

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 304 of 2024

Shri Laikhuram Nandabir Singh, aged about 52 years, S/o (L)
Laikhuram Noyon Singh, a resident of Wangjing Wangkhei,
P.O. Wangjing, P.S. Thoubal, Thoubal District Manipur.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Commissioner/Secretary, Directorate of Education (S), Government of Manipur, Secretariat Building P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Director of Education (S), Government of Manipur, Lamphelpat, DC Office Complex, P.O. & P.S. Lamphel, Imphal West District, Manipur-795004.
3. The Zonal Education officer, Zone-III, Thoubal, Thoubal District, Government of Manipur-795138.
4. The Principal, Lamding Hr. Sec. School at Lamding, P.O. & P.S. Thoubal, Thoubal District, Manipur-795138.

.....Respondent/s

With

MC(WP(C) No. 274 of 2024

Shri Laikhuram Nandabir Singh, aged about 52 years, S/o (L)
Laikhuram Noyon Singh, a resident of Wangjing Wangkhei,
P.O. Wangjing, P.S. Thoubal, Thoubal District Manipur.

..... Petitioner/s

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3. The Zonal Education officer, Zone-III, Thoubal, Thoubal District, Government of Manipur-795138.
4. The Principal, Lamding Hr. Sec. School at Lamding, P.O. & P.S. Thoubal, Thoubal District, Manipur-795138.

.....Respondent/s

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners	::	Mrs. G. Pushpa, Adv.
For the respondents	::	Mr. S. Nepolean, G.A. assisted by Mrs. RK Emliy, Dy GA
Date of Hearing	::	20.06.2024/16.12.2024
Date of Judgment and Order	::	27.12.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mrs. G. Pushpa, learned counsel for the petitioner and Mr. S. Nepolean, learned G.A. for the State respondents.

[2] The present writ petition has been filed to issue a writ in the nature of Mandamus or any other appropriate writ directing the respondents to allow the petitioner to undergo 2 (two) years B.Ed. Training Course in the DM College of Teachers Education Imphal.

[3] The petitioner was initially appointed as Science Graduate Teacher vide Government order dated 07.03.2003 issued by the Director of Education (S), Government of Manipur and posted at Charangpat High School. Vide Government order dated 16.06.2012 issued by the office of the Secretariat Education Department (School Selection), on the recommendation of DPC held on 08.05.2012 in association with the MPSC and with their concurrence under their letter dated 11.05.2012, the petitioner was promoted as Lecturer (Physics) of Higher Secondary School under the Department of Education (S) and posted at Chaoyaima Hr. Sec. School and the name of the petitioner is at Sl. No. 41 of the order dated 16.06.2012. Vide order dated 20.04.2021, the petitioner was transferred and posted at Lamding Hr. Sec. School as Lecturer (Physics) till now.

[4] The Government of Manipur amended the Recruitment Rules for the post of lecturer Hr. Sec. Schools vide notification dated 02.12.2021 and consequent upon the amendment of RR, the Government of Manipur issued a notification dated 29.06.2022 re-designating the post of Lecturer Hr. Sec. School as Post Graduate teacher. Consequent upon the amendment of the RR and its subsequent notification dated 29.06.2022, the petitioner requires to undergo 2 (two) years B.Ed. Training Course as the same RR has distinguished the Lecturer Hr. Sec. Schools, Government of Manipur as trained and un-trained.

[5] The Directorate of Education (S), Government of Manipur issued a notification dated 23.05.2022 inviting applications from all intending eligible in-service Graduate Teacher (Science & Arts) serving under the

Directorate of Education (S) for undergoing 2 (two) years B.Ed. programme for the session 2022-2024 at D.M. College of Teacher Education, Imphal. In response to the notification dated 23.05.2022, the petitioner submitted an application dated 16.06.2022 to the Zonal Education Officer, Zone-III, Thoubal, Government of Manipur for issuance of NOC for undergoing B.Ed. Training for the session 2022-2024 on deputation for 2 (two) years at D.M. College of Teachers Education, Imphal and the said application was duly received by the office of respondent No. 3 on 16.06.2022. Thereafter, the petitioner on being submitted an application addressed to the Principal, Lamding Hr. Sec. School vide office letter dated 10.06.2022 addressed to the Director, Directorate of Education (S), Government of Manipur forwarded the name of the petitioner for continuing his study for B.Ed. Training Course.

[6] The Principal, Lamding Hr. Sec. School issued a No Objection Certificate to certify that the office of the Principal has no objection to the deputation of the petitioner for the study of B.Ed. Training Course. However, there was no response from the authorities of the Department of Education (S). The petitioner came across another notification No. 5/2/2/07-DE(S)Pt issued by the Director of Education (S), Manipur inviting applications from all intending eligible in-service Graduate Teacher (Science & Arts) serving under the directorate of Education (S) for undergoing 2 (two) years B.Ed. Programme at DM College of Teachers Education Imphal. As the petitioner being left out for the session 2023-2024, he applied to undergo 2 (two) years B.Ed. Programme for the session 2023-2025.

[7] Respondent Nos. 1 & 2 filed counter affidavit stating that vide notification dated 23.05.2022 wherein it is stated that the application along with service particulars like regular appointment order, Employee/MGEL Profile, Date of Birth Certificate, Service Identity Card and No Objection Certificate from the concerned ZEOs on or before 15.06.2022 without fail for undergoing 2 (two) years B.Ed. Programme for the session 2022-2024 at DM College of Teachers Education, Imphal. It is stated that the reason for not selecting the petitioner for the session 2022-2024 was that the Principal, Lamding Higher Secondary School forwarded the letter dated 10.06.2022 without NOC from the ZEO concerned. Further, it is stated that the petitioner submitted the application dated 16.06.2022 to the ZEO, Zone-III, Thoubal requesting to issue NOC only after the expiry of the date prescribed in the notification dated 23.05.2023. It is also stated that the petitioner was found not eligible for undergoing 2 (two) years B.Ed. Training Course for the academic session 2023-2025 as per the notification dated 14.03.2014 issued by the Director of University & Higher Education, Manipur in connection with the admission policy for the said course. The notification (para 3.a) mentions that *“a minimum of 8 (eight) years of service before retirement on superannuation at the time of deputation/nomination for B.Ed. Programme is mandatory.”* It is stated that the order of deputation of 50 teachers was issued on 04.10.2023 and as the petitioner's date of superannuation falls on 30.04.2031, he has less than the mandatory 8 (eight) years at the time of deputation. It is prayed that writ petition be dismissed being devoid of merit.

[8] The petitioner filed rejoinder affidavit wherein it is stated that as per the notification dated 23.05.2022, the concerned Principal in-charge, Lamding Hr. Sec. School, Lamding submitted the name of the petitioner for undergoing B.Ed. Training Course in deputation vide letter dated 10.06.2022 and also issued a NOC from the school as per petitioner's certificate dated 03.06.2022. It is stated that the Government of Manipur inducted the new R.R. vide notification dated 02.12.2021 and consequent upon the new RR, the Government issued the notification dated 29.06.2022 re-designated the post of Lecturer Hr. Sec. School as Post Graduate Teacher and on such re-designation, it has been declared that normal increment shall be released/granted notionally (without arrears) from the date of passing/declaration of the trained examination prescribed in the respective RRs in respect of existing un-trained Teachers. It is also stated that prior to the issuance of the notification dated 29.06.2022, all the Lecturers serving under the Government Hr. Sec. Schools were on equal footing irrespective of completion of two years B.Ed. Course or not. However, due to the issuance of the order dated 29.06.2022 undergoing B.Ed. Course has been made necessary for all the Lecturers serving under Government Hr. Sec. Schools. Moreover, the Notification dated 14.03.2014 in para 7 of the notification which reads as *"7. Removal of Difficulties:- The Department of University and Higher Education, Government of Manipur may modify/alter any of the above clauses partly or wholly to remove any difficulties in the implementation of the Admission Policy as and when necessary....."* In the present case, the petitioner has been facing difficulties and these difficulties

can be solved by way of invoking para 7 of the Notification as Rules shall not exercise in a manner to create difficulties in the service career of a government servant and hence, it is prayed that the writ petition be allowed.

[9] Mrs. G. Pushpa, learned counsel for the petitioner submits that the petitioner was otherwise eligible for getting increments in terms of the earlier RR and since the RR was subsequently amended later in the year 2021 thereby requiring 2 years B.Ed. Training for becoming a trained Post Graduate Teacher. Under the erstwhile RR, there was no requirement of training for a Lecturer post, now re-designated as PGT. A new condition was also imposed by the new RR for the PGT to have a remaining tenure of 8 years of service to be eligible for the training. The petitioner applied for B. Ed. Training at DM College of Teacher Education, Imphal for the session 2022-2024 through proper channel. However, there was no response from the authority. It is stated that the petitioner again applied for the session of 2023-2025 for the 2 years B. Ed. Programme. His candidature was not considered for the session of 2023-2025. However, in the counter affidavit of the respondents, it is stated the petitioner was not eligible for the training in terms of Para 3(A)(ii)(a) of the Notification dated 14.03.2014 issued by the Director of University & Higher Education, Govt. of Manipur regulating admission to B.Ed. Course in the DM College of Teacher Education, Imphal on the ground that the petitioner did not have minimum of 8 years tenure of service before retirement.

[10] Mrs. G. Pushpa, learned counsel draws the attention of this Court to the Notification dated 29.06.2022 issued by Finance Department

(Pay Implementation Cell), Govt. of Manipur to the effect that a Lecturer (Higher Secondary School), now redesignated as Post Graduate Teacher (PGT) shall be entitled to normal increment notionally (without arrears) from the date of passing of the trained examination prescribed in the RR in respect of the existing untrained teachers. Recruitment Rules for the post of Lecturer, Higher Secondary Education (2021) prescribes B. Ed. From a recognised Institute as one of the essential criteria. Reading together the RR of 2021 and Notification dated 29.06.2022, an untrained Lecturer (now, PGT) like the petitioner will not be eligible to receive the normal increment unless he/she passes the B.Ed. course. It is also pointed out that there is guideline for selecting the candidates for taking admission in B. Ed. Course in DM College of Teacher Education in view of limited number of seats of 230 per session and the authority resorts to pick and choose method. This is the reason why the petitioner was not considered in the session of 2022-2024, when he was eligible. In the session of 2023-2025, he was held ineligible for not having 8 years of regular service prior to superannuation as disclosed for the first time in the counter affidavit.

[11] Learned counsel for the petitioner submits that the State respondents cannot now take advantage of their own wrongs. In the year 2022-2024, the petitioner's name was not considered without any intimation and he was eligible for that session. But in the year 2023-2025, he has allegedly been not considered for not having minimum 8 years of service. It is pleaded that the State cannot blow hot and cold at the same time and cannot take advantage of the lapse committed for the session of 2022-2025.

Reliance is placed on a recent judgment of a Division Bench of this Court in the case of **Ch. Deependra Singh & Ors. v. State of Manipur & Ors.: 2023 (4) MnLJ 435 @ Para 18** holding that the State respondents cannot be allowed to take advantage of lapses or mistakes committed by them while framing the rules and the employees cannot be made to suffer for the mistake or lapses committed by the State. It is pointed out that in the present case, the State respondents committed serious lapses when they did not consider the case of the petitioner for admission to B. Ed. Course for 2022-2024 session when he was eligible at that time. Now it cannot plead that the petitioner is not eligible for 2023-2025 session. For the lapse of the respondents, the petitioner is likely to lose the entitlement of normal increment. It is submitted that in order to ameliorate the suffering of the petitioner created by the lapses of the respondent, the petitioner be permitted to take admission in B. Ed. Course in any available seat of any session notwithstanding whether he is eligible or not of having minimum 8 years of remaining service.

[12] The second limb of submission of Mrs. G. Pushpa, learned counsel for the petitioner is that there cannot be no amendment in the service rule with retrospective effect so as to eliminate an accrued right to an employee. This is the constitutional mandate that by a retrospective legislation, the service conditions of an employee cannot be altered to his disadvantage and any amendment has to be prospective with proper safeguard of existing employees. On this point, reference is made to the decisions of the Hon'ble Supreme Court in the case of **Union of India v.**

Tushar Ranjan Mohanty: (1994) 5 SCC 450 @ Para 14 holding that legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect, but cannot do so to negate the accrued right. It is submitted that in the present case, the amendment in RR (2021) has taken away the accrued right of the petitioner to entitlement of normal increment, unless he has passed the B.Ed. course.

[13] Third point raised by the learned counsel for the petitioner is the principle of promissory estoppel. Reliance is placed on the case of **Union of India v. Godfrey Philips India Ltd.: (1985) 4 SCC 369 @ Para 13** relying on **Motilal Sugar Mills case [(1979) 2 SCC 409]** that promissory estoppel is applicable to both legislative and executive action except for doing contrary to law or against public policy. It is pointed out that by resorting to para 7 of the Notification dated 14.03.2014, the State respondents could have removed the difficulties faced by the petitioner due to their lapses. It is prayed that the respondents be directed to admit the petitioner in any available seat in any session of B.Ed. in DM College of Teacher Education so as to enable him to receive regular increments. Otherwise, it will amount to depriving the petitioner of an accrued right by retrospective amendment in RR in the year 2021.

[14] Mr. S. Nepolean, learned Govt. Advocate submits that as per Para 3(A)(ii)(a) of the Notification dated 14.03.2014 issued by the Department of University & Higher Education, Govt. of Manipur, stipulating norms for admission in B. Ed. Course in DM College of Teacher Education,

the In-Service Candidate should have a minimum of 8 years of service before retirement on superannuation at the time of nomination for the B. Ed. Course. The petitioner is to retire on 30.04.2031 and as on date of deputation of 50 teachers for the course, ie, as on 04.10.2023, the petitioner did not have mandatory 8 years of minimum service for the course 2023-2025. Regarding the session of 2022-2024, learned GA refers to para 4 of the counter affidavit that the case of the petitioner was not consider for the session of 2022-2024, the application was forwarded by the Principal of Lamding Higher Secondary School without 'No Objection Certificate' from the Zonal Education Office. It is submitted that the petitioner cannot be considered for the session of 2023-2025 as he did not have minimum 8 years of service. The principle of promissory estoppel will not be applicable in the present case.

[15] This Court has considered the materials on record and submissions made at bar and the decisions cited by the parties.

[16] It is an admitted fact that with the introduction of the new RR in the year 2021, the eligibility criteria of Lecturer of Higher Secondary (now, redesignated as Post Graduate Teacher) requires passing of B. Ed. Examination from a recognised Institute. In view of Notification dated 29.06.2022 issued by Finance Department (PIC), Govt. of Manipur, the existing un-trained PGT will be entitled to the normal increment after passing of the trained examination prescribed under RR. The new RR creates two categories of PGTs- trained and untrained, and the same was not in the old RR. By this retrospective legislation in exercise of power under Article 309 of the Constitution of India, the accrued right of the erstwhile Lecturers has

been negated, unless they passed the B. Ed. Course from a recognised Institute. The new RR of 2021 nor the Notification dated 29.06.2022 does provide any safeguard to the erstwhile Lecturers who are yet to be trained as B. Ed. under the new RR. Such a situation has been frowned upon by various decisions of the Hon'ble Apex Court including the case of **Tushar Ranjan Mohanty (supra)**.

[17] From perusal of the documents annexed with the writ petition, it is found that the petitioner submitted an application dated 16.06.2022 to the Zonal Education Officer Zone-III, Thoubal requesting to issue NOC for B. Ed. Training course 2022-2024. This Court is of the firmed view that the alleged non-consideration of the candidature of the petitioner on ground of not forwarding a copy of NOC from Zonal Education Officer cannot be accepted, as there is no fault from the side of the petitioner. Any lapses are from the officials concerned and the petitioner cannot be allowed to suffer for such lapses. The decision in the case of **Ch. Deependra (supra)** will squarely cover the present case. The State respondents cannot hide behind the plea that the petitioner was not eligible for the session of 2023-2025 for the lapses committed in 2022-2024 course.

[18] Without going to the legality of retrospective legislation of RR of 2021 cancelling accrued right of receiving normal increments under the old RR, this Court thinks it apt to refer to constitutional safeguards as mandated in Article 59(4) [wrt President], Article 125(2) proviso [wrt Judges of Supreme Court], Article 158(4) [wrt Governor], Article 221(2) proviso [wrt

Judges of High Courts] to mention a few that service conditions cannot be altered to the disadvantages during the tenure of the incumbents.

[19] In the case in hand, the accrued right of the erstwhile Lecturers (now, PGTs untrained) to receive normal increment has been taken away by the new RR, unless they pass B. Ed. course from a recognised Institute. Lecturers like the petitioner herein have to undergo the B. Ed. course in order to entitlement of normal increment. The petitioner was not considered for the session 2022-2024 when he was otherwise eligible on mere plea of non-enclosure of NOC. NOC was applied in time. For the session of 2023-2025, the rejection is explained in the counter affidavit for the first time that the petitioner was not eligible as he did not have mandatory minimum 8 years of service. This Court is of the opinion that the case of the petitioner could have been considered in the 2022-2024 session itself, even if assuming that there was no 'NOC' from zonal office, by exercising the power under Para 7 of the Notification dated 14.03.2014. For the lapses of the respondents in 2022-2024 cannot be cured by technical plea in 2023-2025, in a situation where accrued right of an employee has been taken away by retrospection legislation under Article 309 of the Constitution. It is clarified that this Court is not examining the retrospection legislation of the new RR of 2021, but considering a device to do justice to the petitioner applying the settled principle that a person should not be made to suffer for the lapses of the officials concerned.

[20] In order to do complete justice and in the facts and circumstances of the present case, it would suffice if the State respondents

are directed to admit the petitioner in B. Ed. course in DM College in any available seat in any session irrespective of whether the petitioner has 8 years minimum service or not, by invoking power conferred under para 7 of Notification dated 14.03.2014 for removing difficulties.

[21] In terms of the directions contained in para 20 as above, the writ petition along with misc. application is disposed of. No cost.

[22] Send a copy of this order to the Administrative Secretary, Education(S), Govt. of Manipur for information and necessary compliance.

JUDGE

FR/NFR

Kh. Joshua Maring

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by RAJKUMAR
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