

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 116 of 2017

Date of Decision: 09.08.2023

Shri. Ramnidawan Suchiang Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S. Dey, Adv. Mr. S. Deb, Adv.
For the Respondent(s)	:	Mr. K.P. Bhattacharjee, GA. for R 1-4. Mr. K.Ch. Gautam, Adv. Ms. C.B. Sawian, Adv. for R 5, 6 & 9. None for R 7 & 8.

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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. An advertisement appeared on 15.05.2016 in a Local Newspaper, 'Mawphor' issued by the Secretary, Saba Non-Government L.P. School, West Jaintia Hills District indicating that a vacant post of Assistant Teacher was required to be filled-up and for which, qualified applicants fulfilling NCTE norms can apply for the same, the last date for receipt of such applications being 27.05.2016 and the date of Interview being fixed on

30.05.2016.

2. The petitioner herein accordingly applied for the same, claiming to be qualified in all respects to be considered for such appointment. On 30.05.2016, the personal interview was held at the office of the respondent No. 5, the Secretary of the School Managing Committee. According to the petitioner, six candidates appeared during the said personal interview and on 03.06.2016, the result of the said interview was published with the petitioner securing the first position scoring 69 marks out of 100. One Chanki Sumer who scored 68 marks was placed at Sl. No. 2 and kept in the Waiting List. The respondent No. 9, who also appeared in the said interview, was placed at serial number 4 in the merit list.

3. The Managing Committee, vide communication dated 11.06.2016 addressed to the respondent No. 4, the Sub-Divisional School Education Officer, Jowai, West Jaintia Hills has sought approval for the appointment of the petitioner on the basis of the result of the selection process. Copy of such letter is annexed as Annexure-10 of this petition. The respondent No. 7, the Headman of the Dorbar Shnong, Saba Village has also written to the respondent No. 4 on 02.02.2017 requesting him to appoint the petitioner at the earliest.

4. The respondents No. 5 and 6 vide letter dated 16.03.2017, has informed the respondent No. 9 that she has been declared as the successful

candidate for the post of Assistant Teacher in the said Saba Non-Government L.P. School and was accordingly issued the appointment letter.

5. Terming the said appointment of the respondent No. 9 as highly illegal, arbitrary, tainted by malafide or oblique consideration and therefore not fair, the petitioner has approached this Court by way of this instant writ petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus by declaring the said appointment letter dated 16.03.2017 as illegal and unconstitutional and therefore liable to be quashed.

6. Mr. S. Deb, learned counsel for the petitioner submitting that the petitioner is able to make out a case of gross violation of natural justice, arbitrariness and blatant irregularity, thereby depriving him of his right to be appointed as an Assistant Teacher of the said Saba Non-Government L.P. School, has referred to the entire process to say that till the stage where the Managing Committee on being satisfied that the petitioner has secured the first position in the merit list on the basis of the interview conducted, he was accordingly recommended to be appointed.

7. However, as pointed out, without any rhyme or reason, the respondent/Managing Committee has issued the impugned letter dated 16.03.2017 appointing the respondent No. 9 who, apparently stood at serial No. 4 in the select list in order of merit and was not even placed in the

Waiting List as far as the selection process and the result of the interview dated 03.06.2016 is concerned.

8. It is also the submission of the learned counsel that without the earlier selection process being scrapped or cancelled and, if it is done so, without informing the petitioner of the same, the respondent/Managing Committee, as has been pleaded in their affidavit-in-opposition has taken the decision to reconduct the interview on 09.12.2016, for which advertisement was floated on 07.12.2016 and the respondent No. 9 was found qualified for the said post. Therefore, there is gross violation of natural justice as far as the petitioner is concerned.

9. The learned counsel has also submitted that the respondent/Managing Committee in their affidavit-in-opposition has stated that in the interview wherein the petitioner and five others took part, that is, on 30.05.2016, there were present some members of an NGO called the Jaintia National Union (JNU) who, after the interview had allegedly taken the interview scoresheet with them and have not returned the same to the Managing Committee in spite of request made, even in writing. This contention cannot be accepted as there is no evidence of any members of such Organisation being present on the said date and even, if such an incident had happened, it would be incumbent upon the Managing Committee to take necessary steps even to the filing of an FIR in this

regard, but not having done so, therefore, the statement made in this regard cannot be accepted.

10. Again, to say that the said scoresheet was surreptitiously taken away by the members of the said Organisation cannot be accepted, submits the learned counsel as the Managing Committee vide letter dated 11.06.2016 addressed to the respondent No. 4 has sought for approval to the appointment of the petitioner and in such communication, the scoresheet was also annexed thereto.

11. In view of the submission made, the learned counsel for the petitioner has made a prayer before this Court that the second selection process by which the respondent No. 9 was declared selected and duly appointed, should be scrapped and the selection process wherewith the petitioner was declared successful should be retained and appointment may be accorded to the petitioner.

12. Ms. C.B. Sawian, learned counsel for the respondent No. 5 and 6/School Managing Committee and also for the respondent No. 9 has submitted that there is no denying the fact that the petitioner along with five other candidates appeared for the interview conducted on 30.05.2016 pursuant to the selection process on the basis of the advertisement dated 15.05.2016.

13. The learned counsel has however submitted that when the

interview was conducted by the School Managing Committee, some members of the JNU and the Sordar/Headman of the village were also part of the interview board. It is reiterated that after the interview was conducted, the members of the JNU took the interview sheet with them and as such, the result of the said interview could not be declared. The Managing Committee has also addressed a letter dated 30.09.2016 to the Secretary of the JNU requesting that the said interview sheet be handed over to the Managing Committee, but it was not done so.

14. It is further submitted that faced with this situation, the Managing Committee in its meeting held on 23.11.2016 at the residence of the Village Secretary took a decision to reconduct the interview on 09.12.2016 for which an advertisement dated 07.12.2016 was issued. In the said advertisement, application was invited from applicants having 45% marks in HSSLC with D.El.Ed as the required qualification.

15. The decision to reconduct the interview was also intimated to the respondent No. 4 vide letter No. SBNGGLPS/INTR/2016-17/3 dated 01.12.2016. Accordingly, the interview was conducted on 09.12.2016 in which the respondent No. 9 was found qualified for the said post. On 12.12.2016, the School Managing Committee met in a meeting and decided to approve the name of the respondent No. 9, for which a letter of even date was sent to the respondent No. 4 seeking approval of such recommendation.

The respondent No. 4 on 14.03.2017 vide letter No. SDSEO/PRY/NGS/APPV-69/2016-17/13792 dated 14.03.2017 has given the necessary approval for appointment of the respondent No. 9 as Assistant Teacher in the said Saba Non-Government L.P. School. The Managing Committee in response to such approval has issued the appointment letter dated 16.03.2017.

16. On the contention of the petitioner that the respondent/School Managing Committee has recommended the name of the petitioner for appointment to the said post, the learned counsel has submitted that the respondent/School Managing Committee was forced by the respondent No. 7 along with members of the JNU to forward the said letter to the respondent No. 4. However, the learned counsel has submitted that a facsimile of the said letter dated 11.06.2016 would show that it is a prepared format with the name of the petitioner being noted by hand.

17. The learned counsel has also submitted that the respondent No. 9 in her affidavit-in-opposition has contended that the School Managing Committee had never declared the result of the interview conducted on 30.05.2016 and as such, the process for issuance of a fresh advertisement on 07.12.2016 and the consequent interview held on 09.12.2016, the said respondent being called for the same and on being declared successful, the receipt of the appointment letter issued by the School Managing Committee

cannot be doubted by the said respondent No. 9. The fact that the result of the first round of interview conducted on 30.05.2016 was never declared was also the stand of the respondent/School Managing Committee.

18. The learned counsel has again stressed on the fact that the respondent No. 9 was appointed on the basis of a fresh advertisement issued and after proper interview was conducted and further, since her name was recommended and approved by the competent authority, that is, the respondent No. 4, therefore, there is no illegality or arbitrariness in the process. The same may not be disturbed by this Court.

19. It is further submitted that the respondent No. 9 has been functioning in the post for the last six years or so and since the petitioner has not been able to convince this Court for stay of such appointment, at this juncture, the respondent No. 9 has acquired a legal right to function in the said post. In this regard, the judgment dated 08.09.2022 passed by this Court in the Division Bench in the case of *Pynskhemlang Nongrang vs. The Directorate of Soil and Water Conservation & Ors. in WA No. 26/2022* was referred to, in support of this contention.

20. Mr. K.P. Bhattacharjee, learned GA appearing on behalf of the respondents No. 1-4, particularly for respondents No. 2 and 4 respectively has submitted that para 5 of the affidavit-in-opposition filed by these respondents dated 16.08.2019 would be relevant to the issue before this

Court.

21. The learned GA has submitted that as far as the competent authority is concerned, firstly, the said letter dated 11.06.2016 said to be the prayer made by the respondent/School Managing Committee for approval of the appointment of the petitioner herein, the same has never been received by the office of the respondent No. 4. The respondent No. 4 has, however, received a letter dated 14.12.2016 issued by the Headman of Saba Dorbar Shnong with a request for approval for appointment of the petitioner to the said post. Another letter dated 12.12.2016 issued by the respondent/School Managing Committee was also received by the respondent No. 4 wherein approval was sought for appointment of the respondent No. 9 herein as an Assistant Teacher of the said Saba Non-Government L.P. School.

22. The respondent No. 4 has then addressed a letter dated 19.01.2017 to the respondent/School Managing Committee mentioning the two proposals that was received by the respondent No. 4 to which the School Managing Committee vide letter dated 03.02.2017, has clarified that the only valid proposal is with regard to the proposal for appointment of respondent No. 9 and the other proposal is to be treated as cancelled. The learned GA has submitted that it was on this basis that the approval by the respondent No. 4 to the appointment of the respondent No. 9 was accorded.

23. This Court has taken into account pleadings of the parties as well as the submission made. At the outset, however, it may be recorded that the respondents No. 7 and 8 respectively have failed to join proceedings herein and accordingly, the matter has proceeded exparte against them.

24. Facts as enumerated above, need not be repeated except to emphasise a point. The selection process initiated in the first instance got underway with the issuance of the advertisement dated 15.05.2016, wherein six applicants were found to be fit for the interview and were accordingly, called for the same on 30.05.2016.

25. The petitioner has contended that on the basis of the result of the said interview published on 03.06.2016, copy of which is annexed as Annexure-9 in this petition, he was shown to figure at serial No. 1 scoring 69 out of 100 marks with the remark that he is qualified. However, this result sheet was disputed by the respondent/School Managing Committee when it was contended that no results have been declared as regard the interview dated 30.05.2016. This is certainly a dispute of facts which this Court may not have the competency to confirm since the relevant records have not been produced by the School Managing Committee. Questions such as how the said copy of the result (Annexure-9) came to be in his possession, whether the same has been published in the newspaper or in the school's notice board or sent individually by post to all the candidates, have

not been fully answered herein.

26. Be that as it may, it is well settled that a successful candidate in an interview or an examination for employment or for filling up vacant post(s) cannot demand to be appointed, even, if his or her name appears in the select list, if such appointment requires approval of a competent authority and in the absence thereof, it cannot be said that appointment to such post(s) is an automatic progression. The petitioner, therefore, cannot claim or demand to be appointed on the basis of the purported result of the said interview.

27. The petitioner has also referred to a letter dated 11.06.2016 said to have been issued by the Chairman and Secretary of the School Managing Committee addressed to the respondent No. 4/Sub-Divisional School Education Officer, wherein by such letter, a prayer was made for approval of the petitioner as an Assistant Teacher in the said school. This letter was denied to have been ever received by the respondent No. 4. Again, this is also a dispute of facts. In any case, since it is incumbent upon the Sub-Divisional School Education Officer to finally accord approval before appointment is made to the post of an Assistant Teacher in the Non-Government L.P. School, if the same has not been done, such successful candidate(s) even, if his/her name appears in the select list, appointment cannot be demanded.

28. Now, coming to the appointment of the respondent No. 9, from whatever is available on record, the pleadings of the parties, particularly that of respondent/School Managing Committee would show that there was a resolution by the school authorities to reconduct the interview on 09.12.2016. This information was sent to the respondent No. 4 on 01.12.2016. Therefore, this would, in effect, mean that the earlier selection process has been cancelled. It is not incumbent upon the concerned authorities to inform the petitioner of such cancellation.

29. A fresh advertisement was accordingly floated on 07.12.2016 in one Local Daily Newspaper 'Mawphor'. There is nothing on record to show as to how many applicants have applied for the said post in response to the said advertisement dated 07.12.2016, however, pursuant to the same, the interview was conducted on 09.12.2016 and the score sheet of the said interview, copy of which was annexed with the affidavit-in-opposition filed by the respondent/School Managing Committee has indicated that only the respondent No. 9 has appeared for the said test and had scored 63 marks for which she was placed first in the list. Apparently, no other candidates have appeared for the said interview, the reason may be that only one candidate has applied for the said post.

30. At this stage, what could be discerned is that the very fact that the advertisement was issued in only one newspaper and that too giving only

one day as an opportunity to the applicants to apply with the date of interview being fixed the next day thereafter speaks volume about the intention of the school authority and arbitrariness and malafide writ large on the face of such proceedings, since the scope to elicit a number of applications from qualified aspirants has been literally shut because of fixation of such a narrow timeframe.

31. It is therefore apparent that there was no fair procedure adopted by the school authorities in this regard since procedural fairness is a safeguard against any arbitrary or malafide action which would in any case invite judicial scrutiny, keeping in mind the provision of Article 14 and 16 of our Constitution.

32. However, in the scenario of the case of the parties herein, the respondent No. 9 cannot be made to suffer for any irregular or illegal action by the school authority, vis-à-vis the said advertisement dated 07.12.2016 and the subsequent process by which she was declared successful and eventually appointed to the said post, albeit, on a temporary basis, since the selection process does not appear to be illegal, but as has been observed was highly irregular.

33. As has been submitted, it is now almost more than six years down the line since that the respondent No. 9 was appointed, there being no stay of her appointment, she is accordingly entitled to equitable relief.

34. The authority cited by the respondent/School Managing Committee, that is, the case of *Pynskhemlang Nongrang* (supra), would indeed be relevant to the facts and circumstances of this case, particularly as regard the appointment of the respondent No. 9. The relevant portion of such judgment is reproduced herein below as:

“26. ...However, once the appointments are firmed up and the appointees are in place for several months, the Court is loath to throw out the appointees. ...However much it appears that the private respondents may have been unfairly selected, yet the private respondents have been occupying the position for some 16 or more months and the appellant herein did not enjoy any interim order since the inception of the writ petition....”

35. In view of the observations made hereinabove, this Court is of the considered opinion that the petitioner cannot make out a case for appointment to the said post of Assistant Teacher, primarily on the ground that there is no approval for his appointment by the competent authority.

36. The appointment of the respondent No. 9 to the said post, at this juncture, cannot be upset.

37. This petition is therefore devoid of merit, the same is accordingly dismissed.

38. Petition disposed of. No costs.

Judge

Meghalaya
09.08.2023
“Tiprilynti-PS”