

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No.12 of 2023

Reserved on: 13.03.2024
Pronounced on: 08.05.2024

Shri Sengbreezbirth N Marak Petitioner

Vs.

1. State of Meghalaya, represented by Chief Secretary to the Government of Meghalaya, Shillong.
2. Commissioner & Secretary, Education Department, Government of Meghalaya, Shillong.
3. Director of School Education & Literacy, Meghalaya, Shillong.
4. District School Education Officer, East Garo Hills District, Williamnagar.
5. Smti Phyra G. Momin
6. Smti Barkuish G. Momin
7. Smti Presildha A. Sangma
8. Smti Binamoni M. Sangma
9. Shri Sengwil N. Marak
10. Smti Mayfourlitha Ch. Marak
11. Smti Shelly A. Sangma
12. Smti Swandeshilla N. Marak
13. Smti Nishabell N. Marak
14. Smti Bethshida M. Areng
15. Shri Banuel Areng
16. Shri Chegen M. Marak
17. Secretary, School Managing Committee, Rongrenggiri Model Deficit Secondary School, East Garo Hills District, Williamnagar.
18. Secretary, School Managing Committee, United Songsak Deficit Secondary School, East Garo Hills District, Agalgre.
19. Secretary, School Managing Committee, Mansang Deficit Secondary School, East Garo Hills District, Mansang.
20. Secretary, School Managing Committee, United Rongjeng Deficit Secondary School, East Garo Hills District, Rongjeng.

..... Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner	: Mr. S.Deb, Adv.
For the Respondents	: Mrs. T.Yangki B, AAG with Mr. J.N.Rynjah, GA

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

ORDER**(Made by the Hon'ble Chief Justice)**

The present writ petition has been filed by way of Public Interest Litigation to quash the appointment of teachers, who do not possess the Meghalaya Teachers Eligibility Test (MTET) qualification and to comply with the mandatory provisions of the NCTE's notification dated 23.08.2010 and the Notification dated 01.07.2020 issued by the Education Department, Government of Meghalaya in letter and spirit.

2. It was the case of the petitioner that education is important for personal and community success and it develops human personality, thoughts and prepares people for life experiences, besides helping people learn how to think about and make a difference in society. It was the grievance of the petitioner that on account of lack of proper education standards and qualified teachers in the schools, aspiring students are unable to get proper education and to pursue higher and technical education.

3. It was also the case of the petitioner that the Right to Children to Free and Compulsory Education Act, 2009 was enacted with the aim to provide free and compulsory education to children between 6 and 14 years in India under Article 21A of the Constitution of India. It is incumbent on the Government and local authorities to ensure timely admission, attendance and completion of elementary education between 6 and 14 age group.

4. It was urged that this petition was filed to elevate the standard of education in the State and as per Section 29 of the Act, a teacher must possess minimum qualifications that are laid down by an Academic Authority duly authorized by the appropriate Government vide notification. If a teacher does not possess a minimum qualification, the person shall not be appointed. There is a categorical stand of the State Government that the cut-off date for appointment of teachers without MTET is 23.08.2010 and that no teacher shall be appointed without MTET thereafter. The petitioner, by referring to Paragraph No.21 of the affidavit, regarding qualifications obtained by the teachers, stated that the teachers do not possess requisite qualification and he also relied upon the notification dated 23.08.2010, which prescribes qualification, without which, they cannot be considered for appointment as teachers.

5. The respondents 1 to 4 have filed a counter affidavit, wherein it has been stated that Writ Petition is not maintainable in service matters in terms of the following judgments of the Supreme Court:

i) **Dr. Duryodhan Sahu and others vs. Jitendra Kumar**

Mishra and others, reported in **(1998) 7 SCC 273**;

“18. The Constitution of Administrative Tribunal was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of “service matters” found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word “his” cannot be ignored. Section 3(b) defines the word “application” as an application made Under Section 19. The latter Section refers to “person aggrieved”. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word 'order' has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.”

ii) *Hari Bansh Lal vs. Sahodar Prasad Mahto and Others,*

reported in *(2010) 9 SCC 655;*

“11. About maintainability of the public interest litigation in service matters except for a writ of quo warranto, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board, considering the qualifications specified in Sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence.

12. We have already pointed out that the person who approached the High Court by way of a public interest litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has not placed any material or highlighted on what way he is suitable and eligible for that post.”

6. It was further stated that the petitioner seeks to quash the appointment orders issued to the teachers and it was the stand of the respondents that the Notification mentioned by the petitioner is applicable to Classes 1 to 8 and the petitioner has not made a specific averment as to the classes to which teachers have been appointed.

7. It was also stated in the counter affidavit that as per Notification dated 01.07.2020, MTET is compulsory for the appointment of teachers to Class I to VIII and not for appointment of teachers to Class IX & X. Thus, it was argued that this petition is liable to be dismissed for bereft of details.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Admittedly, the petitioner is a stranger to the lis and he is not an aggrieved person. In the light of the judgment of the Apex Court in **Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others** (supra), if strangers are allowed to question the appointments made in the service side by way of PIL, the very object of speedy disposal in service matters would be definitely defeated. As per the contention of the respondents, teachers have been appointed pursuant to the advertisement annexed in the petitioner's typeset to teach Class IX & X, for which, MTET is not compulsory. Though the petitioner has stated that the recruited teachers have been taking classes below Class IX, there is no averment or evidence to that effect adduced before this Court.

10. There is no quarrel with the proposition laid down by the Supreme Court that a Writ of quo warranto is maintainable, when

appointment is contrary to a statutory provision. A Three Judges Bench of the Supreme Court in **High Court of Gujarat and another vs. Gujarat Kishan Mazdoor Panchayat and Others**, reported in **(2003) 4 SCC 712**, categorically held as under:

“22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari.

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules.”

11. Moreover, the respondents have clearly stated in Paragraph No.14 of the counter affidavit that the teachers, who have been appointed, will conduct classes for IX & X and not for other classes, for which, possession of MTET qualification is mandatory. The said submission is recorded.

12. The Hon'ble Supreme Court in the case of **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others**, reported in **1997(2) SCC 534**, held as under:

“Before answering the question whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice, it is necessary to consider the need for the education and the place of the teacher in

that behalf. Article 45 of the Constitution enjoins the State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. The Supreme Court has held that right to education is a fundamental right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51 A so as to make the students responsible citizens of the country. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities.”

10. Mahatma Gandhi, the Father of the Nation has stated that “a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them. ...

..... Dr.S.Radhakrishnan has stated that “we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness.”

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as “**Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha**”. As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance."

13. In yet another judgment in the case of **The Secretary, Sri Ramakrishna Vidhyalayam High School, Tirupparaithurai, Tiruchirapalli District Vs. State of Tamil Nadu, Rep.by Special Commissioner and Secretary to Government and others**, reported in **1990 WLR 62**, Madras High Court categorically held as follows:

“59. It is very lamentable state of affairs that in this country, a teacher who was considered as equal to God, should fall from the high pedestal to the lowest level. Our scriptures command the students to consider the teacher as a God (Acharya Devo Bhava). The term ‘Acharya’ in Sanskrit means a person who not only teaches lessons to students, but also ensures good conduct of his pupils. The more important part of the definition is that he shall himself practice what he preaches. In Sanskrit language, the term ‘Guru’ also means teacher. The syllable “Gu” represents darkness (symbolising ignorance). The syllable “Ru” represents the removal thereof. Thus, a Guru is so called as he removes the darkness and the ignorance from the minds of the students. In fact, there is a saying that it is only with the blessings of a teacher that a person blossoms into a full man.”

14. Finding that the present petition is bereft of particulars, **PIL No.12 of 2023 is dismissed** on the ground of maintainability, as PIL is

not maintainable in service matters. However, it is made clear that any appointment is made contrary to the Rules / Regulations / Notification, there is no impediment to agitate by way of PIL for issuance of a writ of Quo Warranto against such appointees.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
08.05.2024
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PRE-DELIVERY ORDER IN
PIL No.12 of 2023