

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No.107/2020

Reserved on: 18.03.2024
Pronounced on: 14.05.2024

Shri Ajit Paul

... Petitioner

-Vs-

1. State of Meghalaya represented by the Chief Secretary, Shillong, Meghalaya.
2. Commissioner and Secretary, Department of Education, Meghalaya.
3. Women's College Shillong, Laitumkhrah, Shillong represented by its Principal
4. The Principal, Women's College, Laitumkhrah, Shillong.
5. The Governing Body of Women's College, Laitumkhrah, Shillong represented by its President.
6. North Eastern Hill University, Umshing Mawkynroh, Shillong represented by its Registrar.
7. Meghalaya Board of School Education, Tura, West Garo Hills represented by its Chairman. ... Respondents

Coram:

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

Appearance:

For the Petitioner : Mr. H.L. Shangreiso, Sr.Adv with
Mr. T. Dkhar, Adv.

For the Respondents : Mr. K.P. Bhattacharjee, GA
Ms. A. Paul, Sr.Adv with
Mr. S. Chanda, Adv for R/3-5
Mr. S. Sen, Adv for R/6

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| i) Whether approved for reporting in Law journals etc.: | Yes |
| ii) Whether approved for publication in press: | Yes |

ORDER

The petitioner has come forward with the present writ petition, challenging the email dated 16.12.2019, by which it was communicated to the petitioner that the Governing Body, vide its Resolution dated 12.10.2019 decided to discontinue the services of the petitioner, without due process of law. The petitioner also sought a direction to reinstate him in the post of Assistant Professor in the Department of Computer Science with all consequential benefits w.e.f. 01.01.2020.

2. The case of the petitioner was that he was serving as Assistant Professor in the Department of Computer Science in the Women's College, Shillong. The 3rd respondent college (in short 'the College'), which is an aided institution of the Government since 1991, situated at Upper New Colony, Laitumkhrah, Shillong, East Khasi Hills District, has three sets of teachers, namely, (i) Government sanctioned teachers under the ad hoc grant-in-aid scheme, (ii) College sanctioned post teachers whose salary are duly sanctioned by the College itself and (iii) Guest faculty teachers/temporary teachers, whose salary are also borne by the College itself. According to the petitioner, he falls under the second category, viz., college sanctioned post teachers, whose salaries are duly sanctioned by the College.

3. It was the case of the petitioner that in 2011, the petitioner was said to have been inducted in the College as a Lecturer to impart computer education for the higher secondary students and based on the performance of the petitioner, he was brought under a regular pay scale of Rs.13600-25000/- w.e.f. 01.06.2013. According to the petitioner, his services have been regularized under the second category as stated above with regular pay scale and that there was no appointment order issued. The petitioner had been repeatedly requesting the College to issue him the appointment order in writing so as to avoid future complications. It was his case that, after being inducted in the College as a Lecturer, the post was re-designated as Assistant Professor and he has represented the College on many occasions as a resourceful person for conducting coaching classes. It was his further case that thereafter, his pay scale was revised to Rs.30000 to 66500/- and he was employed against a sanctioned post, but all of a sudden, the Governing Body on 12.10.2019 has taken a decision to discontinue his services. The email communications dated 14.12.2019 and 16.12.2019 would reveal that the services of the petitioner have been disengaged without following any due process of law and the contents of the said email communications are extracted herein below:

“Sat, Dec 14, 2019 at 2:26 PM

Dear Sir,

With reference to my e-mail to you dated 29/10/19 and 10/12/19 respectively, I would like to request you yet once again

to clarify my current position in the college.

Today, being the last working day of the college for the current year, I would like you to kindly clarify the same so that it becomes easy for me to understand my future in this institution.

In anticipation of your response,

Yours sincerely,
Mr. Ajit Paul
Assistant Professor
Department of Computer Applications
Women's College, Shillong.

Mon, Dec 16, 2019 at 8:39 PM

Dear Mr. Ajit,

I was of the opinion that you had been informed by the Teachers' representatives of the Governing Body's decision to do away with the department in the college as it never started as a separate department in the degree section. As of today the department is not there in the college.

With Warm Regards
Dr. Ratnadeep Roy,
Principal
Women's College Shillong."

4. It was put forth by the petitioner that even though the Department of Computer Science is stated to be not in existence, the same was not duly informed to him by giving notice. Since the College has not followed the principle of natural justice, it was argued that the termination itself is illegal, unreasonable and arbitrary and is liable to be interfered with by this Court. It was further submitted that when he has attained a permanent status in a sanctioned post and that the College remitted provident fund amount after deducting from his salary, discontinuation of his service without following due process of law is illegal. Thus, it was

submitted that the petitioner, having no other alternative remedy, has approached this Court by invoking the writ jurisdiction.

5. Learned senior counsel for the petitioner has brought to the notice of this Court various annexures to show that the petitioner has been engaged by the College and also filed the communication dated 22.07.2017 of the petitioner, requesting the college to provide an appointment order. Learned senior counsel appearing for the petitioner also drew the attention of this Court various prospectus to demonstrate that the Computer Application course was available in the College and in the statement of fixation of his initial pay (Annexure-8), the date of his joining the service has been indicated as 01.06.2013 with the name of the post held by the petitioner as “Assistant Professor in Computer Application”.

6. The College has filed a counter affidavit / affidavit-in-opposition wherein it has been stated as follows:

i) The petitioner was appointed without conducting any interview and no appointment order was issued to him. It is true that the petitioner had conducted various programmes on computer literacy in the College in the interest of students and he was also engaged in the higher secondary classes, for which, he was paid remuneration on par with other teachers;

ii) The Department of Computer Application was only for Higher Secondary Section, as no permission was accorded by the University to open a Department of Computer Science/Application for the College;

iii) The Higher Secondary level classes have been segregated / separated from the College and thus, the College has no Computer Application in order to accede to the request of the petitioner that he has to be engaged in the College;

iv) It is true that the petitioner was initially appointed on consolidated pay and subsequently, he was brought under the scale of pay to avoid disparity. The petitioner was also given all the benefits applicable to the employees of the institution till the discontinuation of his service. Even though the pay scale of the petitioner was fixed on par with regular pay scale on 01.09.2013, his services were not regularized against any sanctioned post in the College and the petitioner was conducting classes in the Department of Computer Application only for Secondary level students and not for the College level;

v) The higher secondary section was bifurcated from the College on instruction from Meghalaya Board of School Education and the same was approved by the Meghalaya Board of School Education vide communication dated 01.04.2019. The bifurcation was made effective after the approval of the Governing Body of the College to go ahead and

to create a separate higher secondary section vide decision dated 09.05.2017;

vi) The petitioner was conducting classes for the students of 5th semester studying in the course, namely, Bachelor of Social Work and pursuant to the decision taken in the Governing Body meeting held on 12.10.2019 to do away with the Department of Computer Application from, the services of the petitioner were divested of due to non-availability of any Computer Application Department in the College and he is only an ad hoc employee and he does not have any substantive right to hold the post;

vii) After bifurcation, the petitioner was offered a full-time position in the Higher Secondary section on revised terms of pay and appointment, but, however, the petitioner has refused to accept the same. When there is no Department in the College premises and there was no admission of students in the Computer Application course, the petitioner has no right to claim any benefit in the absence of any permission given by the University to offer such course by the college.

7. Learned counsel appearing for the University contended that the University has not accorded any permission or sanction to the college to conduct course on Computer Application.

8. Heard both the parties and perused the documents available on record.

9. The petitioner was employed in the College and necessary permission was given to the college only to run higher secondary classes, which is not disputed by the petitioner. The petitioner was paid monthly wages initially and was thereafter brought under a scale of pay and also the revised scale of pay was remunerated to him. Thus, it is apparent that the employer, namely, the College does not want to discriminate teachers in respect of payment of salary. Even assuming for the sake of argument that he was allowed to continue in the College against the sanctioned post teachers to impart education on Computer Application, it can be implied that it was only for the higher secondary section and not otherwise. Once the sanction has not been accorded by the University on account of bifurcation of the college from the purview of secondary education vide its communication dated 01.04.2019, the request of the petitioner that he should be continued in the College to conduct classes for the students cannot be accepted and is next to impossible. Though the College has offered him the post to teach Class X and XII students on a lower pay scale applicable to the said post, the petitioner has turned down the offer and refused to join the lower post.

10. The judgment of the Apex Court reported in the case of **St. Mary's Education Society v. Rajendra Prasad Bhargava** reported in **(2023) 4 SCC 498** held that the writ petition is not maintainable against the private body, having public element and the relevant Paragraph

No.75.5 is extracted hereunder:

“75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

11. From the above, it is very clear that the petitioner is not entitled to any relief and even assuming for the sake of argument that the writ petition is maintainable, when the post itself is abolished on account of bifurcation, the petitioner cannot seek a direction from this Court to continue him in the post, which is no longer in existence. If the submission of the petitioner is accepted, it would amount to creation of posts and issuance of appointment to teachers by the Court, sitting on the administrative side, which is not permissible. Learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of **Ramesh Ahluwalia v. State of Punjab** reported in **(2012) 12 SCC 331** to substantiate his case that since the College has been receiving aid from the Government, the writ petition is maintainable. Of course, he fairly concedes that there was no aid granted to the post, which the petitioner is holding. The decision referred to by the learned counsel for the petitioner was considered by the Apex Court in the subsequent judgment referred to supra, namely, **St.Mary's Education Society v. Rajendra Prasad Bhargava** (*supra*), wherein, in Paragraph Nos.58 and 59, the Apex Court categorically held as follows:

“58. In *Ramesh Ahluwalia*, the appellant therein was working as an administrative officer in a privately run educational institution and by way of disciplinary proceedings, was removed from service by the Managing Committee of the said educational institution. A writ petition was filed before the learned Single Judge of the High Court challenging the order of the disciplinary authority wherein he was removed from service. The writ petition was ordered to be dismissed in limine holding that the said educational institution being an unaided and a private school managed by the society cannot be said to be an instrument of the State. The appeal before the Division Bench also came to be dismissed. The matter travelled to this Court.

59. The principal argument before this Court in *Ramesh Ahluwalia case* was in regard to the maintainability of the writ petition against a private educational institution. It was argued on the behalf of the Appellant therein that although a private educational institution may not fall within the definition of “State” or “other authorities/instrumentalities” of the State under Article 12 of the Constitution, yet a writ petition would be maintainable as the said educational institution could be said to be discharging public functions by imparting education. However, the learned counsel for the educational institution therein took a plea before this Court that while considering whether a body falling within the definition of “State”, it is necessary to consider whether such body is financially, functionally and administratively dominated by or under the control of the Government. It was further argued that if the control is merely regulatory either under a statute or otherwise, it would not ipso facto make the body “State” within Article 12 of the Constitution. On the conspectus of the peculiar facts of the case and the submissions advanced, this Court held that a writ petition would be maintainable if a private educational institution discharges public functions, more particularly imparting education. Even by holding so, this Court declined to extend any benefits to the teacher as the case involved disputed questions of fact.”

12. That apart, even on a glance at the communication dated 01.11.2019 of the faculty members of Women’s College (Annexure-11), addressed to the President, Governing Body, condemning the

discontinuation of the services of the petitioner, which was produced by the petitioner himself, it is vividly apparent that he was conducting computer courses for classes XI and XII. Though it was argued on the side of the petitioner that he was assigned to conduct regular environmental science classes at degree level, there is no evidence adduced to that effect.

13. Looking at any angle, in my considered opinion, the writ petition is not maintainable, when the post itself ceases to exist, owing to bifurcation and the College has no sanctioned post to accommodate the petitioner. Hence, this Court has no other option, but to dismiss the writ petition as not maintainable.

14. Accordingly, the Writ Petition stands dismissed.

(S.Vaidyanathan)
Chief Justice

Meghalaya
14.05.2024
"~~Lam~~ DR-PS"

PRE-DELIVERY ORDER IN
WP(C) No. 107 of 2020