



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.39/2024

Date of CAV : 18.02.2025

Date of pronouncement : 12.03.2025

State of Meghalaya through the Secretary to the Government of Meghalaya,
Education Department, Meghalaya Appellant

Vs.

Smti. Uttora G. Sangma Respondent

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mrs. N.G. Shylla, Sr.GA with
Ms. Z.E. Nongkynrih, GA

For the Respondent : Mr. S. Deb, Adv

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.



JUDGMENT

(Delivered by the Hon'ble, the Chief Justice)

This is the case of a former government teacher wanting post service retiral benefits as paid to regular teachers by the State. She served from 21st July, 1989 till about 2nd February, 2023. It is indeed a long stint of about 34 years. The contention of the State is that she was never a regular employee, being appointed ad hoc and continuing on a temporary and contractual post, thus disentitled to any post service benefits.

Being aggrieved she filed the instant writ petition in this Court [WP (C) No.82 of 2023]. A learned single judge by the impugned judgment and order dated 14th June, 2024, allowed the writ petition by directing all retiral benefits including pension under the Meghalaya Civil Services (Pension) Rules, 1983 to the writ petitioner.

The State is in appeal before us.

Before proceeding further in the matter, narration of facts is necessary.

By a government order dated 21st July, 1989, the respondent was appointed on an “ad hoc basis” as an Assistant teacher by the Inspector of Schools, West Garo Hills.



By an order dated 1st September, 1998 made by the Inspector of Schools, the service of the respondent was regularised from 28th October, 1996.

There is substantial dispute regarding this appointment. The appellant says that the appointing authority had no competence to make the order. The respondent never became a regular employee and continued to be in ad hoc and temporary appointment.

It appears from the records that in or about the beginning of 2023, the respondent became interested in contesting a political election. In order to do so, the respondent could not enjoy an office of profit under the government. The evidence before us, in appeal is most interesting and intriguing. I will discuss a set of correspondence.

By a letter dated 3rd April, 2017, the Director of School and Literacy Education, Shillong forwarded to the Special Officer attached to the Government of Meghalaya, Education Department some service documents with a request to it to accord “ex post facto approval on the regularisation on her service with effect from 28th October, 1996 already made by the then Inspector of Schools”. The Joint Director of School Education and Literacy



wrote back to his counterpart in West Garo Hills, Tura on 15th May, 2017 asking for justification for such approval. On 29th June, 2017, the Joint Director, Tura replied by narrating the career details of the respondent making a kind of declaration as follows:

“3. It is also found that the service of Smti. Uttora G. Sangma was regularised in Grade ‘A’ based on the order from the Addl. Director of Public Instruction vide No.ESTT/ADM/15/89/28 dated 28/10/1996.

5. Infact, since her regularisation, i.e. 1/9/1996, her service has extended upto 21 years and is not promoted elsewhere on higher scale of pay etc. She has been discharging her duties with the scale of pay per permissible to her.”

On 10th August, 2021, the Under Secretary to the Government of Meghalaya, Education Department asked the Director of School Education and Literacy, Meghalaya to provide detailed information to enable action at their end, which was duly furnished as it appears from the letter dated 4th October, 2021. On the same lines, other correspondence was exchanged on 20th September, 2021 and 10th February, 2022.

On 1st September, 2022, the respondent submitted an application for voluntary retirement from service (VRS) with a request to relieve her from service from 30th October, 2022. On 29th November, 2022, the Special Officer to the Government of Meghalaya, Education Department wrote back



to the Director of School Education and Literacy that the respondent was an ad hoc employee, “yet to be regularised” and that the application for voluntary retirement should be tendered after regularisation.

First of all there is not a word in this correspondence that the authority making the regular appointment of the respondent in 1996 had no authority as sought to be contended by Mrs. Shylla, learned counsel for the appellant. Furthermore, there is also complete admission that the respondent had been regularised in service with effect from 28th October, 1996. Yet ex post facto approval of the government was being sought by the above correspondence. This is completely unacceptable. Once it is declared that an employee was regularly appointed, there is no scope of any ex post facto approval any more.

The respondent says that she always believed that she was in regular service. It is the contention of the appellant that she always knew that she was on ad hoc appointment. The respondent maintains that the correspondences referred to above were inter-departmental and even if that set of correspondence suggested that her regularisation was being considered, she did not know anything about it.



Now, by the beginning of February, 2023, the election was closing in. The respondent's case for regularisation according to the appellant authorities, was still under consideration. There was a time limit for the respondent to make the necessary declarations before the election authority that she did not enjoy any office of profit.

On 1st February, 2023, she resigned from the post. On 2nd February, 2023 her resignation was accepted. Her service was regularised by the government on 25th April, 2023.

The respondent's case is that her resignation of 1st February, 2023 was from a regular post after qualifying service and that she be granted all retiral benefits of a regular employee. Alternatively, she claims her resignation letter to be one for voluntary retirement after such qualifying service and she be granted the benefits of that scheme.

The argument of learned counsel for the appellant authority is that her relationship with her employer, the appellant authority was ad hoc and temporary. By her resignation, there was severance of that relationship. When she was regularised on 25th April, 2023, there was no relationship of master and servant. The order of regularisation had no effect on a former



employee. Therefore, the respondent is not entitled to any pension or other retiral benefits.

At this point of time, it is necessary to examine the prayers in the writ petition made by the respondent.

The prayers are short and as follows:

- “i. Direct the Respondents to regularize the service of the Petitioner immediately;
- ii. And further direct the concerned Respondents to release the Petitioner’s pensionary and other terminal benefits as entitled to her, without any undue delay”.

The learned single judge in the impugned judgment and order remarked that the facts and circumstances of this case were peculiar. The resignation of the respondent could be said to be “totally at fault”. The application for resignation of the respondent should be considered as the application for voluntary retirement and that she be granted all retiral benefits more particularly, pension under the Meghalaya Civil Services (Pension) Rules, 1983.

Mrs. Shylla very emphatically made the following further submissions.



The respondent had political ambition. She could not, as a school teacher, contest the election. She knew that she was only an ad hoc employee and that she would lose all the retiral benefits on resignation. She also knew that her regularisation in service was under consideration by the government. She had a choice between regularisation as a school teacher and a political career. She chose the latter resigning from the school, being fully conscious that she will be losing all retiral benefits. Unfortunately, her plan did not work out and she lost the election. Thereupon, she decided to try her luck through this writ to claim all retiral benefits, as if she retired as a regular employee.

It needs to be emphasized that shortly after she resigned, the government formally regularised her service. Mrs. Shylla submitted that this regularisation had no value whatsoever because at the time of regularisation, she was not even an ad hoc employee of the government. There could be no regularisation of a non-existing employee.

Mr. S. Deb, learned counsel for the respondent had answer to all these submissions. He contended that the respondent was duly regularised in 1996. This was known to her as well as the appellant. At a later point of time,



the government seemed to have second thoughts and started treating this regular appointment as ad hoc. Nevertheless it proceeded to regularise the respondent's service as would appear from the inter-departmental correspondence mentioned earlier in this judgment, copies of which were not marked to the respondent. The respondent was in the dark with regard to the above change of viewpoint of the government. So much so that her resignation was also not countenanced by the government and they proceeded to regularise her after the resignation.

Therefore, the facts which emerge and my view on consideration of the above submissions are as follows.

On 1st September, 2022, the respondent wrote to the Director, School of Education and Literacy, Meghalaya, Shillong, that she joined as a teacher on ad hoc basis on 1st September, 1988; the date of regularisation of her service was 1st September, 1996 and that according to Rule 38A of Meghalaya Civil Services (Pension) (Fourth-Amendment) Rules, 1998 she had rendered qualifying service. She requested to be released from employment from 30th October, 2022 on voluntary retirement. On 20th



September, 2022, the Joint Director, School Education and Literacy, West Garo Hills, Tura forwarded this application to the Director.

No steps having been taken by the appellant further to this application, the respondent appears to have made a representation on 6th December, 2022 to the Director. On 31st January, 2023, the Director wrote to her denying that she was a regular teacher and stating that she could make an application for voluntary retirement after regularisation.

I repeat for the sake of maintaining clarity in the course of events that according to government records all this while the case of the respondent for regularisation was being considered by the appellant-authorities.

On 1st February, 2023, the respondent resigned from service. On 2nd February, 2023 the resignation was accepted. On 25th April, 2023, the Meghalaya Public Service Commission, Lower Lachumiere, Shillong, amongst others regularised the service of the respondent.

Therefore, in my view there could be a few alternate situations.

The first is that the respondent knew that she was an ad hoc teacher and her case for regularisation was under consideration. She hoped that she would win the election, and carve out for herself a political career. She



resigned, fully knowing the consequences of resignation that she would not get any retiral benefits.

Secondly, she believed that she was a regular teacher and had completed qualifying service entitling her to full retiral benefits. So she resigned knowing that the resignation would result in voluntary retirement for her under Rule 38A with full retiral benefits.

Thirdly, after losing the election, the respondent realised that she had lost the job without any retiral benefits and had also been unable to win the election. So this writ was preferred on speculation to declare her as a regular employee, and the letter of resignation as one for voluntary retirement under Rule 38A and to claim all retiral benefits.

One thing is very clear. Voluntary retirement is not available to a temporary employee. Furthermore, what is in great favour of the respondent is that after the exchange of all the correspondence, on 25th April, 2023, the Meghalaya Public Service Commission regularised her service from 1st September, 1998 as an Assistant Teacher.

Now, if this be the case, then her letter of resignation of 1st February, 2023 was not acted upon. Otherwise how could an employee who



had resigned and whose service had been terminated be regularised. Further the decision of the Meghalaya Public Service Commission of 25th April, 2023 was a reaffirmation of the regularisation of the respondent made on 1st September, 1998 by the Inspector of Schools with effect from 28th October, 1996. The conduct of the appellant does not permit them to make the assertion at this point of time that the respondent was all along an ad hoc employee. They are estopped from doing so. The respondent should be deemed to have resigned as a regular employee and treated as voluntarily retired. For the above reasons, I affirm the impugned judgment and order dated 14th June, 2024. The said judgment and order shall be complied with within eight weeks of communication of this order.

This appeal [WA No. 39 of 2024] is accordingly dismissed.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice