

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.8/2021 with
MC (WPC) No.5/2021

Date of Order: 13.05.2024

Smti. Meralysha Byrsaw

..... Petitioner

Vs.

1. State of Meghalaya through the Commissioner and Secretary to the Govt. of Meghalaya, Education Department, Shillong.
2. The Director of School Education and Literacy, Government of Meghalaya, Shillong.
3. District School Education Officer, East Khasi Hills District, Shillong, Meghalaya.
4. Sub-Divisional School Education Officer, East Khasi Hills District, Meghalaya.
5. Managing Committee, Domksong L.P. School, Mawsynram, East Khasi Hills District, Meghalaya represented by its Secretary.

..... Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Appearance:

For the Petitioner

: Mr. P. Nongbri, Adv with
Mr. M.L. Nongpiur, Adv

For the Respondents

: Mr. N.D. Chullai, AAG with
Mr. H. Abraham, GA for R/1-4
Mr. S. Kumar, Adv for R/5

ORDER

The present writ petition has been filed, challenging the letter dated 01.12.2020, and by which, the petitioner has been terminated from the post of Assistant Teacher.

2. It is the case of the petitioner that she had completed Bachelor of Arts, Diploma in Elementary Education and thereafter Master of Arts in Sociology and also cleared the MTET. Pursuant to the advertisement dated 23.09.2016 (Annexure-5), the petitioner applied for the post of Assistant Teacher and came out successful in the written examination as also in the interview. It is further case of the petitioner that she was given appointment order, which was later approved vide order dated 30.03.2017 by the respondent No.4. It is her grievance that to her shock and surprise, she was terminated from service on 01.12.2020 and according to her, she had appointed against a sanctioned post, which has been approved by the Government.

3. It is her stand that though the respondent No.5 is empowered to take disciplinary action on the basis of a complaint received against her, due process of law should be followed before disengaging the services of the petitioner and she cannot be simply terminated from service, thereby divesting of her duties on one fine morning.

4. She has referred to Section 9(2) of the Meghalaya School Education Act, 1981 (in short 'the Act, 1981') to state that no employee

of a school shall be dismissed, removed or reduced in rank except with the prior approval of the competent authority.

5. Per contra, the main contention of the respondent No.5 is that it is true that the petitioner was selected and appointed after following due procedures. However, on account of complaints received from the parents and others, the petitioner was disengaged from her services. In terms of Section 9(4), more so, 2nd Proviso, the order of termination will be in force for a period of thirty days and after the expiry of thirty days, the petitioner is not entitled to any relief. It is further contended by the learned counsel for the respondent No.5 that in terms of Section 9(3) of the Act of 1981, the petitioner has got a right to appeal before the Appellate Authority and bypassing the same, the present writ petition has been filed and therefore the same is not maintainable.

6. Learned counsel for R5 pointed out that during Covid-19, the operation of the school has been suspended / closed and that there are no teachers and the Managing Committee has also been dissolved. Of course, though the Managing Committee has been subsequently revived, pursuant to the orders of this Court, as on date, there are no teachers and no students. When there are no students, appointing a teacher in the

school will not serve any purpose. He further pointed out that the post of teacher is a transferable one and the Government can transfer the petitioner to some other school.

7. Learned AAG appearing for the State submitted that he will have to seek instructions with regard to the possibility of transfer of the petitioner from one school to another. He further submitted that as there is a misconduct alleged to have been committed by the petitioner, unless a detailed inquiry is conducted, it may not be feasible for the Government to effect transfer of petitioner to other school for the simple reasons that the school, to which she is transferred, may be forced to face problems. Moreover, the Government is not aware about the actual reason for issuance of show cause notice by the Managing Committee against the petitioner and her disengagement from service.

8. Heard all the respective parties.

9. Admittedly, the petitioner had acquired qualification in Master of Arts (Sociology) and in addition to the above, had also passed MTET. Consequent to her fulfillment of eligibility criteria, she had applied for the post of Assistant Teacher in Domskong L.P. School and having come out successful in the written examination and interview, she was appointed as Assistant Teacher in the respondent-school and

thereafter due approval was also granted by the competent authority. It is no doubt true that for the alleged misconduct, a show cause notice was issued to the petitioner and the petitioner stated that she was not able to give a reply. Even without a reply, it is mandate on the part of the Managing Committee to hold an inquiry by appointing an Enquiry Officer and in case the charges are proved, the Managing Committee could have very well dismissed the petitioner from service.

10. The Act, 1981 is applicable to the teachers in terms of Section 3 (xxiii). For the sake of convenience, the relevant provisions of Sections 3(xxiii) and 9 of the Act of 1981, are reproduced below:

“3(xxiii) “*Teachers*” includes the Head of School.

9. Terms and conditions of service of employees of recognised private schools.— (1) The State Government may make rules regulating the minimum qualifications for recruitment and the conditions of service of employees of recognised schools:

Provided that neither the salary nor the service conditions of an employee in the employment of an existing recognised school at the commencement of this Act shall be varied to the disadvantage of such employee.

(2) Subject to any rule that may be made in this behalf no employee of a recognised private school shall be dismissed removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the competent authority.

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the prescribed authority.

(4) Where the managing Committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the competent authority and so such suspension shall be made except with the prior approval of the competent authority:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the competent authority if it is satisfied that such immediate suspension is necessary by reason of gross misconduct, within the meaning of the code of conduct prescribed under Section 10 of the Act;

Provided further that no such immediate suspension shall remain in force for more than a period of thirty days from the date of suspension unless it has been communicated to the competent authority and approved by it before the expiry of the said period.”

11. The plea taken by the 5th respondent that the termination order will be valid for a period of thirty days and thereafter, the petitioner has no locus to raise any issue cannot be accepted. A glance at the Proviso to Section 9(4) would make it very clear that the suspension shall remain in force for a period of thirty days, unless it is duly communicated to the competent authority and approved by it before the expiry of the said period and this provision will not be applicable to suspension. There is a lot of difference between termination and suspension. The relationship between the employee and employer will exist till the period of suspension, whereas insofar as divesting of duties is concerned, the employer-employee relationship will cease to exist.

That part, the contention that the dismissal order is valid for 30 days and thereafter, it cannot be questioned, cannot be accepted.

12. The next plea raised by the learned counsel appearing for the Managing Committee with reference to Section 9(3) of the Act of 1981, though appears to be sound at the first instance, after a period of four years, asking the petitioner to file an appeal before the Appellate Authority will not inure to the benefit of anyone, much less the Managing Committee. The reason being that the Appellate Authority will have to remand the matter to the Disciplinary Authority to conduct an inquiry, as there are no materials available to ascertain as to whether the charges are proved or not.

13. It is pertinent to mention here that a detailed enquiry should be conducted to find out the genesis of the charges levelled against the petitioner, without which, relegating the matter before the Appellate Authority is merely a stone dropped in the well, as the Appellate Authority cannot take any decision without any basic material. Hence, this Court is of the view that the matter needs to be remitted back to the Managing Committee to follow the procedures adumbrated in the Act of 1981.

14. At this juncture, it is brought to the attention of this Court that there was an interim order passed as early as on 18.01.2021,

pursuant to which the salary had been paid to the petitioner till November, 2023 and thereafter, in view of the abolition of the old Managing Committee, the payment of salary has been stopped.

15. On a reading of the order dated 18.01.2021, it is obvious that the interim order had not been restricted for a particular period or till the Managing Committee is dissolved. Till completion of inquiry by following due process of law and imposition of punishment (in case the charges are held to be proved), the Managing Committee shall have to pay the salary to the petitioner.

16. In the result, ***WP (C) No.8 of 2021 and MC (WPC) No.5 of 2021 are disposed of.*** The order of termination dated 01.12.2020 is set aside and the matter is remitted to the Managing Committee to conduct a detailed inquiry. It is needless to state here that in case the charges are proved, it is open to the Managing Committee to impose appropriate punishment. This Court expects the petitioner to cooperate with the inquiry and the inquiry shall be conducted on a day-to- day basis without adjourning the same beyond five working days at any point of time and the inquiry shall be completed within a period of three months from the date of receipt of this order.

17. At this point of time, learned counsel for the petitioner has stated that the petitioner had already given a representation dated 21.09.2022 for transferring her from one school to another and that the said representation may be considered by the Government. It is made clear that the order of this Court will not preclude either the Managing Committee or the competent authority to decide in respect of transfer of the petitioner, as requested by her, as, at this distance of time, it is highly doubtful as to whether the parents and others, who had given the complaint against the petitioner will come forward to tender evidence against her by spending their valuable time for the purpose of establishing the charges in the inquiry. It is further made clear that in case the Government is willing to induct the petitioner, she has to give up her back wages from December, 2023 till June, 2024. No costs.

(S.Vaidyanathan)
Chief Justice

Meghalaya
13.05.2024
"~~Lam~~ DR-PS"

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