

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 443 of 2020

Date of Decision: 24.03.2023

Smti. Marbline R. Marak Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. R. Colney, GA.

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

JUDGMENT AND ORDER

1. The brief facts of the case is that, the writ petitioner, is the widow of a school teacher who was killed by the outlawed GNLA on 19.07.2012 at Resubelpara, North Garo Hills, accusing him to be a police informer.

The writ petitioner having 2(two) minor children being left destitute, then approached the Chief Secretary to the Government of Meghalaya for employment in any government post. Thereafter, the petitioner was appointed temporarily as Assistant Teacher on 23.04.2013, and given periodic extensions till 15.12.2020, whereafter, her services was discontinued. During the course of her temporary employment, the writ petitioner had preferred representations for regularization on humanitarian grounds, which were forwarded by the concerned respondent No. 5 to respondent No. 4 and respondent No. 2. From the materials it appears that, the matter for regularization of her services was processed by the respondents, as the writ petitioner was also qualified to hold the post as Assistant Teacher. However, as there was no finality in the process, the writ petitioner during the subsistence of her employment, has filed the instant writ petition before this Court.

2. Mr. S. Deb, learned counsel for the petitioner has submitted that, the appointment of the writ petitioner was on humanitarian consideration, and as such, such recruitment is not subject to the rigours of a regular selection process. The learned counsel further submits that, though the scheme for compassionate appointment is no longer in existence in the State of Meghalaya, the appointment of the writ petitioner, not being under any scheme, but made on humanitarian grounds on account of the

exceptional circumstance, that is, the death of her husband at the hand of terrorists, is entitled for consideration for regular employment.

3. The learned counsel has placed reliance on the recommendations of the Fifth Meghalaya Pay Commission, wherein it has been provided that, in exceptional cases where it is found that, the spouse or dependent of the deceased government employee, is not gainfully employed, on certification of the Deputy Commissioner, employment may be provided on compassionate ground. It has been further submitted that, the writ petitioner will come within the exception as the Deputy Commissioner of North Garo Hills, sitting as the Member Secretary of the District Selection Committee, North Garo Hills, had forwarded her application for employment, vide letter dated 09.02.2015. The learned counsel concludes by submitting that, the case of the writ petitioner being exceptional, the respondents are liable to be directed to consider her case favourably.

4. Mr. B. Bhattacharjee, learned AAG assisted by Ms. R. Colney, learned GA on behalf of the State respondents, has submitted that, the compassionate appointment scheme was discontinued on November, 2010, and no scheme was available on the day the writ petitioner's husband died. He further submits that, the petitioner though serving temporarily from 23.04.2013 to 15.12.2020, has acquired no vested right to regularization and that no appointment is permitted without passing

through the regular selection process. Learned AAG submits that, recruitment to the post of Assistant Teacher is prescribed under Rule 6(5) of the Meghalaya School Service Rules, 2012, and that as per the Rules, appointments to the post of Assistant Teachers shall be made by direct recruitment, the procedure of which shall be prescribed by the government from time to time. He therefore submits that, the continuation of service by a temporary or adhoc employee, would not confer such employee with any right to be absorbed into service, if such employee was not appointed as per the relevant rules. He concludes that no case has been made out for regularization of the petitioner and as such, the writ petition deserves no consideration.

5. Having heard the learned counsels for the parties and examined the materials on record, the undisputed facts that have emanated from the case is that, the writ petitioner is the widow of a regular government employee, who lost his life to militants leaving the writ petitioner and two minor children destitute, and on humanitarian grounds was accorded employment, though temporary, by the respondents. The fact that, the writ petitioner is qualified for appointment to the post of Assistant Teacher is also not in question, and the same has also been certified by the respondent No. 5, while the consideration of the proposal for regularization of her services was being processed. In this regard, two letters dated 15.10.2018

(Annexure -19) and 14.02.2019 (Annexure – 20) that are relevant, are reproduced hereinbelow, to show that, the petitioner is qualified and that there was a proposal to regularize the services of the petitioner, which however culminated in her temporary employment not being renewed after 15.12.2020.

**“OFFICE OF THE DIRECTOR OF SCHOOL
EDUCATION AND LITERACY,
MEGHALAYA ::::: SHILLONG.**

No. DSEL/EL/GA/ADM/1/2016/180, Dated Shillong the ____ October, 2018.

*From : Shri. A. Ch. Marak, MCS.
Director of School Education & Literacy,
Meghalaya, Shillong*

*To : The Special Officer to the Govt. of Meghalaya,
Education Department, Shillong.*

*Subject : Proposal for Regularisation of Service in respect of
Smt. Marblin R. Marak, Officiating Asstt.
Teacher of Daram Union Govt. U.P. School.*

Madam,

With reference to the above, I am to enclose herewith a copy of letter No. SDSEO(R)/AP-6/11/2018/2651 Dt. 10.08.2018, for your ready reference alongwith the enclosures therein received from Sub-Divisional School Education Officer, Resubelpara, North Garo Hills and to to inform you that Smt. Marblin R. Marak, Officiating Asstt. Teacher of Daram Union Govt. U.P. School is trained to teach as the Teacher is Graduate with B.Ed, for which the relevant documents are being attached herewith for favour of your kind information and necessary action.

Enclo : As stated.

Yours faithfully,

*Director of School Education and Literacy,
Meghalaya, Shillong.*

MemoNo.DSEL/EL/GA/ADM/1/2016/181, Dated Shillong the 15th October, 2018.

Copy to :-

*The Sub-Divisional School Education Officer, Resubelpara,
North Garo Hills with reference to letter mentioned above.*



No. EDN-103/2015/204

Dated Shillong, the 14th February, 2019.

*From: Smti. I. Lyngdoh,
Special Officer to the Government of Meghalaya,
Education Department.*

*To: The Director of School Education & Literacy,
Meghalaya, Shillong.*

*Subject:- Proposal for Regularisation of Service of Smti. Marblin
R. Marak, officiating Assistant Teacher of Daram Union
Govt. U.P. School.*

Reference:- No. DSEL/EL/GA/ADM/1/2016/159, dt. 18.05.2018.

Sir,

With reference to the subject cited above, I am directed to inform you that the proposal for regularization of the adhoc Service of Smti. Marbline R. Marak, Assistant Teacher, Daram Union Government Upper Primary School is under examination of the Government in Personnel Department.

Yours faithfully,

**Special Officer to the Govt. of Meghalaya,
Education Department.**

Memo. No. EDN-103/2015/204-A, Dated Shillong, the 14th February, 2019

Copy to:-

The Joint Secretary to the Govt. of Meghalaya, Personnel & Administrative Reforms (B) Deptt. with reference to I/D. No. 360/2018, dt. 15.01.2019.

By Order etc.,

**Special Officer to the Govt. of Meghalaya,
Education Department.”**

6. It is worthy to note that, prior to the letters given hereinabove, the proposal for regularization of the services of the writ petitioner, was under consideration by the respondents from 2015 onwards, and as submitted had even been forwarded by the Member Secretary, District Selection

Committee (Deputy Commissioner), North Garo Hills, for consideration vide letter dated 09.02.2015. This Court notes the fact that, the compassionate appointment scheme, has since been discontinued and in the normal course, the dependents of a government employee who dies in harness, cannot apply for appointment on compassionate grounds, which are appointments made outside the regular selection process. However, what cannot be ignored is the fact that, the case of the petitioner is truly an exceptional case, due to the tragic circumstances, which has been elaborated earlier.

7. The recommendations of the Fifth Meghalaya Pay Commission, in its report also had discussed this aspect that is, the question of compassionate appointment in exceptional cases by recommending at Paras – 8.5.3 and 8.5.4 as follows:

“8.5.3 The Commission notes that the scheme for providing employment on compassionate ground to the next of kin of a government employee who dies while in service was introduced by the Government of Meghalaya as a welfare measure to provide relief from extreme hardship to the family of a deceased employee belonging to Group ‘C’ and ‘D’ categories only. And on the recommendation of the Fourth Meghalaya Pay Commission the scheme was discontinued for the reason that the existing

facilities and benefits, including social security cover, available to the family of the deceased government employee who dies while in service were quite adequate.

8.5.4 The Commission examined the submissions made by various Service Associations and Groups of government employees for revival of the Scheme. After careful consideration of all aspects, the Commission recommends that in exceptional cases, where it is found that the spouse or a dependant of the deceased government employee is not gainfully employed, as duly certified by the concerned Deputy Commissioner, suitable employment may be provided by the Government to one member of the deceased employee's dependant(s), preferably a female dependant, keeping in view the social and cultural traditions and practice of the Khasi, Jaintia and Garo population of the State.”

8. This Court therefore, taking into account the entire facts and circumstances of the case, deems the case of the writ petitioner to be worthy of being given due consideration by the respondents for appointment on humanitarian grounds, moreso, as the proposal for regularization, had already been initiated by the respondents themselves

on the representation of the writ petitioner. This concession which is being given by this Court, however, shall not serve as a precedent as the case of the writ petitioner is surely an exceptional case, which deserves consideration.

9. The State respondents shall complete the exercise preferably within a period of 4(four) months from the date of this order.

10. As ordered, this writ petition accordingly is disposed of.

11. No order as to costs.

Judge

Meghalaya
24.03.2023
"D.Thabab-PS"

