

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 114 of 2015

Date of Decision: 20.06.2023

Smti Sonia Sultana Sarker

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.P. Bhattacharjee, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. Sr. GA (For R 1-6)
Mr. K. Paul, Sr. Adv. with
Mr. S. Thapa, Adv. (For R 8)
Mr. Philemon Nongbri, Adv. (For R 9)

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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

1. An advertisement dated 06.01.2015 published in the newspaper "The Shillong Times" was issued by the Secretary, Rajabala Hr. Secondary School, West Garo Hills, inviting applications for the post of Asstt. Teacher (Arts) at Rajabala Hr. Secondary School. The last date of filing the

application is 15.01.2015. In the said advertisement, the required qualification to be possessed by a candidate is that he/she must be Arts Graduate with Major in Assamese.

2. The petitioner responding to the said advertisement has filed her application before the competent authority. Having received a calling letter vide No. RHSS/Secy-1/15/252-58, dated 19.01.2015, calling upon her to appear in the interview fixed on 20.01.2015 in the office of the District School Education, West Garo Hills District, Tura. Accordingly, the petitioner appeared for the said interview which consists of a written test and viva.

3. The petitioner after appearing in the said interview, had expected the result to be declared and/or to be displayed in the notice board of the school, but nothing was forthcoming in this regard. It was only on her initiative that the petitioner came to know of the outcome of the said interview and the result thereof.

4. A representation dated 27.01.2015 was then filed by the petitioner addressed to the District School Education Officer, West Garo Hills wherein an allegation was made against the respondent No. 9 herein to the effect that even though she does not possess the required qualification, that is, that she

has not passed her B.Ed. degree, she was selected and appointed to the said post advertised.

5. It is also averred by the petitioner that from replies received on the basis of the RTI queries made in this regard, it is learnt that the respondent No. 9 was declared to have topped the list of those candidates who have appeared in the said interview for the said post of Asstt. Teacher and consequently she was appointed to the post on the strength of the resolution of the School Managing Committee Meeting No. 17 dated 21.01.2015, which proposal being forwarded by the respondent No. 6 herein vide letter No. SWG/MC/DF-/2014/9656 dated 21.01.2015, was duly approved by the office of the Director of School Education and Literacy, Meghalaya vide letter No. DSEL/SEC-NG/APT/6/2015/103 dated 23.01.2015.

6. Thus, being aggrieved by the selection of the respondent No. 9 to the said post of Asstt. Teacher in Rajabala Hr. Secondary School, West Garo Hills, the petitioner has now approached this Court with this petition under Article 226 of the Constitution of India with a prayer that the appointment order dated No. RHSS/Secy/MC-15/96/270 dated 21.01.2015 and related approval of the same vide letter No. DSEL/SEC-NG/APT/6/2015/103 dated 23.01.2015 be set aside and quashed and that she be appointed to the said post.

7. Mr. K.P. Bhattacharjee, learned counsel for the petitioner has submitted that the entire process wherewith the vacancy for the post of Assistant Teacher in the said Rajabala Higher Secondary School required to be filled up was manipulated to suit only one person, that is, the respondent No. 9 herein.

8. The learned counsel has also submitted that the post of Asstt. Teacher (Arts) felt vacant upon the demise of the incumbent teacher, Sarotibala Hajong. The Managing Committee of the School through its Secretary has then issued the advertisement dated 05.01.2015. It may be mentioned that the Secretary of the Managing Committee is the father-in-law of the respondent No. 9, who admittedly does not possess a B.Ed degree, but in the said advertisement it was not mentioned that the mandatory qualification of candidates who applies has to be B.Ed degree which is as per the National Council for Teacher Education (NCTE) Regulations 2001.

9. To bring home this point, the learned counsel for the petitioner has submitted that there is a mandatory instruction issued by the Government through the Director Higher & Technical Education, which directs that all the teachers at the Secondary level are to be graduate with B.Ed. As such, it is further directed that the concerned authorities should ensure that all vacancies in Deficit Secondary Schools should be filled by B.Ed degree

holders. Failing which no approval should be accorded from the office. This refers to communication No. EG.1/Aptt/2/2006/107 dated 12.01.2007.

10. The Inspector of Schools, West Garo Hills District in turn vide letter No.SWG/DEF/GOVT-ORS/2006/II7677-702 dated 01.02.2007, has written to all the Secretaries of Deficit Schools under West Garo Hills informing them of the said communication dated 12.01.2007.

11. It is the submission of the learned counsel for the petitioner that in spite of the said direction, the respondent No. 8/Secretary, Managing Committee has floated the said impugned advertisement dated 05.01.2015 published in newspaper on 06.01.2015, firstly, by failing to mention that the advertisement was for a vacant post in a deficit secondary school and secondly, that the required basic qualification is B.Ed degree.

12. Yet another contention raised by the learned counsel for the petitioner is that the said post was advertised on 05.01.2015 only with the aim to facilitate the application of the respondent No. 9, inasmuch as the vacancy arose on 12.09.2014 on the demise of the incumbent teacher, but the advertisement was issued only on 05.01.2015 a day after the wedding of the son of the Secretary of the said School to the respondent No. 9, even though she does not have B.Ed as her qualification.

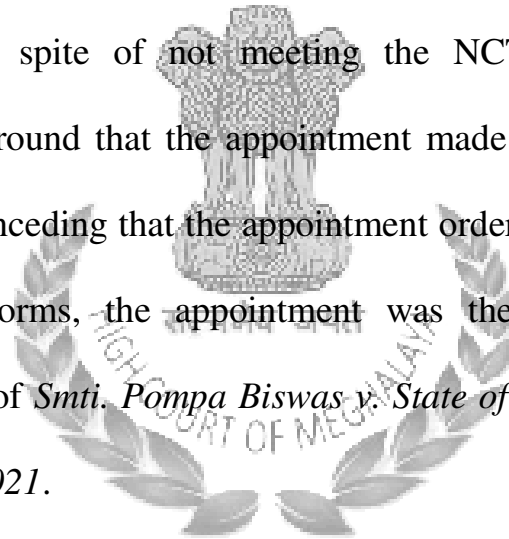
13. The fact that the whole process was fast paced, that is, the last date of filing of applications being fixed on 15.01.2015, the interview was fixed on 20.01.2015, thereafter, the respondent No. 9 was then appointed on 21.07.2015 and approved by the Director School Education and Literacy on 23.01.2015, also gives an impression that there is collusion between the Secretary, MC and the State respondents/School authorities only to favour the respondent No. 9.

14. In this regard, the learned counsel has submitted that the respondent No. 9 has not given the true and correct information while applying for the said post inasmuch as she has given false statement with regard to her teaching experience. In her certificate of teaching experience she has not stated that she was working as a teacher, even if it is assumed that she was employed as a teacher since the year 2009, it means that she has been employed to teach since the time she passed her matriculation which is not possible or permissible in law. The petitioner has, however, two years of experience in teaching but she was never allotted any marks for this. Even the fact that the petitioner has completed her B.Ed degree, she was not allotted any marks in this respect.

15. The learned counsel has submitted that there is another anomaly in the whole process, as the approval letter of appointment of the respondent

No. 9 dated 23.01.2015 contains a condition that she should complete her B.Ed within three years of her appointment to the said post which is against all settled norms of appointment.

16. The learned counsel has submitted that this Court in a similar case where the focus on the application of the NCTE norms in the selection process for the post of Assistant Teacher in the Mahendraganj Deficit Secondary School, South West Garo Hills, the respondent No. 6 therein being appointed in spite of not meeting the NCTE norms, on being challenged on the ground that the appointment made was illegal, the State respondent fairly conceding that the appointment orders were issued without considering such norms, the appointment was thereby cancelled. This pertains to the case of *Smti. Pompa Biswas v. State of Meghalaya & Ors. in WP(C) No. 480 of 2021*.



17. Another authority cited by the petitioner is the case of *Senior Law Manager, Indian Oil Corporation Limited & Anr. v. Guru Shakti Singh & Anr: (2011) 15 SCC 140*, the Hon'ble Supreme Court while considering a case wherein the High Court although holding that the selection process was illegal, however since the complainant alleging the irregularities had died, the irregularities were no longer relevant and would no longer exist. At para 10 and 11 of the same, the Supreme Court held that this view is erroneous

since the issue is with regard to the irregularities in the selection process, once the illegality of such selection process is recognized, the whole process cannot be saved irrespective of whether the person who has challenged the said process is dead or alive.

18. Yet another authority referred to in this regard is the case of *Mohd. Sartaj & Anr v. State of U.P. & Ors.*: (2006) 2 SCC 315, para 11 and 21. In this case, the Hon'ble Supreme Court has noticed that the basic qualification for the post of Assistant Teacher, apart from the educational qualification, was the training qualification of the Basic Teacher's Certificate or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or equivalent training course recognized by the Government. It was held that *"...It is settled law that qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it..."* *"...The appellants could not have been appointed to the post of Assistant Teachers without having training required under Rule 8. That being the case, the appointments of the appellants were dehors the Rules and could not be treated to be continued..."*

19. Mr. K. Paul, learned Sr. counsel for the respondent No. 8/Secretary, Managing Committee refuting the contentions of the petitioner has firstly led

this Court to the prayer in the petition and has pointed out that the same is in two parts, that is, the first is a prayer for setting aside the appointment dated 21.01.2015 and subsequent approval dated 23.01.2015 granted by the Director of School Education and Literacy in favour of the respondent No. 9 herein. The second prayer is for appointment of the petitioner to the said post in question.

20. It is submitted that the petitioner have consciously participated in the selection process and have not challenged the advertisement at the relevant point of time to say that the same was issued without following Government's instructions in this regard, more particularly with reference to the NCTE norms and having been declared failed, the petitioner cannot now come before this Court to challenge the entire selection process.

21. The second challenge of the petitioner to the selection process is that the advertisement was custom made to suit the candidature of the respondent No. 9. However, here too, the learned Sr. counsel has submitted that without challenging the advertisement itself, the entire process which emanated from the said advertisement cannot be challenged.

22. In fact, the petitioner knowing fully well that the essential qualification laid down in the advertisement is for a candidate to have

obtained Major in Assamese, the petitioner apparently not having Major in Assamese as her qualification, has petitioned the Secretary, Managing Committee of the School to relax this qualification in her case. This, clearly proved that she was never qualified to apply for the said post in the first place and even after being allowed to participate in the process, now, after the result is not in her favour, to make a U-turn and to challenge the advertisement, the same cannot be allowed at this juncture, further submits the learned Sr. counsel.

23. Another submission tendered by the learned Sr. counsel is that the prayer of the petitioner is self-defeating inasmuch as on one part, the selection process was challenged on the ground that it was flawed, while on the other part, there is an assertion that she be appointed to the said post. The petitioner cannot blow hot and cold at the same time.

24. In this regard, submission has been made that it is well settled that the selection process where the petitioner was not found suitable and this process cannot be questioned in judicial review under Article 226 of the Constitution as the Court cannot substitute its view to grant relief to the petitioner. At the most, this Court may find and decide that the whole selection is flawed and do away with it altogether.

25. The learned Sr. counsel, in support of his contention, has placed reliance on the following cases:

- i) Madras Institute of Development Studies & Anr. v. K. Sivasubramaniyan & Ors.: (2016) 1 SCC 454, para 12, 13, 14, 15, 16, 17 & 18 and
- ii) State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr.: (2013) 12 SCC 210, para 17.

26. Mr. H. Kharmih, learned Addl. Sr. Govt. Advocate has submitted that the crux of the matter is the said advertisement dated 06.01.2015 wherein application for the post of Asstt. Teacher (Arts) in the respondent's School was brought out in public domain by publishing it in the local daily newspapers.

27. It is submitted that apparently, the officials of the School involved have failed to note that there are already instructions issued by the authorities in the Education Department to say that for filing up of the post of Assistant Teacher in a Higher Secondary School, the required or essential qualification is B.Ed pass which has been prescribed by the NCTE, in absence of which no approval for appointment can be considered.

28. In the case in hand, the approval for the appointment of the

respondent No.9, that too with a condition that she should acquire the educational qualification of B.Ed within three years from the date of appointment is de hors the rules and not in conformity with the Government's instructions and as such, the appointment of the respondent No. 9 is not valid and the whole selection process should be scrapped and the School Managing Committee may be directed to issue fresh advertisement.

29. On the other hand, Mr. Philemon Nongbri, appearing for the respondent No. 9 has submitted that the respondent No. 9 cannot be faulted for being selected for the post and for subsequently being appointed as the Asstt. Teacher of the said Rajabala Higher Secondary School.

30. On coming across the said advertisement, and being duly qualified as per the essential qualifications listed therein, the respondent No. 9 has applied for the post and was legitimately selected for appointment. In absence of any challenge to the advertisement itself, the appointment of the respondent No. 9 cannot be said that it is not tenable in the eyes of law.

31. On the allegation of nepotism, the learned counsel for the respondent No. 9 has submitted that on being called for the interview conducted on 20.01.2015 at 11.00 am in the office of the District School Education Officer, Tura, she appeared before the board of selectors which comprises

the Jt. Director of School Education and Literacy, the DSEO, a Subject Expert, an Educationist and the Principal of the said Rajabala School. This clearly shows that there can be no element of nepotism in the face of such an independent body conducting the interview.

32. The next contention of the learned counsel is that on the basis of the result of the interview held on 20.01.2015, the District School Education Officer (DSEO) has proposed the name of the respondent No. 9 for approval, which approval has to be by the Director of School Education & Literacy. The Director then vide letter dated 23.01.2015 has approved the said appointment, of course, with a condition that the respondent No. 9 should complete her B.Ed within a period of three years, which by this time, the respondent No. 9 has since secured her B.Ed degree.

33. The letter dated 12.01.2007 has conveyed the directions of the Director of Higher and Technical Education that all teachers at Secondary level should be graduate with B.Ed, this following the NCTE guidelines which are mandatory in nature. However, the NCTE guidelines which are of 03.09.2001, as far as requirement of minimum academic and professional qualification for the level of Secondary/High School is concerned, requires graduate with Bachelor of Education (B.Ed) or its equivalent. This, according to the learned counsel means that an educational qualification equivalent to

B.Ed may also be MA. Since there is some ambiguity here, therefore, the Director has approved the appointment of the respondent No. 9 with the condition so given which is in conformity with the said NCTE regulations and as such, there is nothing wrong in the appointment of the respondent No. 9.

34. In concurrence with the stand of the respondent No. 8 as regard the issue of estoppel, the learned counsel has submitted that the petitioner having participated in the selection process and not being successful, she cannot at this stage come before this Court to challenge the result thereof. The case of *Nikuru War & Anr. v. State of Meghalaya & Ors: 2021 SCC Online Megh 75* was referred to in this respect as this Court in this case has discussed the principle of estoppel to say that even those who have taken part in the selection process and have come out successfully, yet if they are not qualified, they cannot demand appointment.

35. This Court is faced with a very peculiar situation as far as this case is concerned. It, however, boils down to the action of the Managing Committee of the said Rajabala Higher Secondary School and the manner in which the said advertisement was issued. What is also found surprising is the stand of the State respondent in these proceedings, inasmuch as the learned Addl. Sr. GA, Mr. H. Kharmih speaking for the State has questioned the action of its

own official, more particularly, the Director of School Education and Literacy who has issued the impugned approval for the appointment of the respondent No. 9 vide his letter No. DSEL/SEC-NG/APT/6/2015/103 dated 23.01.2015, apparently without taking into account that the said advertisement in the first place was issued without specifying the requirement of fulfillment of the said NCTE norms as regard essential qualification of B.Ed degree to be insisted at the time of invitation to those eligible to fill up the post of Asstt. Teacher.

36. The learned Addl. Sr. GA has further submitted that the condition inserted in the approval for appointment of the respondent No. 9 is on condition that she qualifies for her B.Ed degree within three years of being appointed is without any basis not referable to any laid down rule in this regard, the same not being in conformity with any Government instructions and norms. Therefore, it is submitted that the whole selection process be scrapped.

37. In response to the charge that the petitioner has no right or basis to challenge the alleged inadequacy in the advertisement and the faulty selection process since she has willingly participated in it and on being unsuccessful she has questioned the validity of the same, the learned counsel for the petitioner has submitted that when the advertisement came out, there was no indication that a candidate must possess B.Ed degree to be able to apply for

the post. It was only when she sought for relevant information by way of a RTI query that she came to know that the NCTE norms which provides for basic qualification of B.Ed degree is to be strictly adhered to in all recruitment process to the post of Asstt. Teacher in Deficit Secondary Schools.

38. In a similar vein, the learned counsel for the respondent No. 9 has also submitted that when the said advertisement came out, the said respondent being qualified to apply for the same, have done so. It was only in course of these proceedings that it transpired that according to the NCTE norms, having B.Ed degree is the qualifying criteria for a candidate to apply for the post of Asstt. Teacher in deficit secondary schools. Therefore, the respondent No. 9 having been selected, she cannot be faulted for not being aware of the qualifying criteria in the said selection process.

39. This Court having observed that this is a very peculiar situation, faulty right from the inception, thus giving a false impression to aspirants who are seeking meaningful employment and perhaps a fulfilment of sorts by being engaged in the teaching profession, would hold that the fault would lie entirely with the said Rajabala Higher Secondary School and then, the Education Department.

40. The school, in spite of being a school under the deficit system, meaning thereby that financial grants is received from the Government, thus rendering itself bound by certain rules and regulations as are applicable, which are issued by the Education Department, has failed to make this fact known, that is, that possession of a B.Ed degree is an essential qualification, while getting the advertisement published, is thus liable for having the entire process scrapped.

41. As indicated, the Education Department, while issuing the impugned letter of approval for appointment of the respondent No. 9, more so, with the condition that she should get her B.Ed degree within three years' time after she is appointed, also goes to show that being aware of the said stipulation, has sought to condone the same in an indirect manner, which is not in accordance with any rules in this regard and is thus not in conformity with the principles of law. Such an action cannot be condoned by the Court.

42. There is no quarrel with the proposition of law advanced by the learned Sr. counsel for the respondent No. 8 as well as the respondent No. 9 that once a candidate has participated in a selection process, he/she cannot come before this Court after being declared unsuccessful, to challenge the said selection process. The case of Madras Institute of Development Studies (supra) at paras 12-18 duly being taken note of.

43. However, the contention of the petitioner that she came to know of the fact that B.Ed degree is an essential qualification and also the fact that the respondent No. 9 in spite of not having the said qualification of B.Ed was appointed to the said post of Asstt. Teacher, only from the answer to the relevant RTI queries, much after the selection process is over, has also to be considered. As submitted, had the petitioner known about this anomaly from the beginning, she would have challenged the advertisement. This argument is found acceptable to this Court considering the fact that nothing was indicated in the said advertisement about B.Ed being an essential qualification to qualify for application to the said post.

44. The petitioner, however, cannot make contradictory prayers, after challenging the appointment of the respondent No. 9 on the ground that the same was in gross violation of the provisions of law and the directions of the Government of Meghalaya, which appointment was on the basis of the said advertisement, to come and say now 'appoint me' instead cannot be fathomed by this Court, since according to the said advertisement, the petitioner was herself not qualified to apply for the said post, given the admission of the petitioner that she has petitioned the Secretary of the School to condone her lack of qualification, not having had Major in Assamese language, which though was allowed, but again, which was not indicated as under what rule

the same was allowed.

45. The petitioner has annexed a copy of the Gazette of India Notification No. 238 of September 2001 NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations, 2001. In these Regulations, the minimum academic and professional qualifications for appointment as a teacher in the Secondary/High School level is graduate with B.Ed or its equivalent. It was these Regulations which were referred to by the Director of Higher & Technical Education, Meghalaya in his communication dated 12.01.2007.

46. Under the NCTE Act, National Council for Teacher Education established under Section 3(1) is the only authority to prescribe minimum qualification for a person to be employed as a teacher in schools or in recognised institutions. Section 12A of the NCTE Act provides that the National Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority.

47. It need not be reminded that the NCTE Regulations made under the

NCTE Act, 1993 are mandatory in nature, therefore, the said communication of the Director, DHTTE is not an executive or administrative order in a sense, but a conveying of what the mandatory regulation stipulates. This answers the contention raised by the respondent No. 8 in the case of Jitendra Kumar Srivastava (supra).

48. Thus, while referring to the advertisement dated 06.01.2015(supra), placed in juxtaposition with the relevant provisions of the NCTE Regulations(supra), the answer to the perceived dilemma can be safely answer by referring to the case of Employees' State Insurance Corporation v. Union of India & Ors: (2022) 11 SCC, 392, wherein at para 20 of the same, the Hon'ble Supreme Court has held as under:

“20... However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In Malik Mazhar Sultan v. U.P. Public Service Commission (Malik Mazhar Sultan) a two-Judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation....”

49. On an overview of the case of the parties herein, this Court is

convinced that the said advertisement dated 06.01.2015 is an erroneous one and cannot be allowed to be acted upon. Consequently, no right has accrued to either of the parties involved as far as the same is concerned.

50. The advertisement dated 05.01.2015 published in newspaper on 06.01.2015 is hereby set aside and quashed. The whole selection process thereto is now brought to nought. Consequently, the recommendation and appointment of the respondent No. 9 also stands quashed automatically.

51. The interim order passed in this connection is hereby made absolute.

52. The School Authority/Managing Committee is directed to issue fresh advertisement for the post, however, in accordance with the prevailing rules and regulations as regard appointment of an Asstt. Teacher in deficit Higher Secondary Schools of the State.

53. Petition disposed of. No costs.

Judge

Meghalaya
20.06.2023
"Tiprilynti-PS"