Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.21/2020
With MC (WA) No.23/2020

Date of Order: 10.12.2020

Probirth D. Marak & ors Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Biswanath Somadder, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. PT Sangma, Adv
For the Respondent(s) : Mr. A Kumar, Advocate General with
Ms. R Colney, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

The instant writ appeal arises out of a common judgment and order dated 05.10.2020, passed by the learned Single Judge whereby a bunch of writ petitions involving common issues have been disposed of.

The appellants before us are the writ petitioners.

From the facts on record, it appears that the appellants/writ petitioners were essentially seeking regularization of service. The appellants/writ petitioners were also challenging the Meghalaya Teachers Eligibility Test (for short, "MTET") examination, which was held on 31.01.2019. From a plain reading of the impugned judgment and order, it appears that the learned Single Judge has considered the issues involved in the writ petitions at length as well as the pleadings filed and gave an extensive hearing to the parties. The learned Single Judge returned the following findings, which are set out from paragraphs 27 onwards:-

"27. In the light of the relevant materials placed on record by learned AG coupled with the settled principles of law referred above, I am of the considered view that no fault can be found with the decision of the Government to withhold the result of the MTET examination at one centre namely Dadenggre with regard to Paper I (Lower Primary). The Government in pursuant to the above recommendation and conclusion was also justified in declaring the results of candidates appearing in other centres. I also find merit in the contention of learned AG that any direction by the Court to cancel of examination en *masse* and conducting fresh examination could cause huge public inconvenience and lead to anomalous results having significant financial and administrative ramifications. Thus, I hold that petitioners are not entitled for the relief of quashing and setting aside of the MTET examination which was held on 31-01-2019 and prayer is accordingly rejected.

28. Before parting with the judgment, I must deal with the arguments of learned counsel for the petitioners. Now, I will deal with the arguments of respective counsel appearing for the petitioners.

Admittedly, none of the petitioners possess the MTET qualification, therefore, the contention of Mr. P.T.Sangma that petitioners are eligible to be appointed as permanent teachers or their services can be regularized cannot be accepted. I also find no merit in the contention of Mr. Sangma that the petitioners were told that MTET examination is not mandatory for existing teachers. In this regard, reference can be made to the notification dated 08-10-2018 of the Government of Meghalaya. The notification clearly stated that only those persons who have passed the test shall be eligible for recruitment as Lower and Upper Primary teachers in Government Aided Schools. As pointed out earlier that petitioners appeared in the MTET examination which was conducted in pursuant to the advertisement dated 29-10-2018, therefore, it cannot lie in the mouth of the petitioners that they were told that MTET examination is not mandatory for existing teachers and it is only meant for fresh candidates who are applying for the post of teachers in Government schools.

Reliance of Mr. Sangma on the decision of *Chairman All India Railway Recruitment Board and Another vrs. K.Shyam Kumar and Others* (supra) *and Madhyamic Shiksha Mandal, M.P. vrs. Abhilash Shiksha Prasar Samiti and Others* (supra) in support of his argument that the entire MTET examination is vitiated also cannot be accepted and is misplaced. In

K.Shyam Kumar and others, the Railway Board directed the Railway Recruitment Board to conduct a retest for Group D posts, for those candidates who have obtained minimum qualifying marks in the first written examination against which large scale irregularities and malpractices were noticed. The retest was ordered on the basis of report of Vigilance Department which conducted the preliminary enquiry and prima facie revealed leakage of question papers, mass copying and impersonation of candidates in the written test. Certain candidates who had taken the first written examination approached the Central Administrative Tribunal questioning the decision of the Railway Recruitment Board to conduct retest. The Tribunal found no irregularity in the said decision of the Railway Recruitment Board which was taken after referring to the vigilance report and other relevant materials. Writ petition was thereafter filed before the High Court by the aggrieved parties and the High Court by applying *Wednesbury principle* of unreasonableness held the decision of the Board illegal, arbitrary and unreasonable and directed the Board to finalise selection on the basis of the first written test and to issue appropriate orders to all candidates, except the 62 candidates against whom there were allegations of impersonation. The Railway Recruitment Board challenged the High Court order before the Apex Court. The Apex Court held that there is no infirmity in the decision taken by the Board in conducting the second written test for those who have obtained minimum qualifying marks in the first written test rather than going ahead with the first written test which was tainted by large scale irregularities and malpractices. Consequently, the Apex Court set aside the High Court order. The ratio of this decision cannot be made applicable to the present case inasmuch as decision to withhold the examination at Dadenggre was taken by the State of Meghalaya on the basis of the recommendation of the enquiry officer and conclusion arrived by the experts. In *Madhyamic Shiksha Mandal* (supra), the Madhyamic Shiksha Mandal cancelled the examination on the report of Naib Tehsildar who had visited the centre and found the students copying with impunity even before the distribution of question papers. The decision of the Madhyamic Shiksha Mandal was challenged before the High Court and the High Court interfered with the Madhyamic Shiksha Mandal's decision on technical ground that valuers report was subsequent material

and Naib Tehsildar has not been authorized by Madhyamic Shiksha Mandal to visit the examination centre. The Apex Court held that the scope of judicial review in the decision of the body conducting the examination to cancel the same is limited and observed that High Court should not have interfered in such decision. The Apex Court accordingly allowed the appeal and set aside the order of the Division Bench of the High Court and upheld the decision taken by the Board. The ratio of this decision does not come to the rescue of Mr. Sangma, learned counsel for the petitioners inasmuch as the impugned decision to withhold the examination at Dadenggre center was taken on the basis of the recommendation of enquiry officer and conclusion of the expert. The High Court is not expected to interfere in such matters as scope of judicial review is limited.

The contention of Mr. Sangma and Mr. R.Kar to the effect that there was large scale leakage of question paper and same was circulated amongst the candidates through social media like whatsapp also has no merit in view of the finding of the enquiry officer and expert that magnitude of leakage was limited to one centre only.

Mr. N.Syngkon's contention that the qualification laid down under Section 23(1) of the Right to Education Act, 2009 requires to be acquired by the teachers appointed earlier to the coming into force of the said Act and if it is not acquired, the services of those teachers are required to be terminated cannot be accepted for more than one reason namely;

(i) There is no pleading in this regard in the petition.
(ii) The teachers appointed prior to the coming into force of the Act are not impleaded as party respondents to this petition.

29. I find some substance in the contention of Mr. S.Dey that for the period between 2010-2020 i.e., from the date of coming into force of the Right of Education Act, 2009 till date, the Meghalaya Government conducted only one MTET examination and thereby deprived opportunity to the petitioners. The State of Meghalaya could have earlier to 2019 also conducted the MTET examination, however, unfortunately, same was not done and only one opportunity was given to the petitioners. At the same time, I cannot overlook the mandatory provisions of Section 23 of the Right to Education Act, 2009 especially the first and second proviso thereof. Under the first proviso, five years was given to the teachers to acquire the qualification prescribed under Sub-

section (1) of Section 23 and under the second proviso, the period of five years was extended to further four years from 2015. In the light of this mandatory statutory provision, the petitioners ought to have acquired the essential qualification namely, MTET before the period prescribed under second proviso. Unfortunately, the petitioners failed in the MTET examination held in the year 2019, therefore, the submission cannot be accepted.

30. Taking totality of the facts and circumstances of the case into consideration, in my view the petitions are devoid of any substance and same are accordingly dismissed with no order as to cost. Ad interim relief granted earlier stands vacated."

Each of the grounds which are pleaded in the memorandum of appeal filed before us has been carefully considered by the learned Single Judge while rendering the impugned judgment and order. Even in respect of the allegations made by the writ petitioners with regard to 100 percent leakage of question papers when the MTET examination dated 31.01.2019 was conducted, has been carefully considered by the learned Single Judge in the impugned judgment and order. This is clearly evident from a plain reading of paragraphs 23 and 24 of the impugned judgment, which are reproduced hereinbelow:-

HIGH COURT OF MEGHALAYA

"23. The petitioners in my considered view are not entitled to the relief of cancellation of the MTET examination on the above referred preliminary ground. Nevertheless, I deem it appropriate in the interest of justice to deal with the claim of entitlement of the petitioners to this relief, on merit.

As observed earlier, the MTET examination was held on 31-01-2019 and same was conducted in 15 centres across 42 venues for Lower Primary Paper-I at 9:00 AM and for Upper Primary Paper-II in 15 centres across 26 venues. There is no dispute that during this examination in one of the venues i.e. Tura Government College, there was a complaint with regard to leakage of question paper and based on this complaint, two First Information Report came to be registered on 01-02-2019. Learned AG placed on record the steps taken by the Government in pursuant to the complaint of leakage of Lower Primary school question paper. It is submitted that the Government of Meghalaya appointed an Enquiry Officer vide notification dated 05-02-2019 to enquire into the alleged leakage of question paper and set out terms of reference to enquiry officer as follows:

*"**4**. As per the aforesaid notification, the Terms of Reference (TOR) of the Enquiry Officer were:*

i. To assess and verify the allegation on leakage of question papers of MTET-2019.

ii. To assess the magnitude of the alleged leakage by examining all Examination Centres.

iii. To suggest whether to continue with the evaluation of Answer Script or otherwise.

iv. To determine the likely source of leakage.

v. To fix responsibility and suggest ways of improvement for future MTET Examination."

Learned AG submitted that the enquiry officer conducted a detailed and thorough enquiry into the alleged leakage of question papers and submitted the report to the Government on 20-03-2019 and suggested ways and means to improve the system. It was also submitted that the enquiry officer in para 123 of the enquiry report suggested to conduct statistical trend analysis on the marks scored by the candidates for the purpose of ascertaining the magnitude of leakage. Learned AG further submitted that in terms of the recommendation of the enquiry officer, the statistical trend analysis on the marks scored by the candidates was carried out by an independent expert namely Professor Atul Mehta of Indian Institute of Management Shillong (IIM Shillong). It was further submitted that on the basis of the trend analysis report submitted by Prof. Atul Mehta, it was found that only results emerging out of Dadenggre centre that too Paper-I concerning Lower Primary deviated significantly from the trend noted from other centres. The trend analysis report of Prof. Atul Mehta was subsequently confirmed by expert report from DERT. Learned AG further submitted that having regard to the above stated report, the Government decided to declare the results of all centres vide notification dated 25-02-2020 except for candidates of Dadenggre centre appearing in Paper-I (Lower Primary).

24. At this stage, it would be appropriate to reproduce the recommendation of the enquiry officer and the conclusion of Prof. Atul Mehta which reads as follows.

"<u>Recommendation</u>

117. I am of the opinion that alternate approaches be considered for an accurate assessment of the magnitude of the leakage.

118. In this connection, I have come across two apt cases which are elaborated as below:

(i) A study of the press reports related to the case of CBSE Class 10 Maths and Class 12 Economics

Question Paper Leakage in 2018, was done. It may be mentioned here, that one of the news items mentioned that CBSE informed the Delhi High Court that the decision not to conduct reexamination of Maths Class 10, which was allegedly leaked, was taken after doing a trend analysis of the Science, Maths and English papers. The news report further states that:

"The CBSE, in its affidavit, had earlier said it had decided not to hold re-examination of Class 10 Maths test as a scientific evaluation of random answer sheets did not indicate any unusual pattern to believe that there was widespread benefit of the alleged paper leak."

(ii) Another news item reported that the Supreme Court refused to interfere with the discretion of the CBSE and that it refused to intervene in the matter of conducting reexamination of the alleged leaked papers in the CBSE Class 10 & Class 12 examination 2018.

119. Similar expert(s) may be required to analyze the scores of the candidates who appeared in the MTET-2019 Examination at the Dadenggre Centre after evaluating their OMR Answer sheets.

120. If advised by the expert(s), these scores may also be compared to the scores of the candidates from other Centres. This will help to ascertain the magnitude of the leakage.

123. Therefore, I recommend that in order to ascertain the magnitude of the leakage, expert(s) be engaged to conduct a statistical trend analysis on the marks scored by candidates and check if there is anomaly."

Conclusion

"It may thus be concluded that the candidates qualified from the DG [Dadenggre] centre have statistically different characteristics that those from the other centres. While such difference exists both in the Upper and Lower Primary category, the difference is more significant in the Lower Primary category. Moreover, the differences are significant between the DG [Dadenggre] and Tura centre which belong to the same district. Even within DG [Dadenggre] centre, the difference in qualified candidates between Lower and Upper Primary

category is quite significant whereas such difference within in Tura centre is very less."

> The recommendation and conclusion of Enquiry Officer and Prof. Atul Mehta respectively makes it abundantly clear that the problem of leakage was limited in magnitude and also confirmed to one centre namely, Dadenggre that too in respect of the candidates appearing in Paper-I (Lower Primary). The Government of Meghalaya therefore decided to withhold the result of the candidates appearing in Dadenggre centre for Paper-I (Lower Primary) and results of the other centres were declared."

The learned Single Judge thereafter proceeded to reiterate the well settled principle that the Government is accorded with wide latitude in matters of examination and the Court should not interfere with the decision of cancellation of examination. In this regard, the learned Single Judge referred to the decision of the Hon'ble Supreme Court rendered in the case of ***B. Ramanjini v. State of A.P.*** reported in ***(2002) 5 SCC 533***. Apart from the aforesaid decision, the learned Single Judge also proceeded to refer to and relied upon the case of ***Nidhi Kaim v. State of Madhya Pradesh*** reported in ***(2016) 7 SCC 615***, wherein the Hon'ble Supreme Court has held that the scope of interference and judicial review is limited where the Government has taken the decision of cancelling the examination to ensure sanctity of the examination process. Another decision of the Hon'ble Supreme Court, which was referred to and relied upon by the learned Single Judge in the impugned judgment and order is the decision rendered in the case of ***Bihar School Examination Board v. Subhas Chandra Sinha*** reported in ***(1970) 1 SCC 648***. Taking all the relevant decisions into consideration, the learned Single Judge proceeded to conclude the impugned judgment and order in the manner as set out hereinbefore.

In an Intra-Court Mandamus appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a

plain reading of the impugned judgment and order. In the facts and circumstances of the instant case, on a plain reading of the impugned judgment and order, we do not notice any such palpable infirmity or perversity. That apart and in any event, the impugned judgment and order is supported with cogent and justifiable reasons.

In such circumstances, we do not find any merit in the instant appeal and the same is liable to be dismissed and stands dismissed accordingly.

Dismissal of this appeal, however, shall not prejudice the rights of the appellants/writ petitioners to participate in any further examination which may be conducted by the concerned respondent authorities provided, of course, they are otherwise entitled or eligible to do so, in accordance with law.

Connected application(s) also stand(s) disposed of accordingly.

(H.S. Thangkhiew)
Judge

(Biswanath Somadder)
Chief Justice

Meghalaya
10.12.2020
"Lam AR-PS"