

IN THE HIGH COURT OF MANIPUR AT IMPHAL

W.A. No. 64 of 2023 With MC(WA) No. 118 of 2023

Ningthoujam Ibemcha Devi, aged about 50 years, W/o Hijam Apabi Singh, resident of Khoyathong Polem Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. 795001.

... Appellant/Applicant

- Versus -

1. The State of Manipur represented by its Commissioner (Hr. & Tech. Edn.), Government of Manipur having its Officer at Secretariat Building, Babupara, New Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur Pin 795001.
2. The Director (Hr. & Tech. Edn.), Government of Manipur, Nityaipat Chuthek, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin 795001.
3. The Secretary, Manipur Public Service Commission, North AOC, D.M. Road, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin 795001.
4. The Principal Accountant General (A&E), Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin 795001.

... Respondents

B E F O R E

**HON'BLE THE ACTING CHIEF JUSTICE MR. MV MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the appellant/applicant : Mr. N. Ibotombi, Sr. Advocate.
For the respondents : Mr. Kh. Athouba, G.A.; and
Ms. O. Momota, Advocate for
respondent No. 3.
Date of Hearing : 31.08.2023
Date of Judgment & Order : 13.09.2023.

JUDGMENT AND ORDER (CAV)

A. Guneshwar Sharma, J.

[1] Heard Mr. N. Ibotombi, learned senior advocate assisted by Md. Shahidur Rahman, learned counsel for the appellant/applicant; Mr. Kh. Athouba, learned G.A.; and Ms. O. Momota, learned counsel for respondent No. 3.

[2] MC(WA) No. 118 of 2023 is filed by the applicant/appellant herein for dispensing filing of the certified copy of the impugned order dated 28.08.2023 in W.P. (C) No. 603 of 2023. It is stated that the applicant have filed W.P. (C) No. 603 of 2023 and vide impugned order dated 28.08.2023, the learned Single Judge issued notice to the respondents, returnable on 27.09.2023 and it is recorded in the impugned order that pendency of the writ petition shall not bar the respondents from considering and disposing the representation submitted by the petitioner. WA No. 64 of 2023 is filed by the appellant herein. It is stated that the applicant applied for the certified copy of the order dated 28.08.2023 but the same is not issued by the Registry

and accompanying writ appeal has been filed along with a digitally signed true copy of the impugned order issued by the Registry. It is prayed that the appellant be dispensed from filing the certified copy of the impugned order as there is urgency in the writ appeal. Mr. N. Ibotombi, learned senior counsel, prays that the application be allowed.

[3] Mr. Kh. Athouba, learned G.A. for the State; and Ms. O. Momota, learned counsel for the MPSC, have no objections.

Recording this statement and in the interest of justice, the application is allowed.

[4] Mr. N. Ibotombi, learned senior counsel for the appellant, submits that she has filed writ petition being W.P. (C) No. 603 of 2023 with an interim prayer to pass an order not to make finalization of the absorption of other incumbents or not to apply clause 7 of the impugned notification dated 07.03.2019 in the case of the petitioner/appellant. It is stated that the Commissioner (Hr. & Tech. Edn.), Government of Manipur issued an order dated 07.03.2019 with respect to taking over of 6(six) Aided Colleges including Biramangol College, Sawombung, wherein the appellant has been serving as Assistant Professor since 1997 in Geography Department. By the said order, the Governor of Manipur was pleased to appoint 478 teaching and 163 non-teaching employees of the erstwhile aforesaid 6 Aided Colleges into Government Service w.e.f. 22.02.2019 subject to the condition that their final absorption into respective grades of the concerned Government posts would be made in accordance with the recommendation of the MPSC

pertaining to the suitability of the appointments, service conditions and inter-se-seniority in the concerned grades. In para 7 of the order dated 07.03.2019, it is stated that they shall remain at their respective place of posting until further orders. In terms of the order dated 07.03.2019, the Principal of Biramangol College, Sawombung, submitted the list of Staffs of Biramangol College, Sawombung, for final absorption to the authority by a communication dated 27.01.2020 wherein the name of the writ petitioner/appellant appears at Sl. No. 28. Thereafter, the appellant was transferred and posted by an order dated 05.07.2021 from Biramangol College, Sawombung and she challenged the same by filing writ petition being W.P. (C) No. 572 of 2021 for staying the operation of the transfer order dated 05.07.2021 invoking clause 7 of the order dated 07.03.2019. During the pendency of the writ petition being W.P. (C) No. 572 of 2021, the appellant/petitioner was transferred and posted vide another order dated 09.12.2022. The writ petitioner was transferred and posted at N.G. College, Lamphelpat. In view of the subsequent development, vide order dated 16.02.2023, the writ petition was dismissed as withdrawn with liberty to file a fresh one, if so advised. The appellant/writ petitioner learnt from reliable source that the State Authorities is resorting to clause 7 of the impugned order dated 07.03.2019 for dropping the name of the petitioner from the list of Staff of Biramangol College, Sawombung before forwarding to MPSC for recommendation. Then the appellant/writ petitioner filed another writ petition being W.P. (C) No. 603 of 2023 inter alia praying for quashing clause 7 of the impugned order dated 07.03.2019 which provides that the

incumbent shall remain posted at respective place of posting until further orders. Vide order dated 28.08.2023, learned Single Judge issued notice to the writ petition, returnable on 27.09.2023 and observed that pendency of the writ petition shall not bar the respondents from considering and disposing of the representation submitted by the petitioner. The appellant submitted a representation dated 21.08.2023 to the Commissioner (Higher and Tech. Education), Government of Manipur, requesting to transfer and posting back her to the original college, Biramangol College, Sawombung so as to avoid complicity due to the existence of clause 7 of the order dated 07.03.2019 and the representation is still pending before the authority. Being aggrieved by the impugned order dated 28.08.2023, the appellant filed the present appeal amongst on the ground that without any interim order, the case of the appellant will remain unattended and it may take longer time in getting her case of final absorption to be considered by the authority. It is prayed to quash and set aside the aggrieved portion of the impugned order dated 28.08.2023 to the extent that the pendency of the writ petition shall not bar the respondents from considering and disposing of the representation submitted by appellant.

Prayer in the writ appeal is reproduced below:

- i) to admit this Writ Appeal and call for records;
- ii) to quash and set aside the aggrieved portion of the impugned order to the extent that the pendency of the Writ Petition shall not bar the respondents from considering and disposing the representation submitted by the appellant.
- iii) to grant the interim order to the extent that not to make finalization of absorption of other incumbents or not to apply

clause 7 of the impugned order in writ petition in case of the appellant.

- iv) to pass any appropriate order & direction which the Hon'ble Court may deem fit & proper to meet ends of justice.

[5] Mr. N. Ibotombi, learned senior counsel for the appellant, submits that the aggrieved portion of the impugned order be set-aside and this Court may pass appropriate interim order and the writ appeal may be disposed of at the motion stage.

[6] Mr. Kh. Athouba, learned GA for the State; and Ms. O. Momota, learned counsel for the MPSC, submit that the present appeal is not maintainable as the impugned order dated 28.08.2023 is not an appealable order as nothing adverse is held against the petitioner. In fact, the impugned order is in favour of the appellant and the learned Single Judge issued notice to the respondents and gave liberty to the respondents for disposing the representation submitted by the petitioner notwithstanding the pendency of the writ petition. It is prayed that the writ appeal be dismissed as the same is not maintainable in the present form.

[7] We have heard the learned counsel for the parties. On bare perusal of the impugned order dated 28.08.2023 passed by the learned Single Judge in W.P. (C) No. 603 of 2023, this Court does not find anything against the appellant/petitioner, rather the order is in her favour. Notice was issued to the respondents, returnable on 27.09.2023 and it was also observed that pendency of the writ petition would not bar the respondents from considering and disposing of the representation submitted by the

petitioner. In her representation dated 21.08.2023, the petitioner prayed for reposting in her original college i.e. Biramangol College, Sawombung in compliance of the clause 7 of the order dated 07.03.2019 which stipulates that the incumbent shall remain at the respective place of original posting until further orders. The prayer in the writ petition is for quashing clause 7 of the order dated 07.03.2019 and also for direction to consider and dispose of the representation dated 21.08.2023 and in the interim it is prayed for passing an order not to make finalization of absorption of other incumbents or not to apply clause 7 of the impugned order in case of the petitioner till the pendency of the writ petition. This Court is of the view that the impugned order does not reject the prayer for interim order as submitted by Mr. N. Ibotombi, learned senior counsel for the appellant. Rather liberty was given to the respondents to dispose of the representation of the appellant which is one of the prayers in the writ petition. Moreover, this Court is of the view that the impugned order dated 28.08.2023 is not an appealable order within the meaning of Section 2(14) of CPC which provides that order means the formal expression of any decision of a Civil Court which is not a degree. In the present case, the learned Single Judge did not express any formal expression of any decision with respect to all the prayers made in the writ petition. It is an innocuous order of issuing notice to the respondents and giving liberty to the respondents to dispose of the representation submitted by the appellant notwithstanding the pendency of the appeal. It is settled provisions of law that the principles embodied in CPC is also applicable in the proceedings of writ petition and writ appeal. We are of the view that the writ

appeal is not maintainable in the present form as the appellant is not aggrieved by the impugned order which is in the form of issuing notice to the respondents and giving liberty to dispose of the representation of the appellant. One of the prayers, prayer No. 4 in the writ petition is for a direction to consider and dispose of the representation dated 21.08.2023 submitted by the appellant within a time frame by a speaking order. In any case, the appellant is not aggrieved by any portion of the impugned order dated 28.08.2023 passed by the learned Single Judge, nor the prayer for the interim relief being rejected by the impugned order. We are of the view that the impugned order dated 28.08.2023 does not fall within the meaning of order as defined in Section 2(14) of CPC. Hence, reading together Chapters 3 & 4 of the High Court of Manipur Rules 2019, the writ appeal is dismissed as not maintainable. However, it is clarified that the appellant may agitate the prayer for interim relief before the learned Single Judge and also other grounds in the writ appeal. It is clarified that this Court does not express any opinion on the merit of the case except for considering maintainability of the writ appeal.

[8] With these observations, writ appeal is disposed of.

[9] No costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Indrajeet