

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 118 of 2017 with
WP(C) No. 119 of 2017
WP(C) No. 121 of 2017
WP(C) No. 122 of 2017
WP(C) No. 125 of 2017
WP(C) No. 217 of 2017

Date of Decision: 15.09.2023

Shri. Sebastian P. George	Vs.	The Director General Assam Rifles & Ors.
Shri. Arindam Chakraborty	Vs.	The Director General Assam Rifles & Ors.
Shri. Srilekha Das Purkayastha	Vs.	The Director General Assam Rifles & Ors.
Shri. Bharat Prasad Yadav	Vs.	The Director General Assam Rifles & Ors.
Shri. Sanwar Hussain	Vs.	The Director General Assam Rifles & Ors.
Shri. Mekanmi Kengoo & Ors.	Vs.	State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

In WP(C) No. 118 of 2017
In WP(C) No. 119 of 2017
In WP(C) No. 121 of 2017
In WP(C) No. 122 of 2017 and
In WP(C) No. 125 of 2017

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. T. Dkhar, Adv.
For the Respondent(s) : Mr. R. Debnath, CGC (For R 1 & 5)
Mr. N. Syngkon, Adv. (For R 2-4)

In WP(C) No. 217 of 2017

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. T. Dkhar, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA (For R 1&2)
Mr. R. Debnath, CGC (For R 3)
Mr. N. Syngkon, Adv. (For R 4-7)

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

1. Two sets of writ petitions involving the affairs of the Assam Rifles Public School, Society, Laitkor, Shillong and the Assam Rifles Welfare Education Society (ARWES) as respondents have been preferred by petitioners, some of whom are common in both sets of petitions. The same have been filed under Article 226 of the Constitution of India seeking to invoke the writ jurisdiction of this Court.

2. Since the issues raised in these two sets of petitions are inter-related and a decision in one would have a bearing on the other set, therefore, this Court find it convenient to take up both sets and to hear the parties and pass a common order thereon.

3. It may be mentioned that cases in WP(C) No. 118 of 2017, WP(C) No. 119 of 2017, WP(C) No. 121 of 2017, WP(C) No. 122 of 2017 and WP(C) No. 125 of 2017 deals with the issue of transfer of the petitioners therein, while WP(C) No. 217 of 2017 deals with the issue of the alleged amalgamation of ARPS, Laitkor, Shillong with ARWES.

4. Heard Mr. H.L. Shangreiso, learned Sr. counsel for the petitioners who has submitted that the petitioners herein includes teaching and non-teaching staff of the Assam Rifles Public School (ARPS), Laitkor, Shillong who have been serving in the said school for more than a decade and half.

5. The ARPS was established in the year 1980 as a residential and boarding educational institution in the North-Eastern part of India. It is overseen by the Assam Rifles Public School Society, registered under the Societies Registration Act, 1980.

6. The overall administration, supervision and control of the ARPS vests with the Governing Body comprising of the Director General, Assam Rifles as its Chairman and also includes some Assam Rifles Officers and Government Officials.

7. On the other hand, there also exists the Assam Rifles Welfare Education Society (ARWES) which also runs and manage about 41 ARPS schools all over the North-Eastern region with its own Board of Governors along with its independent rules and regulations as far as management of the schools under it are concerned.

8. It is also the submission of the learned Sr. counsel that in terms of the recommendation of the 6th Pay Commission, the teaching and non-teaching staff of the ARPS joined together to lay claim to the same facilities for which a writ petition being WP(C) No. 137 (SH) of 2010 had to be filed before the Shillong Bench of the Gauhati High Court (as this Court then was) for a judicial direction thereof. However, the writ petition was dismissed by an order dated 12.08.2011 passed by a Single Bench of this Court.

9. Against the said order dated 12.08.2011, an intra-court appeal was preferred before a Division Bench of this Court and the same being WA (SH) No. 35 of 2011 was allowed vide order dated 05.09.2012, in effect, directing the concerned authorities to implement the recommendation of the 6th Pay Commission in favour of the teaching and non-teaching staff of the ARPS, Laitkor, Shillong.

10. The school authorities being aggrieved by the said order dated 05.09.2012 went on to file a Special Leave Petition No. 36962/2012 before the Hon'ble Supreme Court which was dismissed on 21.07.2015. Even a Review Petition No. 2799/2015 filed thereafter also failed to yield any result. Eventually, the decision of the court has to be accepted by the school authorities.

11. In a twist in the tale, the ARPS authorities feigning inability to sustain the financial burden cast upon it by virtue of the said order of the Apex Court, had, vide notice dated 30.12.2015 communicated the decision to close down the school w.e.f. 01.04.2016. This again, led to the teaching and non-teaching staff of the said school to approach this Court by way of a writ petition being Writ Petition No. 100 of 2016 challenging the proposed closure.

12. The said Writ Petition No. 100 of 2016 was however, disposed of by an order dated 10.08.2016 upon mutual agreement reached at between the parties therein. The learned Sr. counsel has also submitted that while disposing of the said writ petition, this Court, taking note of the affidavit filed by the respondent/Assam Rifles therein, has observed as under:

“2. That the management of Assam rifles welfare education society as well as the Directorate general of Assam Rifles decided to

withdraw the impugned closure notice dated 30.12.2015 for implementing closure of the Assam Rifles public School Laitkor and the same stands withdrawn for all practical purpose and intents.

3. That it is categorically stated that existing service conditions of the regular permanent employees of Assam Rifles Public School Laitkor, Shillong (Petitioners herein) cannot and will not be changed/alterd as the same has attained finality by orders passed by this Hon'ble court and affirmed by the Hon'ble Apex Court."

13. It is again the submission of the learned Sr. counsel that the petitioners were in for a rude shock when they were served with individual transfer and posting orders issued by the Chairman ARPS, whereby they were directed to report to their place of postings at different Assam Rifles Public Schools under the ARWES.

14. Being aggrieved by such transfer and posting orders, the petitioners has approached this Court by filing separate writ petitions, assailing the said impugned order. While moving the said petitions, the petitioners have also prayed for an interim order and this Court vide order dated 19.05.2017 has accordingly suspended the orders of transfer.

15. The respondent Assam Rifles authorities then preferred an intra-court appeal against the said interim order before the Division Bench of this Court and this Court vide order dated 03.07.2017 in WA No. 22 of 2017 rejected the prayer made.

16. The learned Sr. counsel has further submitted that it is only when the said writ appeal was filed before this Court that the petitioners came to know for the first time that the said transfer and posting orders have been issued on the basis of the relevant ARWES Rules and Regulations following the purported amalgamation of the ARPS Society with the ARWES in terms of a decision taken by the Board of Governors in its

meeting held on 28.09.2016.

17. This was revealed from the affidavit-in-opposition filed by the respondent Assam Rifles in the said writ petitions, whereby the orders of transfer were assailed following which the petitioners were made aware of the sequence of events as they unfolded, wherein the whole process of amalgamation, including obtaining of requisite approval from the Registrar of Societies, Government of Meghalaya has taken place.

18. This then led to the petitioners to file the WP(C) No. 217 of 2017.

19. As to the crux of the matter in issue, the learned Sr. counsel has submitted that the Management Committee of the ARPS Society in its meeting held on 07.09.2016 at Chanakya Hall, HQ DGAR, Laitkor, Shillong has passed a resolution in one of the agenda discussed as regard a proposal to bring ARPS, Laitkor under the management of the Assam Rifles Welfare Education Society (ARWES).

20. The minutes of the Governing Body Meeting of the ARPS Society held on 28.09.2016 was also referred to by the learned Sr. counsel to say that at agenda 4 of the same, the discussion was on the issue of conversion of ARPS, Laitkor, Shillong registration from ARPS Society to ARWES and therein, the direction of the Chairman was noted wherein thereafter, it was unanimously decided that the ARPS Society be amalgamated with ARWES. This decision was taken only by the Governing Body and not by all the members of the ARPS Society, asserts the learned Sr. counsel.

21. Pursuant to the said resolution dated 28.09.2016, on 04.10.2016, the Assam Rifles authority has communicated to the Registrar of Societies, Government of Meghalaya informing him of the decision to amalgamate

the Assam Rifles Public School Society (ARPSS) with Assam Rifles Welfare Education Society (ARWES). In the same communication, it was also requested that the necessary 'No Objection Certificate' for the amalgamation be issued.

22. The Registrar of Societies then vide letter No. SR/ARWES-11/15/315 dated 07.10.2016 addressed to the Deputy Commandant/Administrative Officer, ARWES, has conveyed the approval of the said amalgamation by stating that “...in pursuance to Section 12(b) of the Meghalaya Societies Registration Act XII, 1983, this office **does not have any objection** to the amalgamation of Assam Rifles Public School Society (ARPSS)... with Assam Rifles Welfare Education Society (ARWES)...”. The letter also went on to say that “...as decided by the Governing Body Meeting of both societies held on 28th September, 2016 at Conference Hall, HQ, DGAR”. This, according to the learned Sr. counsel is factually incorrect as there was no meeting of the ARWES on 28th September, whereas the said resolution was made only in the meeting of the Governing Body of ARPS Society.

23. To put into effect the resolution of the ARWES Governor Meeting held on 05.04.2017, amendments were made in the ARWES Rule Book which reads as follows:

*“Consequent to the resolution passed during the **ARWES Governing Body Meet** held on 05 Apr 2017, following addition/alterations have been made in the Rule Book, Chapter 7 under **Article No 85, Sub Paragraph (l) to (m)**:-*

- (a) **Conduct of Suitability Test for all Principals and Teachers.** *Conduct of Suitability Test for all Principals and Teachers of ARPS on an yearly basis. Their extension/retention in service will depend on the result of*

the test. Their performance based on the Boards/Class Result will also be taken into the account.

(b) Inter School (ARPS) transfer of Regular/Permanent.
ARPS Teacher, Inter School (ARPS) transfer of Regular/Permanent ARPS Teacher after every three years regular service at a location.”

24. The Member Secretary, ARWES vide letter No. I.14017/GS(Edn)/ARWES-01/2017/335 dated 21.04.2017 has then informed the Registrar of Societies of the decision taken in the 05.04 2017 meeting of the Governing Body(GB) whereby the said additions were incorporated in the ARWES Rules and Regulations and has also sought inclusion of the same by the Registrar. The Registrar in response, vide letter dated 02.05.2017 has informed the Member Secretary, ARWES of the approval for amendment of the said ARWES Rules and Regulations.

25. By the introduction of the said additional rules and regulations, the learned Sr. counsel has submitted that the service condition of the concerned petitioners is now affected and thus being aggrieved thereto, they have every right to approach this Court to challenge the said arbitrary act.

26. It is also reiterated that the ARPS Laitkor is purely a residential school and therefore, nowhere in the rules is it provided for transfer, the new rule has cause prejudice to those petitioners who were served with the impugned transfer order. On this premise, it is further submitted that the introduction of the said rule of transfer is contrary to the earlier stand taken by the school authorities that there shall not be any change of the existing service conditions of the regular permanent employees of the ARPS, Laitkor and which resolution was duly taken note of by the Division Bench of this Court.

WP(C) No. 118 of 2017, WP(C) No. 119 of 2017, WP(C) No. 121 of 2017, WP(C) No. 122 of 2017 and WP(C) No. 125 of 2017.

27. The learned Sr. counsel has then submitted that as a consequence of the alleged illegal amalgamation of the ARPS Society with ARWES, the Board of Governor of the ARWES by resolution dated 05.04.2017 has introduced two new rules and regulations(supra) and thereafter, the impugned order for transfer of the petitioners to their respective place of posting was issued.

28. It is submitted that the petitioners on being appointed as teachers in the ARPS, Laitkor were also made to execute a contract of service, page 25, Annexure-A in WP(C) No. 118 of 2017 being one such appointment letter and also at page 27, Annexure-B is found copy of the contract of service. In the contract of service, a number of terms and conditions were laid down however no condition is present to indicate that the post is a transferable post, or that the incumbent is liable to be transferred to other ARPS schools at any point of time.

29. In WP(C) No. 118 of 2017, the petitioner therein was served with the impugned posting order No. I.14017/GS (Edn)/ARWES-01/2017 dated 13.05.2017 whereby on the authority of the Chairman ARPS he was transferred from ARPS Laitkor, Shillong to ARPS, Pallel, Manipur. This similar situation was also present in the case of the other petitioners in other related cases mentioned herein above, submits the learned Sr. counsel.

30. The impugned transfer orders were issued with reference to the ARWES rules and regulations, but in view of the fact that there is no nexus between the ARWES and ARPS, Laitkor, the alleged merger not being legally sustainable, the petitioners could not have been transferred under the

said ARWES rules, further submits the learned Sr. counsel.

31. Yet again, the learned Sr. counsel has submitted that the impugned transfer order has been passed malafide and in colourable exercise of power in violation of the undertaking given by the respondent authorities to the extent it was recorded in the order dated 10.08.2016 in Writ Petition No. 100 of 2016 indicating to the effect that the said authorities shall not alter/change the service conditions of the teaching and non-teaching staff of the school, such service conditions being also applicable to the petitioners herein.

32. While referring to the commitment given by the respondent/ARPS as noted by the Division Bench of this Court vide order dated 10.08.2016 in Writ Petition No. 100 of 2016(supra), the learned Sr. counsel has submitted that the respondent school authorities are estopped from bringing in fresh rules as regard transfer in the light of the commitment given not to make any changes in the service conditions of the permanent employees of the ARPS, Laitkor, Shillong. In this regard, the case of *The State of Rajasthan v. Nemi Chand Mahela & Ors.: (2019) 14 SCC 179* para 11 was cited.

33. On the issue of transfer, the case of *M/S Kundan Sugar Mills v. Ziyauddin & Ors.: AIR 1960 SC 650* para 4 and 5 was cited to say that in a case similar to the case of the petitioners herein, the Hon'ble Supreme Court has observed as follows:

“4. The question of law raised in this case must be considered in relation to the said facts. The argument of the learned counsel for the appellant that the right to transfer is implicit in every contract of service is too wide the mark. Apart from any statutory provision the rights of an employer and an employee are governed by the terms of contracts between them or by the terms necessarily implied therefrom. It is conceded that there is no express agreement

between the appellant and the respondents where under the appellant has the right to transfer the respondents to any of its concerns in any place and the respondents the duty to join the concerns to which they may be transferred. If so, can it be said that such a term has to be necessarily implied between the parties? When the respondents 1 to 4 were employed by the appellant, the latter was running only one factory at Amroha. There is nothing on record to indicate that at that time it was intended to purchase factories at other places or to extend its activities in the same line at different places. It is also not suggested that even if the appellant had had such an intention, the respondents 1 to 4 had knowledge of the same. Under such circumstances, without more, it would not be right to imply any such term between the contracting parties when the idea of starting new factories at different places was not in contemplation. Ordinarily the employees would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. The matter does not stop there. In the instant case, as we have indicated, the two factories are distinct entities, situated at different places and, to import a term conferring a right on the employer to transfer respondents 1 to 4 to a different concern is really to make a new contract between them.

5. The decisions cited at the Bar do not in the least sustain the appellant's broad contention. In Alexandre Bouzourou v. Ottoman Bank, AIR 1930 PC 118, the appellant was an employee of the respondent-bank. The bank transferred him from one branch to another branch of the bank situated in different towns. As he refused to comply with the order of transfer, he was dismissed. Thereafter, he filed a suit to recover damages from the bank for wrongful dismissal. It was argued before the Judicial Committee that under the terms of his contract of service the sphere of his employment included only the head office and not the branches of the bank. The evidence in that case showed that transfer was one of the ordinary incidents of the bank's employment, being usually concurrent with an increase of salary and responsibility, and suggested no more than that the bank considered their officials' convenience where possible. Indeed the appellant therein did not even suggest in his correspondence that the transfer was a breach of his contract..."

34. Mr. N. Syngkon, learned counsel for the respondent/ARPS refuting

the submissions and contentions raised by the petitioners has not disputed the fact that the Assam Rifles Public School (ARPS) Society, Laitkor, Shillong was established in the year 1980 registered under the Societies Registration Act, 1860. It is also not denied that the petitioners herein are teachers of the said school, except the petitioner in WP(C) No. 125 of 2017 who is a non-teaching staff.

35. On their being appointed as such, the petitioners in these writ petitions had signed the respective contract of service as under:

Sl. No.	Name	Writ Petition No.	Contract of service signed on
1.	Sebastian P. George	WP(C) No. 118 of 2017	07.03.1994
2.	Arindam Chakraborty	WP(C) No. 119 of 2017	01.05.2004
3.	Srilekha Das Purkayastha	WP(C) No. 121 of 2017	01.06.2004
4.	Bharat Prasad Yadav	WP(C) No. 122 of 2017	31.10.1988
5.	Sanwar Hussain	WP(C) No. 125 of 2017	31.10.1988

36. The learned counsel has then submitted that clause 15 of the said Contract of Service has clearly stipulated that the petitioner will conform to all the rules and regulations in force in the school and shall carry out all such orders and directions as he/she shall, from time to time received from the Managing Committee/Principal or any authorized member of the staff.

37. One such order is the impugned order of transfer which, according to the learned counsel, falls within the ambit of the contract stipulation at clause 15 and therefore, the petitioners could not have assailed such transfer order before this Court.

38. The learned counsel has also raised the issue of maintainability of these petitions and has submitted that the ARPS, Laitkor is a private school and not a public body but a non-aided private educational institution looked after by the ARWES, the school is neither a limb of Assam Rifles nor of the Union of India through the Ministry of Home Affairs and as such, is not a 'State' or an instrumentality of State as envisaged under Article 12 of the Constitution of India.

39. To further clarify on this aspect, the learned counsel has submitted that the source of fund for running the school is derived from the fees paid by the students and contribution or grant-in-aid out of the regimental fund managed by the Director General, Assam Rifles. Regimental Fund comprises of individual subscription from serving personnel of the Assam Rifles, profit earned from commercial ventures run by Combatants on government accommodations, profits received from CSD Canteen, etc. No public funds have been received or utilized by the ARPS in the running of its school at Laitkor.

40. On the contention of the petitioners that the ARPS cannot be considered a private educational institution, since the management of the said school lies with the Director General, Assam Rifles and the Governing Body as well as the Managing Committee consists of members who are mostly Officers of the Assam Rifles with adequate number of teachers and parents representative, the learned counsel has contended that having Assam Rifles Officers as members of the Managing Committee would not make the institution a government institution as such.

41. Stressing on the issue of maintainability, the learned counsel has submitted that writ proceedings under Article 226 of the Constitution will

not lie against a private educational institution, which fact was asserted and determined in the case of *St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.*; (2023) 4 SCC 498 where at paras 3, 11, 12, 27, 28, 30, 33, 34, 69 and 70 the Hon'ble Supreme Court dealing with the said issue also touching on the aspect of the consequences of a school being affiliated to the Central Board of Secondary Education (CBSE) has, at the relevant paragraphs that is, paras 28 and 34 observed as follows:

“28. We may at the outset state that the CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body...

34. It needs no elaboration to state that a school affiliated to the CBSE which is unaided is not a State within Article 12 of the Constitution of India [See : Satimbla Sharma v. St. Pauls Senior Secondary School [(2011) 13 SCC 760]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [See : K. Krishnamacharyulu v. Sri Venkateshwara Hindu College of Engineering, (1997) 3 SCC 571]. The school affiliated to the CBSE is therefore an “authority” amenable to the jurisdiction under Article 226 of the Constitution of India [See : Binny Ltd. and another v. V. Sadasivan and others, (2005) 6 SCC 657]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee – confirmation, suspension, transfer, termination, etc. [See : Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360].”

42. Noting that a Division Bench of this Court had earlier decided on the issue of maintainability of a writ petition before this Court as far as the ARPS is concerned and that such issue was also raised before the Hon'ble Supreme Court by way of a Special Leave Petition, the same having been decided in the affirmative, the learned counsel has submitted that in the

light of the decision in the case of ***St. Mary's Education Society*** (*supra*) the issue of maintainability is required to be revisited. The case of ***Canara Bank v. N.G. Subbaraya Setty & Anr.***: (2018)16 SCC 228 para 5 was cited in support of his contention, the same reads as follows:

“5. Res judicata is, thus, a doctrine of fundamental importance in our legal system, though it is stated to belong to the realm of procedural law, being statutorily embodied in Section 11 of the Code of Civil Procedure, 1908. However, it is not a mere technical doctrine, but it is fundamental in our legal system that there be an end to all litigation, this being the public policy of Indian law. The obverse side of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the court takes place. However, there are certain notable exceptions to the application of the doctrine. One well-known exception is that the doctrine cannot impart finality to an erroneous decision on the jurisdiction of a court. Likewise, an erroneous judgment on a question of law, which sanctions something that is illegal, also cannot be allowed to operate as res judicata. This case is concerned with the application of the last mentioned exception to the rule of res judicata. The brief facts necessary to appreciate the applicability of the said exception to the doctrine of res judicata are as follows. In the present case, Respondent 1 availed a credit facility from the petitioner Bank sometime in 2001. Respondent 2, his son, stood as a guarantor for repayment of the said facility. As respondent 1 defaulted in repayment of a sum of Rs 53,49,970.22, the petitioner Bank filed OA No. 440 of 2002 before the DRT, Bangalore, against Respondent 1 and 2. Respondent 1, in order to repay the dues of the Bank, signed an assignment deed dated 8-10-2003 with the Chief Manager, Basavanagudi Branch, Bangalore for assignment of the trademark “EENADU” in respect of agarbathis (incense sticks) on certain terms and conditions.”

43. As to the challenge to the amalgamation of the ARPS Society with the ARWES, the learned counsel has submitted that it was a unanimous decision of the Governing Body of the ARPS Society along with the Chairman of the Governing Body of the ARWES taken on 28.09.2016 to amalgamate the ARPS Society, Laitkor with ARWES and the same having

been issued with a No Objection Certificate from the Registrar of Societies, Meghalaya, the process of amalgamation is thus completed and there can be no challenge to the same.

44. The decision of the Board of Governors, ARWES to incorporate additions to the existing rules and regulations of the ARWES to provide for conducting of suitability test for all teaching staff as well as the provision for transfer of such staff within the Assam Rifles Public Schools, about 41 in numbers located in different parts of the North-East, the same having been duly approved by the Registrar of Societies vide communication dated 02.05.2017, the issuance of the impugned order of transfer cannot be faulted, further submits the learned counsel.

45. Mr. K.P. Bhattacharjee, learned GA appeared for the State respondents No. 1 and 2 in WP(C) No. 217 of 2017 has submitted that the issue of amalgamation of the ARPS Society with the ARWES was taken up, the process of the said amalgamation being challenged, the role of the State, particularly the Registrar of Societies in such process was also questioned.

46. Defending the stand of the State, the learned GA has at the outset, challenged the locus of the petitioners by submitting that the petitioners not being members of either the ARPS Society or the ARWES, they are precluded from interfering with the said amalgamation process.

47. It is also submitted that the respondent No. 2/Registrar of Societies is made aware of the Governing Body meeting of the ARPS Society held on 28.08.2016 wherein a decision was taken to amalgamate the ARPS Society with ARWES and also that such decision was not opposed by the members of either of the said Society aforementioned, on receipt of a communication dated 04.10.2016 seeking 'No Objection Certificate' to the said proposed

amalgamation, the respondent No. 2 has accordingly issued such NOC, the same being communicated vide letter dated 07.10.2016.

48. It is further submitted that some additions were made in the ARWES rules and regulations and the same was also intimated to the Registrar vide letter dated 02.04.2017 who has duly responded positively by way of the approval being granted and communicated vide letter dated 02.05.2017.

49. Accordingly, the learned GA has submitted that there being no infirmity in the process of amalgamation, the approval to the same by the Registrar of Societies is a valid process and cannot be questioned by the petitioners in these proceedings.

50. Mr. R. Debnath, learned CGC appearing for the Union of India through the Director General, Assam Rifles has submitted that the submission of the learned counsel for the respondents No. 4-7, that is, ARPS Society and ARWES and their Officials on the issue of amalgamation or even in the cases regarding transfer of the said petitioners therein is hereby endorsed inasmuch as it is reiterated that the Assam Rifles has no direct control in the management of the ARPS Society and ARWES and no public or Government fund has been utilized in the running of the said Societies, therefore, there is no relief that can be claimed as regard the Union of India/DGAR.

51. On consideration of the submission and contentions raised by the respective parties in this set of similar and almost identical cases, this court would first deal with the issue of maintainability of the writ including the locus of the petitioners as regard WP(C) No. 217 of 2017.

52. It is the contention of the learned counsel for the respondent ARPS authorities that the said school being a private non-aided school, meaning that it is not receiving any grant-in-aid from the Government, therefore the management of the said school being run by an independent body, the ARPS Society is not amenable to writ jurisdiction. The case of ***St. Mary's Education Society***(supra) was cited to stress on this point.

53. It is the contention of the petitioners that it is no longer *res integra* that the ARPS and its constituent bodies are amenable to writ jurisdiction under Article 226 of the Constitution of India. The authority for the same was the order dated 05.09.2012(supra) passed by a Division Bench of the Gauhati High Court in the case of Shri. Makanmi Kengoo & Ors. (which also includes all the petitioners herein except Sanwar Hussain) against the respondent/ARPS & Ors., in a case seeking implementation of the benefits of the recommendation of the 6th Pay Commission, the petitioners therein have moved the Gauhati High Court, Shillong Bench(as this court then was), with a petition under Article 226 of the Constitution of India and on the same being rejected by a Single Bench on the ground that a writ petition is not maintainable under Article 226 as against the ARPS, the aggrieved petitioners appealed before the Division Bench in an intra-court appeal against the said dismissal order. The Division Bench of this Court, as stated above has allowed the appeal and in effect held that the ARPS Society is amenable to writ jurisdiction. The Special Leave Petition filed before the Hon'ble Supreme Court in this regard was dismissed with the Supreme Court upholding the said order of the Division Bench. Even on review, the same was dismissed.

54. In the abovementioned case, the Division Bench of this Court had reversed a decision of a Single Bench which has held that a writ petition

under Article 226 of the Constitution of India is not maintainable since the respondent/ARPS is a non-aided private educational institution and therefore, is not amenable to writ jurisdiction.

55. The Division Bench after considering the appeal before it has come to the conclusion that since the teachers of ARPS are entitled to the pay scale as is admissible to Central Government Employees, they are accordingly entitled to the benefits of the 6th Pay Commission Recommendations. This is in line with the instructions of the Central Board of Secondary Education (CBSE) as far as those educational institutions which are affiliated to it are concerned.

56. To make the matter more comprehensible, it would not be out of place to refer to certain portions of the said judgment dated 05.09.2012(supra), the same being as follows:

“15. In view of the above, the question to be considered now is, whether the appellants can insist that such benefits of pay scales and dearness allowance admissible under the 6th Central Pay Commission be extended to them in toto. In our opinion, the answer must be in the affirmative for more than one reason. As found by the learned Single Judge, with which we are in respectful agreement, the condition precedent for affiliation of any school to CBSE is that such school do pay the salaries and allowances to their staff which shall not be less than the correspondent categories of employees in the State Government Schools or as per scales etc. prescribed by the Central Government. In the instant case, the ARPS had already opted to pay the appellants the salaries and allowances payable to the corresponding categories of employees in the Central Government schools like KVS and JNV vide Annexure-C, Annexure-D and Annexure-E to the writ petition, and not the salaries and allowances payable to the corresponding categories of employees in the State Government. In our judgment, the refusal on the part of the respondent authorities to the appellants to pay the salaries and other allowances payable to the correspondent categories of

employees in the Central Government is contrary to the affiliation rules of the CBSE and is, therefore, unfair, unjust and illegal. Moreover, such consistent past practice of paying the salaries and allowances to the appellants on par with their corresponding counterparts in the Central Government such as the staff of KVS and JNV cannot be set at naught at this stage without reasonable justification as that would be arbitrary. Once the claim of the appellants is found to be justified, financial constraints can hardly be a ground to deny the benefits payable to the appellants. That was the submission urged on behalf of the State-appellant in **State of Mizoram v. Mizoram Engg. Service Assn., (2004) 6 SCC 218**. The answer of the Apex Court is found at para 7 of the judgment: this is what it said:

“7. The learned counsel for the appellant also argued that if the scale of Rs. 5900-6700 is to be allowed to the Chief Engineers, the State government will have to allow the same scale to other heads of departments in the service of the State government which will be heavy burden on the financial resources of the State Government and for that reason we should restrict the scale for the post of Chief Engineer and Additional Chief Engineer to Rs. 5700 and Rs. 4100-5300 respectively. In our view this is hardly any ground to interfere with the decision of the High Court. It has been found that the claim of the respondents is fully justified by the facts on record. The Central Government as well as the State government accepted the recommendations of the Fourth Central Pay Commission and the scales being allowed to the members of the respondent-Association are based on those recommendations.”

16. No other contentious issue survives for consideration. In our considered view, the learned Single Judge, having found that the respondent authorities are under obligation to pay the appellants the salaries and allowances payable to the corresponding categories of employees in KVS and NVS in terms of the Bye-laws of CBSE regulating affiliation of schools to it, however, should not have stopped there but should have applied principles laid down by the Apex Court in **K. Krishmachalyulu** (supra) and allowed the writ petition: she has in the process failed to exercise her writ

jurisdiction of mandamus vested in her by the Constitution. After all, the legitimate expectation of the appellants that the past and consistent practice of the school allowing them to enjoy the salaries and allowances payable to the schools run by or through the Central Government will continue cannot be discontinued without reasonable justification.”

57. At this juncture it would be apt to look at the lis between the parties to see if the principle of *res judicata* will be applicable to the case of the parties herein, with reference to the issue of transfer. The case of Nemi Chand Mahela(supra) at para 11 cited by the petitioners would give a glimpse of the impact the concession given by the ARPS authorities would have, as far as the conditions of service of teaching and non-teaching staff of ARPS, Laitkor, Shillong is concerned and the propriety of the effect of the later rule which provides for transfer. The said para is reproduced herein below as:

“11. The learned counsel for the petitioners had drawn our attention to para 24 of the decision in Manmohan Sharma’s case [(2014) 5 SCC 782] which refers to the case of one Danveer Singh whose writ petition had been allowed and the order had attained finality as it was not challenged before the Division Bench or before the Supreme Court. Termination of services in the case of Danveer Singh, it was accordingly held, was not justified and in accordance with law. The reasoning given in paras 22 and 23 in Manmohan Sharma’s case [(2014) 5 SCC 782] relating to the case of Danveer Singh would reflect the difference between the doctrine of res judicata and law of precedent. Res judicata operates in personam i.e. the matter in issue between the same parties in the former litigation, while law of precedent operates in rem i.e. the law once settled is binding on all under the jurisdiction of the High Court and the Supreme Court. Res judicata binds the parties to the proceedings for the reason that there should be an end to the litigation and therefore, subsequent proceeding inter se parties to the litigation is barred. Therefore, law of res judicata concerns the same matter, while law of precedent concerns application of law in a similar issue. In res judicata, the correctness of the decision is normally immaterial and it does not

matter whether the previous decision was right or wrong, unless the erroneous determination relates to the jurisdictional matter of that body. (See Makhija Construction and Engineering (P) Ltd. v. Indore Development Authority [(2005) 6 SCC 304].”

58. In the case of St. Mary’s Education Society & Anr. (surpa), the learned counsel for the respondent has referred to certain paragraphs of the judgment to say that the Hon’ble Supreme Court in this case has held that a private and aided school affiliated to the CBSE is not a State within Article 12 of the Constitution of India and is thus, not amenable to writ jurisdiction under Article 226 of the Constitution.

Some of the paragraphs referred to by the learned counsel for the respondent/ARPS which are found relevant are reproduced herein as under:

“3. In the present appeal, two pivotal issues fall for consideration of this Court:-

- (a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?*
- (b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution?*

15. The appellant No. 1 is a Society registered under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973. The Society runs an all-girls school in Mhow, Indore, Madhya Pradesh, by the name St. Mary’s Higher Secondary School, which was founded by a group of French Catholic Nuns in 1893. The school is a private unaided minority educational institution, which enjoys the protection guaranteed under Article 30(1) of the Constitution. There is absolutely no Governmental control over the functioning and administration of the school. The respondent No. 1 herein was employed in this school prior to his termination. The school is presently affiliated to the Central Board of Secondary Education (CBSE) and is thus governed by its Rules and Byelaws. Further, the

Society has its own Byelaws, namely, (1) the Service Conditions for the Employees of St. Mary's School and (2) Service Rules for Teaching and Non-Teaching Staff. The appellant No. 1-Society and the school are absolutely private institutions, without any aid or control of the Government or any instrumentality of the Government, and therefore, not a "State" within the meaning of Article 12 of the Constitution.

28. We may at the outset state that the CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body...

30. The contention canvassed by the respondent No. 1 is that a Writ Petition is maintainable against the Committee of Management controlling the affairs of an institution (minority) run by it, if it violates any rules and byelaws laid down by the CBSE. First, as discussed above, the CBSE itself is not a statutory body nor the regulations framed by it has any statutory force. Secondly, the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management.

33. Thus, where a teacher or non-teaching staff challenges action of Committee of Management that it has violated the terms of contract or the rules of the Affiliation Byelaws, the appropriate remedy of such teacher or employee is to approach the CBSE or to take such other legal remedy available under law. It is open to the CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws.

34. It needs no elaboration to state that a school affiliated to the CBSE which is unaided is not a State within Article 12 of the Constitution of India [See : Satimbla Sharma v. St. Pauls Senior Secondary School [(2011) 13 SCC 760]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [See : K. Krishnamacharyulu v. Sri Venkateshwara Hindu College of Engineering, (1997) 3 SCC 571]. The school affiliated to the CBSE is therefore an "authority" amenable to the jurisdiction under Article 226 of the Constitution of

India [See : Binny Ltd. and another v. V. Sadasivan and others, (2005) 6 SCC 657]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee – confirmation, suspension, transfer, termination, etc. [See : Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360].

69. In view of the aforesaid discussion, we hold that the learned single Judge of the High Court was justified in taking the view that the original writ application filed by the respondent No. 1 herein under Article 226 of the Constitution is not maintainable. The Appeal Court could be said to have committed an error in taking a contrary view.”

59. What can be deduced from the above is that the Hon’ble Supreme Court in the case of *Chairman, Assam Rifles Public School & Anr. v. Mekanmi Kengoo & Ors.* vide order dated 21.07.2015(supra) has, after hearing the parties and on perusal of the record declined to interfere with the impugned order dated 05.09.2012 passed in WA No. 35 of 2011(supra) which in effect, would mean that it is the view of the Hon’ble Supreme Court that though the ARPS is affiliated to the CBSE, yet it is still considered a State under Article 12 of the Constitution and is accordingly amenable to writ jurisdiction.

60. It is, therefore, apparent that on the same issue, there are two conflicting judgments of the Apex Court as noticed above.

61. It may be reminded that courts, including the Hon’ble Supreme Court have held that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect.

62. When it comes to a decision to be made when a court as in this case is faced with two conflicting judgments of a superior court of equal bench strength, particularly of the Supreme Court, one school of thought propounds that the High Court is not necessarily bound to follow the decision later in point of time, but may follow the one which in its view is appropriate to the facts and circumstances and issues raised in the case under consideration.

63. In view of the above, this Court would respectfully hold the view that the respondent/ARPS though being a private unaided educational institution, however, because of what was held in the case of *Chairman, Assam Rifles Public School & Anr. v. Mekanmi Kengoo & Ors.*(supra) therefore, it is deemed to be a State within the meaning of Article 12 of the Constitution and accordingly, is amenable to writ jurisdiction under Article 226 of the Constitution. Most of the parties involved in the earlier case are also parties in these proceedings. Another factor which would weigh with this Court is that since this Court itself in the Division Bench has held that the ARPS is amenable to writ jurisdiction, no departure can be made in this regard by a Single Bench of the same Court. Under such premise, this Court would hold that these petitions are accordingly maintainable.

64. Before proceeding with the facts and circumstances of the case of the petitioners in WP(C) No. 118 and others(supra), the issue of amalgamation raised in WP(C) No. 217 of 2017 is required to be answered first since according to this Court the decision thereof would affect the outcome of the other related writ petitions aforementioned.

65. Without reiterating the facts as stated, a look at the relevant provisions of the Meghalaya Societies Registration Act, 1983 as far as

amalgamation is concerned, would show that under Section 12 the provision and procedure of amalgamation of societies has been laid down. The said provision reads as follow:

“12. (1) Whatever two or more societies desire to amalgamate, the Governing Body of each society shall submit the proposal in writing to the member thereof and such proposal shall be considered in a general meeting of the society convened for the purpose.

(2) No such proposal shall have any effect unless-

(a) it has been delivered or sent by registered post to the members of each of the societies at least ten days before the date of the meeting at which it will be considered;

(b) it has been sent to the Registrar before the meeting and he communicates his approval thereto, with or without any modifications;

(c) the proposal, with the modifications, if any, suggested by the Registrar, is agreed to by three-fourths the members of each of the societies concerned and confirmed by like votes of members at the subsequent general meeting of the amalgamated society.

(3) An appeal shall lie to the State Government against any order of Registrar refusing to accord his approval to the proposal or to his suggestions for any modification and the decision of the State Government on such appeal shall be final.

(4) On the proposal being confirmed-

(a) the amalgamated society shall be registered under its new name;

(b) the registration of the amalgamating societies shall be cancelled; and

(c) the assets and liabilities of the amalgamating societies shall be the assets and liabilities of the amalgamated society.”

66. As has been submitted by the learned Sr. counsel for the petitioners, sub-section 1 of Section 12 provides that before the process of amalgamation is completed, the Governing Body of each society should submit the proposal in writing to the members of such societies and such proposal shall be considered in a meeting of such societies.

67. From the minutes of the meeting of the Governing Body of the ARPS, Laitkor, Shillong held on 28.09.2016, one of the decisions taken was that the ARPS Society be amalgamated with ARWES for better administration of ARPS, Laitkor. This was followed by the communication dated 04.10.2016 issued upon the Registrar of Societies, Shillong, Meghalaya by the Deputy Commandant on behalf of the ARPS, Laitkor, Shillong with a request for issuance of necessary No Objection Certificate for the amalgamation in view of the resolution to this effect dated 28.09.2016.

68. Nothing in the above procedure followed is seen the implementation or adherence of the statutory provision as far as sub-section 1 of Section 12 of the Meghalaya Societies Registration Act is concerned. There is no record of any general meeting of all the members of ARPS, Laitkor, Shillong being held to consider the proposal for such amalgamation. There is also no record to show that there was a corresponding meeting of the members of ARWES to consider such proposal, such procedure being mandated by law.

69. The decision of the Registrar of Societies vide his letter dated 07.10.2016 communicated to the Deputy Commandant/Administrative Officer, ARWES indicating his No Objection to such amalgamation purportedly under the provision of Section 12(b) of the said Meghalaya Societies Registration Act, is also found to be irregular and without any substance inasmuch as there was no attempt by the said Registrar to inquire as to whether the proper procedure was followed by the Societies concerned before such No Objection can be given. Therefore, the No Objection given cannot stand the test of legal scrutiny and the same is nonest in the eye of law.

70. Under such circumstances, the resolution dated 05.04.2017 passed in the Annual ARWES Board of Governors Meeting wherein at point No. 13 additions have been made in ARWES rules and regulations, such additions being to provide for suitability/competence test for Principal and Teachers teaching in ARPS to be conducted on a yearly basis and another addition to the rule is the provision for transfer of all permanent teachers of ARPSs after three years of regular service, may be applicable to all the ARPSs under ARWES but, would not be applicable as far as teaching and non-teaching staff of the ARPS, Laitkor, Shillong are concerned.

71. On the observations made above, this Court would hold that no effective and legal amalgamation has taken place as far as ARPS, Laitkor, Shillong and ARWES are concerned.

72. The objection of the respondents that the petitioners in WP(C) No. 217 of 2017 have no locus standi to prefer the petition before this Court as far as the process of amalgamation is concerned cannot be accepted by this Court since it is evident that the decision made post amalgamation as far as the impugned order of transfer is concerned has directly affected the petitioners concerned and therefore, they are deemed to be aggrieved parties and are entitled to seek judicial relief as has been done in this case.

73. Coming back to the case in WP(C) No. 118 and others, the contention of the learned Sr. counsel that the petitioners therein on being appointed to such post in the ARPS, Laitkor, Shillong, they were also made to execute the contract of service which they have accordingly done so, the fact that there is no specific provision for transfer set out in the said contract of service would only reinforced the fact that the ARPS, Laitkor, Shillong is a residential school and there is no question of transfer, this contention is

also found acceptable by this Court since the issue of transfer more often than not, is required to be specifically laid down under relevant rules and regulations as was done in the one sought to have been introduced by ARWES.

74. On this ground alone and on the accompanying facts and circumstances considering that the impugned posting order was made with reference to the ARWES rules and regulations which is without authority as has been observed herein, the impugned posting order cannot be enforced as far as the petitioners herein are concerned.

75. In the light of the above, this Court on careful considerations of the issues raised herein and the observations made pursuant thereto, firstly is inclined to respectfully agree with the decision of the Division Bench of this Court in WA No. 35 of 2011 that ARPS is a State within the meaning of Article 12 of the Constitution and is therefore amenable to writ jurisdiction, the issue of maintainability is therefore decided in the affirmative.

76. As to the case of amalgamation, as pointed out, the process and procedure carried out by the ARPS and ARWES is not in accordance with the relevant provision of law and the same is declared null and void.

77. Again, as observed above, the petitioners as far as the case of transfer is concerned, has made out a case for the impugned transfer order to be set aside and quashed, which is done so herein.

78. The interim order dated 19.05.2017 is hereby made absolute.

79. Only relevant authorities cited by the parties have been taken into account, the question raised in these petitions being adequately answered.

80. These petitions are accordingly disposed of. No costs.

Judge

Meghalaya
15.09.2023
"Tiprilynti-PS"

