

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 11 of 2018

Md. Habibur Rahman

.....Petitioner/s

- Versus -

State of Manipur

.... Respondent/s

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Order

17.04.2024

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Mr. Jamon, learned counsel for the petitioner, Mr. Shyam Sharma, learned G.A. for the State respondent and Mr. AP. Sahu, learned counsel for the WAKF Board.

[2] The petitioner was appointed as Consultant Officer (Madrassa Mordernisation) on contract basis for a period of one year vide order dated 02.08.2010 issued by the Chief Executive Officer, WAKF Board, Manipur and his contractual appointment has been extended from time to time. Subsequently, the post of Consultant Officer has been re-designated as Project Officer vide order dated 14.03.2011 issued by the Chief Executive Officer, WAKF Board, Manipur. Thereafter, the petitioner was allowed to discharge duty as Project Officer, WAKF Board, Manipur vide order dated 19.02.2013.

[3] Vide order dated 29.06.2013, the Chairman, WAKF Board, Manipur terminated the service of the petitioner on the ground for committing illegal or irregular acts.

[4] By the present writ petition, the petitioner challenged his termination order dated 29.06.2013 mainly on the ground that it was done without due process and selectively in violation of provisions of Section 38 (6) of the WAKF Act, 1995.

[5] The representation submitted by the petitioner against his termination order was also rejected by Chairman, WAKF Board, Manipur vide order dated 24.07.2017. Both his termination order and rejection of the representation are being impugned in the present writ petition mainly on the ground that no opportunity was granted to the petitioner in violation of Section 38 (6) of the WAKF Act, 1995 and the same was done selectively.

[6] Mr. Shyam Sharma, learned G.A. for the State respondent, submits that the initial appointment of the petitioner is not in consonance with the provisions of the Act, as appointment has not been approved by the State Government in terms of Section 23 of the Act. It is also stated that as per the provision of sub-section 7 of Section 38, the petitioner ought to challenge his termination before the competent tribunal.

[7] Mr. Kh. Tarunkumar, learned senior counsel for the petitioner relies upon the decision of the Hon'ble Supreme Court in the case of **Jaswant Singh & Ors. vs. State of MP & Ors.** reported as **(2002) 9 SCC 700** holding that the opportunity of being heard should

be given to the person whose initial appointment order was also not in order.

[8] Mr. AP. Sahu, learned counsel for the WAKF Board, submits that apart from the fact that the petitioner was terminated on the ground of illegality, it is clarified that his further extension was not signed by the competent authority.

[9] This Court has considered the materials on record, submissions made at the bar and relevant case law.

[10] It is admitted fact that prior to termination, no opportunity was granted to the petitioner to explain his case. On perusal of Sub-section 6 of Section 38 of WAKF Act, 1995, it is seen that reasonable opportunity of being heard ought to be granted to the employee of the WAKF Board before passing an order of suspension/removal/dismissal from his post. Since the statutory protection is not provided to the petitioner, the termination order dated 29.06.2013 is liable to be set aside on this ground alone.

[11] Accordingly, the impugned order dated 29.06.2013 issued by the Chairman, WAKF Board, Manipur terminating the service of the petitioner is set aside and the petitioner be re-instated in his service. It is made clear that the respondents are at liberty to proceed against the petitioner as per law, if so advised.

[12] Mr. Kh. Tarunkumar, learned senior counsel, prays for back wages in view of the Hon'ble Supreme Court decision reported as **(2023) 9 SCC 160** which stipulates that back wages are entitled in case the employee was terminated illegally.

[13] However, this Court is not passing any order with regard to back wages and it is left to the wisdom of the respondents to consider this aspect keeping in mind the peculiar facts of the present case that the petitioner was not getting anything during the last 10 (ten) years.

[14] In terms of the above directions and observations, the writ petition is disposed of.

JUDGE

Kh. Joshua Maring

**KH. JOSHUA
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