

GAHC030004642021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/132/2021

Sh. Santosh Bikash Chakma and Anr
R/o Pandawnglui
Lawngtlai District, Mizoram

2: Sh. Surobindu Chakm

VERSUS

Lai Autonomous Distrcit Council and 3 Ors
Lawngtlai District

Advocate for the Petitioner : Mr. Samuel L Pachuau

Advocate for the Respondent : Mr. Lalpianfela Chawngthu for R1- R3

BEFORE
WP(C) No. 132 of 2021

Petitioners:

1. Sh. Santosh Bikash Chakma
S/o Surendhar Chakma
R/o Pandawnglui, Lawngtlai
Mizoram

2. Sh. Surobindu Chakma
S/o Sastomuni Chakma

R/o Karlui-I, Lawngtlai District
Mizoram

By Advocates:

Mr. Shanti Bikash Chakma
Ms. Priscilla Lalnunpuii
Mr. Samuel L Pachuau

- versus -

Respondents:

1. Lai Autonomous District Council
R/b its Chief Executive Member
Lawngtlai District, Lawngtlai
Mizoram
2. The Executive Secretary
Lai Autonomous District Council
Lawngtlai District, Lawngtlai
Mizoram
3. The District Education Officer
School Education Department
Lai Autonomous District Council
Lawngtlai District – 796891
Lawngtlai Mizoram
4. The Secretary
District Council & Minority Affairs Department
Govt. of Mizoram
Aizawl, Mizoram

By Advocates:

Mr. C Zoramchhana (Addl. AG/GA, Mizoram)
Mr. Lalpianfela Chawngthu

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing & Judgment : 27.07.2023

J U D G M E N T

Heard Mr. Samuel L. Pachuau, learned counsel for the petitioners and Mr. Lalpianfela Chawngthu, learned Standing Counsel, LADC appearing for respondent Nos. 1 to 3. None appears for respondent No. 4.

[2.] By filing this writ petition, the petitioners have challenged 2 (two) Office Orders both dated 07.05.2021 by which they have been removed from service w.e.f., the date of the order.

[3.] Brief facts of the case is that the petitioner No. 1 was appointed as non-formal teacher of Pandawnglui in the scale of pay of Rs. 6750/- per month w.e.f., the date of joining duty vide Office Order No. 25/2013 dated 03.05.2013 (Annexure-1). Likewise, the petitioner No. 2 was appointed as additional teacher in the scale of pay of Rs. 10,000/- per month (fixed) w.e.f., the date of joining duty and posted at Karlui-II P/S vide Office Order No. 54/2016 dated 01.06.2016 (Annexure-2).

[4.] While the petitioners were working as such, a complaint letter was submitted to the Education Officer P/S LADC, Lawngtlai, Mizoram on 18.01.2021 (Annexure-5) against the petitioner No. 1 by the local leaders comprising of President, Mizo National Front, Pandawnglui Unit, President, Young Lai Association, Pandawnglui and President, Village Council/Court, LADC, Pandawnglui. The complaint against him was that he was not regular in his duty, he did not give notes to the students by writing in the blackboard but instead gave his phone to them to copy the materials he

downloaded through Google, he never check the notebooks of the students, he consumed alcohol during class hours, he was involved in political party activities and openly favoured BJP political party by funding the candidate concerned. Therefore, the complainants requested the said authority to look into the matter.

[5.] Similarly, a complaint was submitted against the petitioner No. 2 to the Education Officer, P/S, LADC, Lawngtlai, Mizoram by similar organization and political party of Karlui-II alleging that the petitioner No. 2 did not properly teach the students, he was not regular in duty, he kept himself busy in his personal works, he went to school once a week and whenever he was intoxicated, he used to beat up the students unnecessarily. Further, in the last general election of MDC, 2020, he openly campaigned against MNF party and distributed money to the Congress party. He also said that nobody could terminate him from service. As such, the complainants requested the authority to take necessary action in the matter. The complaint letter was received by the addressee on 14.01.2021.

[6.] Pursuant to the complaint letters submitted, both the petitioners were issued an explanation letter on 20.01.2021 by the Education Officer, P/S LADC, Lawngtlai by abstracting the points of the complaints made against them in the explanation letter. The petitioners were thereafter issued a reminder on 22.02.2021 asking them to give their explanation. The petitioner No. 1, thereafter, submitted his reply on 25.02.2021 denying the allegation made against him while stating that he did his level best to teach the children and that there was no negligence towards his duties on his part. Likewise, the petitioner No. 2 also submitted his reply to the Education Officer, P/S, LADC Lawngtlai on 25.02.2021 denying the allegations made against him by stating that he performed his duty in the school to the best of his ability and that he was not involved in any political activities.

[7.] Upon receiving the reply from the petitioners, the Education Officer, P/S, LADC, Lawngtlai vide his Communication dated 25.03.2021 asked one Sh. A

Zainuntluanga, Asst. Education Officer, P/S as an Enquiry Commissioner to make a spot verification in order to find out the correctness of the reply submitted by the petitioners and to submit a detailed report on or before 06.04.2021. Along with the letter, the explanation notice, reply to the explanation notice and the complaints were also enclosed.

[8.] Thereafter, the Enquiry Commissioner submitted his spot verification report in respect of the petitioner No. 1 on 06.04.2021 to the Education Officer, P/S LADC, Lawngtlai wherein he stated that on 05.04.2021, the Enquiry Commission took statements in connection with the complaints made against the petitioner No. 1 and from the statements, it was verified that the petitioner No. 1 had indeed violated the rules. He, therefore, reported that it was up to the authorities concerned to either take an executive decision to suspend or terminate him from service. Similarly, the appointed Enquiry Officer submitted his report against the petitioner No. 2 on 06.04.2021 by drawing a conclusion that on 05.04.2021, statements were taken in connection with the complaint made against the petitioner No. 2 and from the statements recorded, it was verified that the petitioner No. 2 had clearly violated the rules and therefore, it was up to the authority concerned to either suspend him or terminate him from service. Pursuant to the two verification reports submitted, the petitioners were removed from service as already stated herein above.

[9.] Mr. Samuel L Pachuau, learned counsel, submits that the Enquiry Officer during the enquiry did not take the statements of the parents and teachers of the school concerned but the statements of the local leaders. He submits that the alleged complaints against the petitioners, in fact, came from the local leaders and therefore, their statements could not have been relied upon to remove the petitioners. He submits that regarding the absence of the petitioners from school, the Enquiry Commissioner and the respondent authorities concerned failed to consider the fact that it was due to COVID-19 Pandemic that there could not be any regular classes. He

submits that, at any rate, in the entire process a fair opportunity was not given to the petitioners to defend themselves and moreover, there are no evidence or materials to prove that the petitioners engaged themselves in political activities by openly supporting a particular political party. Under the circumstance, the learned counsel submits that the impugned orders removing the petitioners from service cannot be sustained and should be set aside. In support of his submission, the learned counsel has relied upon the following authorities:-

1. Judgment of Supreme Court dated 23.09.2022 in Civil Appeal No. 6890/2022 (Jeetubha Khansangju Jadeja vs. Kutchi District Panchayat).

2. Judgment & Order of this Court dated 25.09.2018 in WP(C) No. 64/2018 (H.C Ralai & 109 Ors. vs. C.E.M, MADC & 2 Ors.)

3. Judgment & Order dated 23.01.2019 of this Court in WP(C) No. 131/2018 (Sh. V. Vanlalhruaia & 62 Ors. vs. LADC & 2 Ors).

[10.] Mr. Lalpianfela Chawngthu, learned counsel appearing for the LADC, on the other hand, submits that the respondent authorities have followed due procedure to enquire to the complaint against the petitioners by giving sufficient opportunities to them. Upon making such enquiry, it was found that the complaints made against them were true and therefore, they have been removed from their service. He submits that the acknowledgment letter about the complaints made against the petitioner was duly signed on behalf of the students and the NGO stating the correctness of the complaints made against the petitioners. He submits that the fact of the petitioners being irregular in attending their respective schools was not due to the COVID-19 Pandemic, inasmuch as, they were irregular even before the occurrence of the COVID-19 Pandemic in the State of Mizoram. Therefore, no interference is called for on the impugned orders removing the petitioners from service.

[11.] I have heard the submissions made by the learned counsels for the parties

and I have perused the materials available on record.

[12.] The grievance expressed by the petitioners is that the complaints made against them are not true and that the person who was detailed to verify the correctness of the stand taken by the petitioners in their reply to the explanation letter had taken the statements of the local leaders and not that of the students or their parents. The same can be clearly seen from the Verification Report submitted by the appointed Enquiry Commissioner on 25.03.2021 in respect of the petitioner No. 1 and the Verification Report dated 06.04.2021 in respect of the petitioner No. 2. As may be noticed, the complaints against the petitioners were submitted by the local NGO, local political party Unit and also the Village Councils concerned. Therefore, relying upon the statements of the complainant themselves could not have been used against the petitioner and particularly without giving them any opportunity to defend their case against such statements. The respondent authorities concerned in their own wisdom, decided to call for an explanation and appoint a person to enquire the veracity of the complaints and also the truthfulness of the reply given by the petitioners and therefore, in doing so, they ought to have given reasonable opportunity to the petitioners after the spot verification was conducted by the appointed person. Therefore, Court is of the considered view that there has been violation of the principles of natural justice in passing the impugned orders of removal of the petitioners from service.

[13.] In view of above, the impugned orders dated 07.05.2021 removing the petitioners from service are hereby set aside and instead of directing the reinstatement of the petitioners, the matter is remanded back to the stage of appointment of the Enquiry Commissioner vide the Communication dated 25.03.2021. The appointed person shall make necessary enquiry into the matter and the report which he will submit thereafter be made available to the petitioners for them to make a reply or respond within a reasonable time. If the appointed person to make the

enquiry is now not available for whatever reasons, the respondent authorities shall replace him with an appropriate person to make such enquiry. Upon completion of the enquiry and upon giving due opportunities to the petitioners, the competent authority under the LADC shall pass appropriate speaking orders including the question on payment of back wages if the petitioners are to be reinstated. The entire exercise shall be carried out and completed within a period of 2 (two) months from the date of receipt of a certified copy of this order.

[14.] In view of the conclusion arrived at, reference to the authorities made by the learned counsel for the petitioners is found to be not necessary.

[15.] With the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant