



Serial No.01
Supple. List

HIGH COURT OF MEGHALAYA
AT SHILLONG

W. A. No. 33 of 2024

Reserved on : 27.08.2024

Date of Decision: 10.09.2024

Shri Ajit Paul,
S/o Shri. Sudhir Chandra Paul
Aged about:37 years
R/o, Boyce Road Laitumkhrah,
Shillong East Khasi Hills,
District, Meghalaya.

::::WRIT APPELLANT.

Vs. 1.State of Meghalaya, represented
by the Chief Secretary to the
Govt. of Meghalaya, Shillong.

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 H.S. Thangkhiew, Chief Justice (Acting)
Hon’ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s)	: Mr. H.L. Shangreiso, Sr. Adv. with Ms. E.Wanniang, Adv.
For the Respondent(s)	: Mr. N. D. Chullai, AAG with Ms. Z. E. Nongkynrih, GA. (R:1 & 2) Ms. A. Paul, Sr. Adv. with Mrs. R. Dutta, Adv. (R: 3 – 5) Mr. S. Sen, Adv. (R: 6) Mr. S. P. Mahanta, Sr. Adv. with Mr. M. Lyngdoh, Adv. (R: 7)

(JUDGMENT & ORDER)

Per. B. Bhattacharjee, Judge:

This writ appeal seeks to challenge the order dated 14-05-2024 passed in WP(C) No. 107 of 2020 by which the writ petition filed by the appellant herein was dismissed by holding that the same was not maintainable.



1. The facts of the case giving rise to the filing of the present writ appeal is that the appellant was inducted in the Women College, Shillong in the year 2011 to impart computer education for the Higher Secondary section and subsequently to run the add-on courses for the Degree students and being satisfied with the performance of the appellant, the Governing Body (respondent No.5) in its meeting 08-06-2013 passed resolution to bring the appellant under the regular pay-scale of the college. Pursuant to the above resolution, the appellant was paid a regular pay-scale w.e.f. 01-06-2013 by regularizing his service against the college sanctioned post. However, the appellant was never issued with any appointment letter, whereas all the other faculty members under the college sanctioned post had received their respective appointment letters. Nevertheless, the College Authority being happy with the sincere and industrious approach of the appellant towards his duty as a teacher in the college, redesignated his post from lecturer to that of the Assistant Professor and, accordingly the pay-scale of the appellant was revised w.e.f. 01-09-2018. As no appointment letter was issued to the appellant, the teachers' representative of the college adopted an agenda in its meeting held on 01-12-2018 in the matter of non-issuance of



appointment letter to the appellant besides other issues and forwarded the same to the respondent No 5 for looking into the matter. In the midst of the aforesaid situation, the appellant was taken by surprise when he received an oral information in the later part of the year 2019 from the respondent college to the effect that the pay-scale extended to the appellant would be discontinued and he would get a remuneration of only Rs.500/- per class for taking classes in the Higher Secondary section. The appellant immediately sent emails on 29-10-2019, 10-12-2019 and 14-12-2019 to the respondent college seeking clarification of his status in the college. The respondent college, thereupon, vide reply dated 16-12-2019 informed the appellant that the respondent Governing Body had decided to do away with the Department of Computer Science in the college as it never started as a separate department in the Degree section and as on that date, the Department of Computer Science was not there in the college and the appellant was instructed not to resume his duties.

2. In the above circumstances, having left with no other alternative, the appellant approached the High Court by filing the writ petition No. 107 of 2020 challenging the resolution dated 12-10-2019 adopted by the Governing Body (respondent No.5 herein) and the



impugned letter/mail dated 16-12-2019 of the Principal of the Women's College (respondent No.4) intimating the appellant about the discontinuation of his service. The appellant also prayed for a direction for his reinstatement in service with all benefits. The writ court dismissed the above writ petition by holding: -

“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.”

3. Assailing the order of the writ court, the appellant has filed this writ appeal by raising several grounds mentioned in his Memo of Appeal.

4. Mr. H. L. Shangreiso, the learned Senior Counsel appearing for the appellant submits that the learned Single Judge failed to appreciate that the appellant was regularized in a college sanctioned post and the benefit of regular pay-scale was conferred upon him. He submits that as per the provision of rule 2(10) of the Recognition of Secondary and Higher Secondary School Rules, 2012, the respondent college is a recognized private institution falling under the purview of the



Meghalaya School Education Act, 1981 and hence, the conclusion reached by the learned Single Judge that the writ petition was not maintainable, is totally wrong. He further submits that the finding of the Single Judge that the college had no sanctioned post to accommodate the appellant is contradictory to the available materials on record. The learned Senior Counsel has drawn attention of this Court to the various documents appended with the writ petition and submits that as per several reports of All India Survey on Higher Education and the Prospectus issued by the respondent college, it is apparent that there exists a Computer Department in the college. By referring to the proceeding of the Staff Council Meeting dated 10-06-2013 and the certificate dated 21-12-2015 issued by the then Principle of the college, he submits that the appellant was a full-time lecturer in the Department of Computer Science and being a regular employee of the college, could not have been terminated from service without affording an opportunity of hearing and without prior approval of the competent authority in terms of Section 9(2) of the Meghalaya School Education Act, 1981. The learned Senior Counsel further refers to rules 23 (9) & 23 (10) of the Meghalaya Deficit Aided College Management School Rules, 2013 and submits that adherence to the



principle of natural justice and equity is a mandatory requirement in case of termination and removal of service of employees of the college, but the same was not done in the case of the appellant despite the fact that he acquired regular and permanent status in a college sanctioned post and deduction for provident fund was made from his salary. On the basis of his submissions, the learned Senior Counsel prays for setting aside and quashing of the impugned order of the learned Single Judge and for issuance of necessary direction for reinstatement of the writ petitioner back into service with all benefits. To buttress his argument, the learned Senior Counsel places reliance on the decisions of the Apex Court reported in (1997) 7 SCC 550, *Chief General Manager, State Bank of India and Another versus Bijoy Kumar Mishra*, (2011) 13 SCC 760, *Satimbla Sharma & Ors. vs St.Paul Sr.Secondary School & Ors.*, (2016) 6 SCC 541, *Raj Kumar vs Director of Education & Ors.*, (2020) 14 SCC 449, *Marwari Balika Vidyalaya vs. Asha Srivastava and others* and the decision of the Allahabad High Court in *Special Appeal No.115 of 2024, C/M Pratibha Inter College Vs. State of U.P & Ors.*



5. Per contra, Ms. A. Paul, learned Senior Counsel appearing for the respondents. No. 3 – 5 submits that the appellant was engaged in the service of the college in the Higher Secondary section without any advertisement and interview and no appointment letter was issued to him and, as such, the appellant cannot claim himself to be a regular employee of the college. The learned Senior Counsel submits that the Department of Computer Application was only for the Higher Secondary section and no permission was accorded by the respondent No.6, the University, for opening the same department in the degree level of the college. It is further submitted that the Higher Secondary section was bifurcated from the college on instruction from the respondent No.7, the Board, and the same was approved vide communication dated 01-04-2019 of the Board. After the bifurcation of the Higher Secondary section, there exists no Department of Computer Application in the college. The learned Senior Counsel refers to a letter dated 22-07-2017 written by the appellant addressed to the principal of the college requesting for consideration of his tenure of service from the year 2011 as a faculty in the college and for providing him an appointment letter, and submits that the letter itself is the proof that the appellant was never provided with any regular



appointment in the college. The learned Senior Counsel contends that since the appellant was not appointed in the college by holding a regular selection process and no appointment letter was ever issued to him, the provision of Section 9(2) of the Meghalaya School Education Act, 1981 would not apply to him. Further, the appellant was not appointed in the degree level of the college at any point of time and, hence, the provision of the Meghalaya Deficit College Management Rules, 2013 is also not applicable in the present case. The learned Senior Counsel submits that though the pay-scale of the appellant was fixed at par with regular pay-scale to avoid disparity, his service was never regularized any sanctioned post in the college. She submits that appellant does not have any legally enforceable right and, hence, the order of the Single Judge cannot be faulted with and this writ appeal is liable to be dismissed.

6. Mr. N. D. Chullai, learned AAG appearing for the State-respondents No. 1 & 2 submits that no relief has been claimed against the State-respondents in the matter. Further, the State had no role in the appointment of the appellant in the college and no approval was accorded to any such appointment.



7. Mr. S. Sen, learned Counsel appearing for the respondent No. 6 submits that the University has not accorded any permission or sanction to the college for conducting course in Computer Application and the college does not have affiliation of the University to offer any programme on Computer Science.

8. Mr. S. P. Mahanta, learned Senior Counsel appearing for the respondent No.7 submits that the Board has no connection with the appointment and removal of the appellant from the service of the college.

9. Perusal of the materials on record reveal that though the appellant was engaged in the college in the year 2011 to impart computer education in the Higher Secondary section of the college, no appointment order showing the terms and condition of the service of the appellant was issued to him. There is also nothing to show that the appellant was taken into service of the college after holding a regular selection process. The terms and conditions of the appointment of the appellant is also not disclosed anywhere. In absence of proof of any specific terms and conditions of appointment, it is difficult to hold that the appellant was appointed in the college on a regular basis.



10. The proceedings of the Staff Council Meeting dated 10-06-2013, basing on which the appellant has asserted his claim of regular appointment, is not a proceeding of the Governing Body of the college and thus, cannot be made a basis for deciding the claim of regular appointment of the appellant. The certificate dated 21-12-2015, relied on by the appellant is also not a proof of regular appointment of the appellant as the same was issued in the form of a salary certificate. The content of the said certificate that the appellant was serving as a full-time lecturer in the college since 20-06-2011 is totally at variance with the claim of the appellant that he was brought under regular scale w.e.f. 01-09-2013. Furthermore, the letter dated 22-07-2017, admittedly written by the appellant requesting for consideration of his tenure of service as a faculty in the institution by issuing an appointment letter, goes against the very claim of the appellant that he was appointed as a regular employee in the college in the year 2011.

11. The appellant does not dispute the fact he was taken into the service of the college without any advertisement and without holding a regular selection process. There is also no dispute that the Higher Secondary section of the college was bifurcated on the basis of the



approval accorded by the respondent No.7 on 01-04-2019. Except for asserting his claim of regular appointment on the basis of conferment of structured pay-scale by the college, the appellant is not able to furnish any material to establish his claim. Moreover, there is nothing on record to show that the appellant was appointed in the degree section of the college for taking regular classes. In such a situation, it cannot be said that the appellant has any legally enforceable right to seek regular appointment in the college.

12. The various case laws relied upon by the learned Senior Counsel for the appellant do not appear to be relevant for consideration of appellant's claim in the present matter. The case of *Chief General Manager, State Bank of India and Another (supra)* was in relation to a subject concerning period of probation and deemed confirmation in service. The appellant's case in the present matter is no way relatable to any appointment on probation and confirmation in service. The case of *Satimbla Sharma & Ors. (supra)* was with regard to pay parity between the teachers of a private schools and government aided schools and, hence, has no connection with the facts and situation of the present case. The decision rendered in *Raj*



Kumar (supra), was with regard to retrenchment of a person employed as a driver who became permanent in the year 1994. The case of the appellant in the present matter has no similarity with the said decision. The decision rendered in *Marwari Balika Vidyalaya (supra)*, was in relation to an appointment made with approval of the competent authority and no approval was obtained for the purpose of removal. It is not the case of the appellant here that his appointment was approved at any point of time by the competent authority. The case of *C/M Pratibha Inter College (supra)* by the Allahabad High Court relates to termination of service wherein enquiry was required to be made under Clause 9 of the Regulation 2000 framed under the U.P. Intermediate Education Act, 1921 and, as such, has no bearing with the case of the appellant before this Court.

13. The appellant's claim in the present case is with regard to termination of a service from the post of the Assistant Professor. The Recognition of Secondary and Higher Secondary School Rules, 2012 framed under the provision of Meghalaya School Regulation Act, 1981 does not show there exist any post of Assistant Professor in the Higher Secondary section of any institution. The Rules 15, 16, 17, 18



& 19 provides for the posts of the Head of the Institution, Assistant Head of the Institution, Subject Teachers, Office Staffs and Librarian. Hence, the petitioner cannot make any claim basing on the provision of the aforesaid Act of 1981 and the Rule of 2012.

14. Since the learned Senior Counsel has referred to the provisions of Rule 2(d), Rules 23(9) and 23(10) of the Meghalaya Deficit Aided Colleges Management Rules, 2013, it would be appropriate to take into consideration the provisions of the aforesaid rules which are as follows:

“2.(d) “Employee” means every person employed in an Educational institution whose entire salary is drawn from maintenance grants received from the State Government except menials, i.e., all employees covered by grant-in-aid.

23.(9) To appoint staff and other persons that is necessary to run the affairs of the colleges after due advertisement and interview. All such appointments shall however be made in conformity with prevailing relevant rules governing appointments. No such approval is necessary in case of appointment of substitute teacher maintained by the college from its own fund provided that such teacher possesses the required qualification. No such approval is necessary in case of appointment of persons in the menial category.

(10) The Governing Body shall adhere all procedures prescribes under the relevant Employee Rules approved by



Government in the matter of dismissal of any incumbent holding a post under the deficit funding system. In case of other categories of employees, the principles of natural justice and equity should be adhered to.”

A conjoint reading of the aforesaid rules makes it amply clear that the appointment of regular staffs and other persons to run the affairs of the colleges can only be made after due advertisement and interview in conformity with prevailing rules governing appointment except in case of appointment of substitute teachers maintained by a college from its own fund. The adherence to the rules approved by the Government is also required in case of dismissal of any incumbent holding a post under the deficit system and for employees of other categories, the principle of natural justice and equity needs to be followed.

15. Since the appellant was not taken into service by following the procedures of law laid down for appointment either in the Higher Secondary section or in the degree level of the college, the petitioner cannot claim to be a regular employee of the respondent college. Mere extension of benefit of regular pay-scale would not make him a regular employee of the college. Apart from the contentions raised on behalf of the respondents No. 3, 4 & 5, the submissions advanced on



behalf of the State-respondents No.1 & 2, the respondent No.6 and the respondent No.7, make it crystal clear that the appointment of the appellant in the college had no approval of the competent authority. There is nothing in the aforesaid provisions of the Act and the Rules implying inclusion of contract or temporary workers or those who are not appointed by following the prescribed norms of appointment, be termed as employees of the institution.

16. It is clear that the appellant's induction in the service of the respondent-college has no involvement of public law element. If according to the appellant, there is an illegality or infirmity in his discontinuation of service, the same totally falls under the realm of private contract. It cannot be said the college was discharging any public duty in connection with the appointment of the appellant.

17. For what has been discussed above, the impugned order dated 15-04-2024 passed in WP(C) No. 107 of 2020 does not call for any interference.

18. The appeal stands dismissed. No costs.



(B. Bhattacharjee)
Judge

(H. S. Thangkhiew)
Chief Justice (Acting)

Meghalaya
10.09.2024
"Biswarup-PS"