With the above observation and direction, this writ petition stands disposed of.”

15. The respondent State contended that the petitioner's appointment was irregular one as she was appointed against no post and, in fact, her appointment was cancelled vide order dated 26.3.1999.

16. On a perusal of the records, it is seen that the petitioner was appointed as substitute teacher at WangoNaodakhong Girls L.P. School in the scale of Rs.1250-1975 pm. with D.A. and other allowances as admissible under the rules with effect from the date of her joining duty in the school against one of the posts created vide Government Order dated 30.5.1987 until further orders or till the post is filled in on regular basis whichever is earlier. On a further perusal of the order dated 15.12.1989, it is seen that the head for drawing salary has also been mentioned therein. When the appointment of the petitioner as substitute teacher is against the post created by the order dated 30.5.1987 until further orders or till the post is filled in on regular basis as per the appointment order, it cannot be contended that her appointment is against no such post sanction.

17. Though the respondent State contended that the appointment of the petitioner was cancelled vide order dated 26.3.1999, the petitioner has been allowed to work as such. It is not the case of the respondent State that between the period 15.12.1989 and 26.3.1999, appointment on regular basis has been

made disturbing the petitioner. For the sake, if we take into account that the appointment of the petitioner has been cancelled on 26.3.1999, having extracted the work for nearly 10 years, she cannot be thrown out simply, as her appointment is not illegal. That apart, on 12.4.2018, the Zonal Education Officer, Zone IV(B), Government of Manipur has submitted the details of adhoc teachers who are working in the schools under Bishnupur District to the Director of Education (S), Government of Manipur, wherein the name of the petitioner has been found place at Serial No.1. Thus, it is clear that as on 12.4.2018 also, the petitioner has been serving as adhoc teacher at Wangoo Naodakhong Girls LP School, upgraded to Wangoo Sabal Naodakhong UP School. On 27.7.2019, 28.9.2020, the Head Mistress of Wangoo Sabal Naodakhong Upper Primary School has given duty certificates, wherein it has been categorically certified as under:

“This is to certify that Smt. S.Bindashakhi Devi, Primary Teacher (Substitute) WangooSabalNaodakhong Upper Primary School, had been attending to school regularly since her initial appointment till date without any break.”

18. When the certificates of the Headmistress of the concerned school are to the effect that the petitioner is attending the school regularly right from her initial appointment, in the interest of justice, her case has to be considered by the respondent State and her appointment is not illegal.

19. It is pertinent to mention that the Director of Education (S), Government of Manipur, in his order dated 25.4.2004, allowed the petitioner to appear before a DPC for consideration of regularization of Primary Teacher and

that her appointment shall be adjusted against the vacancy in the Wangoo Naodakhong Girls LP School vice Ibochou Singh retired as and when the ban on direct recruitment is lifted by the Government. The petitioner also issued with NIC Identity Card. While being so, her initial and/or adhoc appointment cannot be termed as illegal one.

20. The Hon'ble Supreme Court, time and again, held that where the appointment are not made or continued against sanctioned posts or where the persons appointed do not possesses the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

21. As could be seen from various orders produced by both sides, it is evident that the petitioner's appointment is neither illegal nor irregular. The Hon'ble Supreme Court also held that a duty cast upon the concerned Government or instrumentality to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of Courts or Tribunals, as a one-time measure. As stated supra, the petitioner's initial appointment as adhoc teacher or substitute teacher, as the case may be, is only after following the due process of law and her initial appointment is not back door entry.

22. The petitioner has established that she has been serving in her respective post till date without any break since her initial appointment by discharging her duties by attending the school. No order for discontinuing the adhoc service of the petitioner has been issued by the respondents till date. The petitioner has been serving in the school in question for 31 years continuously under the fond hope that one day her services would be regularized. However, for the past 31 years, the petitioner has not seen the light of the day.

23. The petitioner contended that she has been serving in her post without pay and allowances with effect from 1.3.2007 till date. However, nothing has been produced to establish the non-payment salary and allowances to the petitioner. Anyhow, it is for the respondent State to look the said issue and pay the entitled salary for the period in which she has not been paid salary.

24. The Commissioner, Education (S), Government of Manipur cannot simply say that the petitioner is unfit for regularization to the post in which she is still working as adhoc/substitute teacher, as it is not the case of the respondent State that the petitioner is not qualified to hold the said post. Nothing has been produced by the respondent to show that there is lack of fulfillment of requisite qualification as per the applicable rules and the initial appointment of the petitioner is in violation of the rules for public recruitment. In the absence of any such contra evidence, it is to be concluded that the petitioner has made out her case.

25. For all the reasons stated above, the writ petition is allowed. The first respondent is directed to review its order dated 11.10.2018 in respect of the petitioner and to regularize the petitioner in her adhoc service by linking up her service period with retrospective effect as has been done in respect of other adhoc employees of other Departments. The respondents are also directed to pay the entitled pay and allowances to the petitioner for the unpaid period. The aforesaid exercise is directed to be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom