

Serial No. 02
Supp. List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 38 of 2020

Date of Judgment: 02.05.2023

Professor Jeffreyson Wahlang Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K.Tiwari, Sr. Adv. with
Mr. S.P.Sharma, Adv.

For the Respondent(s) : Mr. H.Abraham, GA for R 1 & 3.
Mr. K.Paul, Sr. Adv. with
Mr. S.Chanda, Adv. for R 2 & 4.
Mr. H.L.Shangreiso, Sr. Adv. with
Ms. E.Wanniang, Adv. for R 5.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. The brief facts of the case are that the petitioner who was appointed as an Assistant Professor against a government sanctioned post,

while on probation was relieved of his duties, as after review of his probation period by the Governing Body, his services were not confirmed. The dispensation of the services of the petitioner it has been alleged, was because he had been found participating in demonstrations, which however has been resisted by the respondents, who maintain that the decision to relieve the service of the petitioner was termination simpliciter and not a stigmatic one, as it was based on an overall assessment of his service.

2. The petitioner then made a representation before the respondent No.3 on 01-07-2019 seeking redressal of his grievances which was followed by other detailed representations on 10-10-2019 and 22-10-2019 on the same issue. As the matter remained unresolved, the petitioner is before this Court assailing the impugned communication dated 28-06-2019, whereby he has been relieved of his duties.

3. Mr. P.K.Tiwari, learned Senior counsel assisted by Mr. S.P.Sharma, learned counsel submits that the impugned communication dated 28-06-2019, issued by the respondent No.4, stating that the petitioner's period of probation was reviewed by the Governing Body and decision arrived that the petitioner be relieved from his duties, is violative of Rule 7 of the Assam Aided College Employees Rules, 1960 (hereinafter referred to as Rules of 1960) which were applicable on the

same being adopted by the Government of Meghalaya. It is further submitted that the Governing Body, lacked jurisdiction to take such decisions as its composition is also contrary to rules, and the discharge of the petitioner under Rule 8 (a) of the Rules is to be read in harmony with Rule 7, wherein discharge of the petitioner cannot be treated to be one made at the end of the period of probation. It has also been contended that the decision is also violative of Rule 23(10) of the Meghalaya Deficit Aided Colleges Management Rules, 2013 (hereinafter referred to as Rules of 2013) which provides that the Governing Body is to adhere to all procedures prescribed under the relevant Employee Rules, in the matter of dismissal of any incumbent holding a post under the Deficit Funding System.

4. The learned Senior counsel has further submitted that the act attributed to the petitioner in the letter of the respondent No.4, and in the letter of the respondent No. 2 (Principal) to the respondent No.3, is not a misconduct within the meaning of the Rules regarding conduct and discipline of the employees of Aided Educational Institution, contained in the Rules of 1960 most specifically Rule 2, 5 and 6 read with Rule 38 of the Rules of 2013. It has been strongly contended that when the appointment of the petitioner had the approval of the Government, the termination of the same, could only be with the approval of the

Government. Learned Senior counsel has referred to the Annexures contained in the affidavit-in-opposition to substantiate this point, especially letter dated 03-07-2019, and the Minutes of the meeting dated 04-07-2019, wherein the respondents, had directed that the petitioner to be given a show cause, and that he be allowed to continue on probation for one more year.

5. Learned Senior counsel concludes his arguments by submitting that the respondent No. 4, a body which is subordinate to the final authority of the Government, could not have dispensed with the services of the petitioner without due approval, and the impugned letter of termination is unsustainable in law, being punitive in nature, and made in violation of the principles of natural justice, and the Rules holding the field and as such, is liable to be interfered with by this Court.

6. Mr. K.Paul, learned Senior counsel assisted by Mr. S.Chanda, learned counsel on behalf of the respondent Nos. 2 and 4, has at the outset raised questions on the maintainability of the writ petition, and has drawn the attention of the Court to the averments made in the writ petition itself, wherein the petitioner has stated that the appeal/representation filed by him ought to have been allowed, instead of being kept pending. He submits that the appeal, was preferred on 10-10-2019 and the instant writ petition was filed on 04-02-2020, before any decision had been arrived at

by the respondent No. 1 and 3. The appeal, he submits which was filed by the petitioner under Rule 12 (ii) of the 1960 Rules, which is the cause of action according to the writ petitioner, for filing of the instant writ petition, having not yet been decided, the writ petition is therefore premature.

7. It has been also submitted that the fact that no decision has been taken cannot be disputed inasmuch as, the State respondents had requested for documents to show case the evaluation process, notices or any memorandum issued to the writ petitioner to enable them to consider the matter, and no decision has been forthcoming till date. With regard to the power of confirmation or non-confirmation of an employee in service, the learned Senior counsel submits that as per Rule 23 (11) of the Rules of 2013, the Governing Body is vested with the power of confirmation of employees whose salaries are borne by the Government under the Deficit Funding System of Aided Colleges, and as such, for non-confirmation of the services of the petitioner, no approval is required from the State respondents. Reference has also been made to the affidavit of the State respondents, which he submits at para 5 it is averred that, appointments to such posts are not done by the State Government and autonomy in this regard is given to the Governing Body.

8. On the point that the Governing Body has not been constituted as per rules and therefore the impugned order was without jurisdiction, the learned Senior counsel submits that there is no hard and fast rule that the Principal has to be only the Secretary in the Governing Body, and has referred to Rule 4 (vi) and (vii) of the Rules of 2013. He submits that the petitioner's service on probation being found unsatisfactory on an overall assessment, the Governing Body was well within its rights as the appointing authority to not confirm the services of the petitioner. The learned Senior counsel has also reiterated the point that the college exercises autonomy in such matters, where the post of the petitioner does not fall under the Government, but is only aided by the Government with the College Governing Body being the appointing authority.

9. The learned Senior counsel then submits that Article 311, is not applicable to probationers as long as the order of termination is not stigmatic. The order of relieving the petitioner from his duties from the post of Assistant Professor he submits, is an order simpliciter, which does not even say termination from services. The question of regularization of the petitioner he contends, is not permissible and apart from the writ petition being premature, the prayer of the petitioner as contained in the writ petition is untenable, apart from being directed against a private body that does not come within the definition of Article 12 of the Constitution

of India. He therefore, submits the petition being without any merit is liable to be dismissed.

10. Mr. H. Abraham, learned GA on behalf of respondent Nos. 1 & 3 as per his affidavit, submits that approval was not accorded as no show cause was issued and further that the period of probation being over two years, the petitioner should have been subjected to continuous evaluation processes in intervals, and if these processes found him wanting in his performance, requisite advisories should have been issued to him. With regard to non-disposal of the appeal, the learned GA has not made any submissions.

11. Mr. H.L.Shangreiso, learned Senior counsel assisted by Ms. E.Wanniang, learned counsel on behalf of the respondent No.5, which is the Meghalaya College Teachers Association, St. Edmund's Unit, has submitted that the writ petitioner is not guilty of any misconduct nor had violated any professional ethics, and that the respondent College was expected to adhere to and follow the due process of law when it comes to taking adverse action against any employee.

12. I have heard learned counsel for the parties. The basic underlying fact in the instant case, is that the petitioner was still under probation when he was relieved of his duties by the respondent College, and as such, the rights and conditions of service that accrue to a probationer has

to be examined against the action taken by the respondent College together with the relevant Rules governing the situation.

13. The impugned letter dated 28-06-2019 conveying the decision of the Governing Body of the College taken on 26-06-2019, has simply stated that in an overall assessment of the period of probation, it had been unanimously decided, not to confirm the services of the petitioner as Assistant Professor. An attempt had been made by the petitioner, to make out a case, that the discharge as per Rule 8 (a) of the 1960 Rules, during or at the end of the period of probation, should be read together with the proviso to Rule 7, that reads that 'end of probation' should also include a one year extension, thereby to mean that the period of probation has not ended, does not seem to be tenable. For easy reference, Rule 7 and 8 of the Rules 1960 are reproduced herein below:

“7. Probation – All persons appointed in aided college shall be on probation for a period of two years subject to the production of medical certificate as may be prescribed:

Provided that in the event of unsatisfactory work or conduct during the period of probation for which written warning was given to a probationer, or in the event of failure to pass examination or training or test if so prescribed, the period may be extended by another year.

8. Discharge of a Probationer – A probationer will be liable to discharge from the service –

(a) *If he/she fails to give satisfaction during or at the end of the period of probation.*

- (b) *If on any information received relating to his/her nationality, age, health, character and antecedents, the Appointing Authority is satisfied that the probationer is ineligible or otherwise unfit for holding the appointment.”*

A bare perusal of these two Rules read together cannot be said to vest the writ petitioner with a right to automatic extension of the probation period, inasmuch as, the proviso to Rule 7 is not mandatory and the word ‘may’ is used. As such, in the absence of any extension, the petitioner cannot be said to have not been discharged at the end of the period of probation.

14. The respondent College, is an Aided College under the deficit funding system, and in this regard the Rules of 2013, has laid down the manner of confirmation of employees whose salaries are borne by the Government under this system, and provides that such employees were to be confirmed by the Governing Body after a normal probation period of two years. The relevant Rule i.e., Rule 23 (11) of the 2013 Rules is reproduced herein below:

“23. The following particular duties are assigned to the Governing Body.

(11) Employees whose salaries are borne from Government under the deficit funding system under Aided Colleges will be confirmed by the Governing Body after a normal probation period of two years

subject to observing all formalities under prescribed rules.”

15. The writ petitioner by the operation of the above quoted Rule therefore is subjected to confirmation by the Governing Body of the College, and in view of this autonomy given by the Rules, the decision to discharge or confirm the services of a probationer, would rest at the level of the Governing Body itself.

16. The services of the petitioner as noted earlier, were on probation and as observed above, the confirmation of his services rest with the Governing Body. The impugned order which was issued at the end of the probation period, does not impute any misconduct and as such, the same does not cast any stigma nor can be held to be punitive in nature, but is of termination simpliciter. In such cases therefore, wherein the termination of service has been made as per prevailing rules and on being assessed on the overall performance, no opportunity need be given. Furthermore, being a matter of purely subjective satisfaction, the impugned order will therefore not be violative of Articles 14, 16 and 311 of the Constitution of India. In this context, it would be beneficial to refer to the judgment of the Supreme Court in the case of ***Registrar, High Court of Gujarat & Anr. Vrs. C.G.Sharma*** reported in (2005) 1 SCC 132, wherein at paragraphs 43, 44 and 47 it has been held as follows:

“43. But the facts and circumstances in the case on hand are entirely different and the administrative side of the High Court and the Full Court were right in taking the decision to terminate the services of the respondent, rightly so, on the basis of the records placed before them. We are also satisfied, after perusing the confidential reports and other relevant vigilance files, etc. that the respondent is not entitled to continue as a judicial officer. The order of termination is termination simpliciter and not punitive in nature and, therefore, no opportunity needs to be given to the respondent herein. Since the overall performance of the respondent was found to be unsatisfactory by the High Court during the period of probation, it was decided by the High Court that the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of Articles 14, 16 and 311 of the Constitution. The law on the point is crystallized that the probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Under the relevant Rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and in that view of the matter, the contentions of the respondent that the respondent’s services were deemed to have been continued on the expiry of the probation period, are misconceived.

44. This Court, in the judgment in the case of Wasim Beg v. State of U.P. while considering the confirmation and its scope held as under:

“15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in

the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with State of Punjab v. Dharam Singh, M.K. Agarwal v. Gurgaon Gramin Bank, Om Prakash Maurya v. U.P. Coop. Sugar Factories Federation, State of Gujarat v. Akhilesh C. Bhargav.”

47. In our opinion, what is to be considered in such matters is the examination of overall entries of the officer concerned and not the entry here and there. It may well be in some cases that in spite of satisfactory performance still the authority may desire to not to extend the probation of an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person. There is no denying of the fact that in all organisations there is a great deal of dead wood and, more so in government and judicial departments, which has to be replaced in public interest. Therefore, as pointed out by many courts in India and by this Court, it is purely a matter of subjective satisfaction of the High Court. In such case, the record so considered would naturally include the entries in the confidential reports/character rolls/vigilance reports, both favourable and adverse. There cannot be any justification for interference by this Court in such cases.”

17. Another aspect of the matter, is with regard to the pendency of the appeal filed by the writ petitioner under Rule 12 (ii) of Rules of 1960 before the respondent No. 3. The pleadings in the writ petition at paras 23

and 31 has in effect surrendered the recourse taken before the appellate forum as provided by the rules, inasmuch as, the statements made therein has also impugned the failure on the part of the said respondent to allow the appeal and that the inaction by the respondent, as per the writ petitioner has resulted in the miscarriage of justice. The instant writ petition being on the same cause of action as the appeal, and considering the rules applicable and the facts and circumstances of the case, the petitioner having elected to resort to an application under Article 226, inspite of the pendency of the appeal, it cannot be said that the instant petition is premature.

18. The other contentions raised by the petitioner, such as the impugned decision being passed by a Governing Body which has not been duly constituted and that the termination of services, not being as per Rule 2, 5 and 6 of the Rules of 1960 read with Rule 38 of the Rules of 2013, do not deserve any detailed consideration by this Court, inasmuch as, the show cause notice dated 10-06-2020, brought on record by an additional affidavit filed by the petitioner, is not supported by any other materials, apart from the fact that the same, is not in consonance or provided in the Rules of 2013, especially on the point that the Principal of the College should be the Secretary, whereas the Rules at Rule 4 (vi) and (vii) speak otherwise, and allows the Principal to be nominated as Joint

Secretary or even Secretary. On the latter point raised, that the conduct of the petitioner does not come within the conditions given in Rule 2, 5 and 6 of the Rules of 1960 under the heading ‘Rules regarding Conduct and Discipline of the Employees of Aided Educational Institution’, read with Rule 38 of the Rules of 2013 to constitute misconduct, an examination of these Rules which are quoted hereafter, reveals that these provisions are not attracted or applicable in the instant case.

*“2. **Conduct** – No employee shall, except with the previous sanction of the Director of Public Instruction engage in any trade or accept any private employment except private tuition subject to a maximum of two hours a day:*

Provided that an employee may undertake honorary work of a social and charitable nature subject to the condition that his normal duties do not thereby suffer, but he/she shall not undertake and shall discontinue such work if so directed by the Managing Committee.

5. No employee shall publish or cause to be published, in his own name or anonymously or contribute to the Press any matter which is likely to lead to academic indiscipline or promote defiance of authority.

6. No employee shall offer himself as a candidate for election to a Legislative Body or for holding office of any political organization except in accordance with provisions of Rule 7:

Provided that an employee may seek election as an independent candidate of a panchayat with the previous approval of the Managing Committee as the case may be but he shall not be entitled to accept any office thereunder except in accordance with the provisions of Rule 7.

38. The Governing Body shall ensure that its employees refrain from any agitation directed against the Government and its agencies. The Governing Body may deal with any indiscipline in the college and to seek that the academic performance of the college is not affected by any situation that may arise due to strikes and non-cooperation movements.”

19. Accordingly, in view of the discussions and observations as made above, the impugned order suffers from no infirmity and the writ petition stands dismissed.

20. No orders as to costs.

Meghalaya
02.05.2023
“Samantha PS”



Judge