

GAHC020001282023

2025:GAU-NL:375



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/50/2023

SHRI. Y. VUNGTHUNGO
SENIOR PRINCIPAL, GOVERNMENT HIGHER SECONDARY SCHOOL
WOKHA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 8 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR(DoSE)
DIRECTORATE OF SCHOOL EDUCATION
NAGALAND KOHIMA

4:THE NAGALAND LOKAYUKTA
REPRESENTED BY ITS SECRETARY
NAGALAND LOKAYUKTA
NAGALAND
KOHIMA

5:SMTI. AVINO TASE
DEPUTY DIRECTOR
DIRECTORATE OF SCHOOL EDUCATION
NAGALAND KOHIMA

6:SMTI. LIPOKINLA IMCHEN

SR. PRINCIPAL
GHSS MAYANGOKCHA
MOKOKCHUNG NAGALAND

7:SMTI. KAREN SEMA
PRINCIPAL
GHSS CHUMUKUDEMA
NAGALAND

8:SHRI KUGHAZHE SWU
SR. PRINCIPAL
GHSS ZUNHEBOTO
NAGALAND

9:SHRI KEVIZAKIE RIO
DEPUTY DIRECTOR/JOINT MISSION DIRECTOR OF SAMAGRA
SHIKSHA
DIRECTORATE OF SCHOOL EDUCATION
NAGALAND
KOHIM

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, I IMCHEN,ALIBA OZUKUM,ASA
RUTSA,TOSHI JAMIR,K. TSUKRU,NUNGSANG AIER

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner :Mr. C.T. Jamir, Sr. Advocate assisted by
Mr. I. Imchen, Advocate

Advocate for the respondents :Ms. Inaholi Wotsa, Govt. Advocate
Ms. V Suokhrie, Addl. Advocate General
Mr. T.B Jamir, Addl. Advocate General for R-4
Mr. Wati Jamir, Advocate for R-5 to 9

Dates of Hearing : 05.11.2024; 12.11.2024; 13.11.2024;
10.02.2025 & 23.06.2025

Date of Judgment & Order : **13.08.2025**

JUDGMENT AND ORDER (CAV)

The present writ petition is directed against the order dated 28.01.2021 passed by the Upa-Lokayukta, Nagaland, Kohima in Case No. A.NLP-13/2020. The further prayers are for setting aside the proceedings in case No. A.NLP-13/2020 as well as order dated 28.01.2021 passed by the Upa-Lokayukta, Nagaland and the Notification dated 24.03.2023 issued by the Commissioner and Secretary, Government of Nagaland, Department of Education whereby the officiating Promotion of the writ petitioner from the post of Post Graduate Teacher (PGT) to Principal vide the earlier notification dated 17.07.2014 stood revoked subject to final recommendation of the Nagaland Lokayukta, Directorate of Investigation, Nagaland.

2. The case projected by the petitioner is that he was appointed initially as a Computer under the Directorate of Economics & Statistics on 11.03.1997. Subsequently, he was sent on deputation as Post Graduate Teacher under the Department of School Education for a period of two years. While the petitioner was serving as a Post Graduate Teacher on deputation, he was regularized in his original post i.e. Computer in the Economics & Statistics Department. The petitioner, however, was not reverted back to his parent department but he was absorbed as a Post Graduate Teacher in the School Education Department. During his service under the School Education Department, the petitioner claimed to have pursued B.Ed Degree twice- one from CMJ University, Shillong, Meghalaya in the year 2011 and another from CSJM University, Kanpur in the year 2016. The petitioner however submitted his B.Ed Degree certificate which he had obtained from CSJM University, Kanpur. The petitioner was

thereafter promoted on officiating basis to the post of Principal (Class-I Gazetted) of the Higher Secondary Schools under the Department of School Education, Nagaland by order dated 17.07.2014. By the said order, there are several other persons were promoted including the petitioner and the private respondents No. 5 to 9.

3. There was a process of verification of documents initiated by the Department of School Education by constituting a Special Screening Committee. During the process, the B.Ed Degree certificate submitted by the petitioner from CSJM University, Kanpur was found to be 'not genuine'. The private respondents No. 5 to 9 lodged a complained before the Nagaland Lokayukta being Case No. A.NLP-13/2020. The Nagaland Lokayukta by order dated 28.01.2021 took cognizance on the complaint filed and directed the Investigating Officer to collect or seized from the School Education Department the letter of the petitioner forwarding his B.Ed Certificate to the School Education Department. Thereafter by order dated 20.08.2021, the Nagaland Upa-Lokayukta upon examination of the materials available passed an interim recommendation to the Department of School Education to review the officiating promotion Notification dated 17.07.2014 in respect of the petitioner. This recommendation was an interim recommendation. Final recommendation was to follow after verification of the B.Ed Degree obtained from CMJ University, Shillong. Pursuant to the interim recommendation issued by the Nagaland Upa-Lokayukta, the petitioner was served with a show cause Notice dated 08.02.2022 to which the petitioner submitted his written reply to the show cause notice. Thereafter by memo dated 20.05.2022, an enquiry was proposed against the petitioner by the Department of School Education.

The petitioner also filed a written statement against the memo issued. Subsequently by Notification dated 24.03.2023 following the recommendation of the Upa-Lokayukta, Nagaland, the notification dated 17.07.2014 issued to the petitioner for officiating promotion was revoked with immediate effect subject to the final recommendation of the Nagaland Lokayukta.

4. The respondents have contested the matter by filing their respective affidavits. It may also be mentioned here that on an application seeking impleadment filed by the private respondents No. 5 to 9, upon interlocutory application being allowed by this Court, the respondents No. 5 to 9 who are the complainants before the Nagaland Upa-Lokayukta are also arrayed as a party. The State respondents have filed their affidavit disputing the contentions raised by the writ petitioner where the State respondents had made averments that the petitioner was not serving Vice Principal which is vital post for promotion to the next higher post of Principal, at the time of issuance of his officiating promotion to the post of Principal nor did he possessed of B.Ed Degree which is the pre-requisite qualification. There is also an averment in the affidavit that the petitioner had obtained B.Ed Degree certificates from Chhatrapati Shahu Ji Maharaj University (CSJMU), Kanpur, Uttar Pradesh and C. Motilal Jawaharlal University (CMJU), Shillong which were verified by the appropriate authority but the verification report dated 26.09.2020 received from the CSJMU, Kanpur refused that the certificate of B.Ed Degree presented by the writ petitioner from CSJMU, Kanpur is 'not genuine'. It is further stated by the State Department that as per the official records available with the department, no B.Ed certificate from CMJ University, Shillong has

been submitted by the petitioner to the department at the relevant point in time. It is also stated in the affidavit that the petitioner did not avail of any leave to attend the two (2) years B.Ed course in Shillong or Kanpur as the said universities do not offer distance learning programme.

5. In the rejoinder affidavit filed by the petitioner to the affidavit in opposition of the State respondents, the petitioner reiterated his case as presented in the writ petition although the stand of the respondents reflected in the affidavit that the petitioner did not avail any leave to pursue his B.Ed Degrees either in Kanpur or in Shillong is not controverted in the rejoinder affidavit. However, in the writ petition itself, an order dated 10.10.2018 issued by the Director, Department of School Education is enclosed which shows that the petitioner and two other persons have been given ex-post facto approval for passing B.Ed Course without taking prior permission from the department.

6. The private respondents No. 5 to 9 have disputed the contention raised by the writ petitioner. It is stated that the petitioner was never promoted to the post of Vice Principal which is the feeder category for being promoted to the post of Principal. He was promoted to the post of Principal from PGT which is contrary to the Rules of the Department. That apart, during the process of verification of documents initiated by the respondents department, the certificates submitted by the petitioner in support of his case that he had completed B.Ed Degree from CSJM University was found to be 'not genuine'. B.Ed is a degree which is mandated under the Rules as a necessary qualification for being promoted to the post of Principal. Since the department did not initiate necessary proceedings against the petitioner inspite of his documents being found to

be 'not genuine', the respondents No. 5 to 9 had filed a complaint before the Upa-Lokayukta, Nagaland and upon such investigation, the order dated 20.08.2021 was passed recommending review or recalled of the order dated 17.07.2014 whereby the petitioner was given officiating promotion as a Principal. Pursuant to such orders passed by the Nagaland Upa-Lokayukta, the department had issued the notification dated 24.03.2023 recalling the officiating promotion given to the petitioner and which is however made subject to the final recommendation to the Upa-Lokayukta.

7. The Nagaland Lokayukta through its Secretary has also contested the case projected by the writ petitioner by filing a detailed affidavit. The respondent No. 4 has raised a plea of maintainability of the writ petition. The respondent No. 4 in its affidavit has contested the case projected by the petitioner that the proceedings initiated by the Upa-Lokayukta is beyond its jurisdiction in view of Second Schedule Clause (d) read with Section 9 (1) of the Nagaland Lokayukta Act, 2017 (hereinafter referred to as '*the Act*'). It is further disputed by the respondent No. 4 that the complaint is otherwise barred by limitation for the issues which are raised against the writ petitioner could not have been reopened as the same are barred by limitation. The respondent No. 4 stated in its affidavit that the allegation of corruption against the petitioner and the respondents State Department arose pursuant to the complaint being lodged by the complainants on 29.05.2020. It is pursuant to the direction issued by the Upa-Lokayukta to investigate into the matter that the fact that petitioner's B.Ed Degree certificate issued by CSMJ University has been found to be 'not genuine' in the verification report received from the said university.

The Upa-Lokayukta is empowered to investigate into any matter relating to corruption. Since the petitioner has been availing the service benefits on the basis of certificates which are found to be 'not genuine', with or without connivance of the State respondents, upon complete investigation if these allegations are found to be correct then it amounts to corruption and therefore the Upa-Lokayukta has jurisdiction to investigate into such allegations.

8. In so far as limitation is concerned, it is stated that since the allegations prima facie have been found to be correct against the writ petitioner and pursuant to such an investigation being directed to be undertaken by the Upa-Lokayukta, the matter is not barred by limitation as these directions were issued only in pursuant to a complaint filed by the complainants on 29.05.2020.

9. The learned Sr. Counsel for the petitioner strenuously submits that the very question of jurisdiction of the Upa-Lokayukta is barred under the provisions of the Nagaland Lokayukta Act, 2017. Referring to Section 9 of the Act, it is submitted that the Upa-Lokayukta shall not conduct any investigation in cases of a complaint involving a grievance in respect of any action to any matters specified in the Second Schedule or if the complainant has a remedy by way of a proceeding under any forum or any authority. Referring to Second Schedule, the learned Senior counsel submits that under Clause-(d) to the Second Schedule, it is specified that any action taken in respect of appointments, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants are beyond the scope of Upa-Lokayukta. It is submitted that the question is about the petitioner's officiating promotion to the post of

Principal, this is clearly a matter pertaining to conditions of service. As such, the Lokayukta ought not to have issued jurisdiction on a complaint filed by the complainant who are none other than private respondents No. 5 to 9 and who are also employed in the State Education Department like the petitioner and therefore the Upa-Lokayukta could not have issued the impugned orders and the recommendation to the State Education Department and in that view of the matter, the impugned orders passed by the Upa-Lokayukta and the consequential impugned Notification dated 24.03.2023 recalling the promotion of the writ petitioner is bad in law and should therefore be set aside and quashed.

10. It is further submitted that the private respondents being employees at the State Department like the petitioner have every opportunity of ventilating their grievances before the appropriate authority in the Department of Education, if they are otherwise affected by the promotion of the petitioner. The private respondents are aggrieved by the promotion of the petitioner as the petitioner is Senior to respondents and is placed higher in the gradation list than the private respondents. As such it is a clear case of dispute of seniority which the private respondents are aggrieved with and therefore their remedy lies before the appropriate authority of the department and the complaint filed by them before the Upa-Lokayukta must be dismissed. It is further submitted that the promotion on the writ petitioner was effected on 17.07.2014. Admittedly, this complaint has been filed by the private respondents on 29.05.2020, therefore, the complaint is expressly barred under the provisions of Section 9(3) of the Act of 2017. Section 9(3)(a) clearly provides that any complaint involving a grievance made after the expiry of the period of

twelve (12) months limitation from the date on which the action complained of against becomes known to the complainants shall not be investigated by the Upa-Lokayukta. It is also submitted that even assuming that the complaint is not a grievance but an allegation made by the complainants, even then the said complaint needs to be filed within a period of 5 (five) years from the date on which the action on the conduct complaint against is alleged to have taken place. It is submitted that since the order of promotion was issued on 17.07.2014 even then the limitation would have expired within 5 (five) years which is by 16th or 17 July, 2019. The complaint was admittedly filed on 29.05.2020. As such it is submitted that the impugned order passed by the Upa-Lokayukta is barred by the limitation and should therefore be interfered with and the further subsequent order passed by the School Department should be interfered with set aside and quashed.

11. The learned Sr. counsel for the respondent No. 4 has referred to a Judgment & Order rendered by a Division Bench in *W.A No. 1/2024 (The Nagaland Lokayukta Vs. Smti Catherine Dzuvichu & Ors)*, it is submitted that in a similar matter, the Division Bench of this Court held that the bar under Section 9 cannot be extended by an allegation by a third party. He therefore submits that the complaint before the Upa-Lokayukta is not a grievance but an allegation into the corruption resorted to by the petitioner with or without the connivance of State respondents. Therefore, this complaint cannot be treated to be a grievance rather it is an allegation and which therefore is not barred under Section 9 of the Act. He submits that this Judgment being Judgment of the Division Bench of this Court would therefore on this aspect be binding on this Court. He has

further referred to Judgment of the Bombay High Court render in *Vishwasrao Chudaman Patil Vs. Lokayukta, State of Maharashtra and ors*, reported in *1985 Mh.L.J 54* to support his contention that what is barred is a complaint in the nature of a grievance but not an allegation and therefore the bar under Section 9 is not applicable. It is further submitted that the challenge made in the present proceedings is to the interim directions issued by the Upa-Lokayukta which is the order dated 28.01.2021 passed by the Upa-Lokayukta. The subsequent order passed by the Upa-Lokayukta dated 20.08.2021 is not assailed. The impugned Notification dated 24.03.2023 whereby the officiating promotion of the writ petitioner stood recalled was pursuant to the order dated 20.08.2021 passed by the Upa-Lokayukta.

12. The learned counsel for the parties have been heard. Pleadings available on record have been carefully perused. The Judgments pressed into service have also been carefully perused.

13. Since the question of maintainability has been raised in the present proceedings ordinarily it would be apposite to deal with the said objections raised by the respondents. However, in order to determine the question of maintainability of the writ petition, the facts and the issues involved in the writ petition are also required to be dealt with to determine this question of maintainability. Therefore, the question of maintainability will be taken up together along with the merits of the writ petition.

14. To recapitulate the facts involved in the matter, the petitioner was initially appointed as a Computer in the Department of Economics and Statistics, Government of Nagaland by order dated 11.03.1997. While the petitioner was serving in the said department, he was sent on deputation

to the post of PGT (Subject Teacher) (Class-II Gazetted) to the Education Department, Government of Nagaland. The period of deputation was initially for a period of two years as is revealed from the order sending the petitioner on deputation vide order dated 30.04.2003. While the petitioner was on deputation by order dated 30.06.2003, his initial services in the parent department as a Computer in the Economic and Statistics Department was regularized with effect from 12.06.2003. Since the petitioner was not reverted back to the parent department within the stipulated period, his services has been de-linked with the Department of Economics and Statistics under FR.13, Government of India decision No. (2). Thereafter by order dated 14.02.2011, the petitioner was absorbed as a PGT in the Directorate of School Education.

15. On 17.07.2014, the Department of School Education passed an order whereby certain employees under the said department were promoted to the post of Principal in an officiating basis. The name of the petitioner is reflected at Sl. No. 1. The names of the private respondents No. 5 to 9 are reflected in Sl. No. 2, 3, 4, 5 & 6. As per the annexure enclosed to the said order reflecting the names of the writ petitioner and the private respondents No. 5 to 9, it is seen that the petitioner in his designation was shown to be a Post Graduate Teacher whereas respondents No. 2 to 6 are shown to be Vice Principal. Pursuant to this order dated 17.07.2014, the department of School Education undertook a process for verification of Educational Documents or all higher secondary cadres by a special committee, all the Principals of the Higher Secondary Schools were directed to collect the mentioned documents of all offices and submit the hard copies before the date specified in the said order. The petitioner

thereafter received a communication dated 28.09.2020 issued by the Superintendent of Police, Nagaland Lokayukta Police requiring the petitioner to furnish all educational qualification certificates i.e from Matriculation till post graduate and the Bachelor of Education (B.Ed) certificates of the writ petitioner. This communication was stated to have been issued on the basis of an investigation carried on by the Lokayukta Police. Pursuant to the said communication, the petitioner submitted all the documents as called for. He was also asked to appear before the Nagaland Lokayukta Police along with the originals and in pursuant to which the petitioner also appeared as directed.

16. Thereafter, by order dated 28.01.2021, the Nagaland Upa-Lokayukta took cognizance and decided to proceed against the petitioner for committing fraud by submitting fake certificate of B.Ed and taking cognizance of the complaint filed against the petitioner. The petitioner filed his objection/affidavit in the matter. Thereafter, the Upa-Lokayukta by order dated 20.08.2021 passed a detailed order making an interim recommendation that the promotion notification dated 17.07.2014 in respect of the writ petitioner be review by the authorities concerned. It is stated in the said order that the final recommendation will follow after verification of the B.Ed Degree obtained from CMJ University, Shillong during the year 2010-13 by the petitioner. This order was passed on the basis materials available before the Nagaland Upa-Lokayukta that the certificate submitted by the petitioner regarding his B.Ed Degree from CSMJ University, Kanpur was found to be 'not genuine' on the verification report called for and received from the said university in Kanpur. The Department of School Education also issued a show cause dated

08.02.2022 and to which the petitioner submitted his written reply.

17. Subsequent thereto by memorandum dated 20.05.2022, the petitioner was informed that an enquiry is proposed against the petitioner under Rule 9(2) of the Nagaland Services (Discipline and Appeal) Rules, 1967. The said memorandum included the statement of article of charge as well as a statement of imputations of misconduct or misbehavior in support of each article of charge. List of documents as well as a list of witnesses on which the article of charge are proposed to be sustained are also enclosed. The petitioner was permitted to file his written statement in response to the said departmental proceedings initiated, the petitioner filed his written statement thereafter on 20.05.2022. While the matter was being proceeded with against the petitioner, the department, by order dated 24.03.2023, issued the impugned notification revoking the officiating promotion earlier granted to the petitioner by notification dated 17.07.2014, with immediate effect, subject to the final recommendation of the Nagaland Lokayukta, Directorate of Investigation. In the present writ proceedings, the petitioner challenges the order dated 28.01.2021 issued by the Upa-Lokayukta, Nagaland, taking cognizance of the complaint against him, as well as the notification dated 24.03.2023 revoking his officiating promotion to the post of Principal pursuant to the interim recommendation of the Upa-Lokayukta dated 20.08.2021

18. In order to address the question before the court with regard to maintainability of the writ petition, it is necessary to refer to the relevant provisions of the Nagaland Lokayukta Act, 2017, the same are extracted below:

Section - 9: Matters not subject to Investigation:

(1) Except as hereinafter provided, the Lokayukta or Upa-Lokayukta shall not conduct any investigation under this Act in the cases of a complaint involving a grievance in respect of any action:

(a) If such action relates to any matter specified in the Second Schedule; or (b) If the complainant has or had any remedy by way of a proceeding before any forum or other authority; Provided that nothing in clause

(b) shall prevent the Lokayukta or UpaLokayukta from conducting an investigation, if the Lokayukta or, as the case may be, the Upa-Lokayukta, is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

(2) The Lokayukta or Upa-Lokayukta shall not investigate:

(a) Any action in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 by the State Government or Government of India;

(b) Any action in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 by the State Government or Government of India.

(3) The Lokayukta or Upa-Lokayukta shall not investigate –

(a) Any complaint involving a grievance made after the expiry of a period of twelve months limitation from the date on which the action complained against becomes known to the complainant.

(b) Any complaint involving an allegation made after the expiry of five years from the date on which the action or conduct complained against is alleged to have taken place. Provided that the Lokayukta or Upa-Lokayukta in respect of grievance or allegation, as the case may be, may entertain a complaint made after the expiry of the said period if the complainant shows sufficient cause for not making the complaint within the said period.

(4) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or Upa-Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such extent that the discretion can prima facie be regarded, as having been improperly exercised.

SECOND SCHEDULE

[See Section 9(1)(a)]

(a) Action taken for the purpose of investigating crimes or relating to the security of the State.

(b) Action taken in the exercise of powers in relation to determining whether a matter shall go to a Court of not.

(c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers of supplier, except whose or the complaint alleges harassment gross delay in meeting contractual obligation.

(d) Action taken in respect of appointments, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims for pension, gratuity, provident fund or to any claim which arise on retirement, removal on termination of service and such other action involving allegation of corruption in respect of appointment not barred under provision of section-35 of the Act.

(e) Grant of honours and award

Section - 10: Provision relating complaints.

(1) Subject to the provisions of this Act, a complaint may be made under this Act, to the Lokayukta; in the case of an allegation, by any person, and in the case of a grievance, by a person aggrieved:

Provided that where the person aggrieved is dead or, is for any reason, unable to act for himself, the complaint may be made or continued by his legal representative or by any other person who is authorized by him in writing in this behalf.

(2) Every complaint shall be made in such form and in such manner and shall be accompanied by such affidavit as may be prescribed.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force, any letter written to the Lokayukta by a person in police custody or in jail or in any asylum or other place from insane persons, shall be forwarded to the Lokayukta unopened and without delay by the police officer or other person in-charge of such jail, asylum or other place and the Lokayukta may, if satisfied that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

Section - 15: Interim recommendation.

If, during the course of preliminary inquiry or investigation under this Act, the Lokayukta or Upa Lokayukta is prima facie satisfied that allegation or grievances against any action is likely to be substantiated either wholly or partly, he may, by a report in writing, recommend to the public functionary concerned to stay the implementation or enforcement of the decision or action complained against, or to take such mandatory or preventive action on such terms and conditions, as he may specify in his report.

Section - 16: Interim Report.

(1) The Lokayukta or Upa- Lokayukta, as the case maybe, may forward an interim report to the competent authority recommending grant of interim relief to the complainant if he is satisfied at any stage of preliminary inquiry or investigation that the complainant has sustained injustice or undue hardship in consequence of any decision or action of a public functionary and that the grievance complained of should be redressed expeditiously.

(2) The Lokayukta or Upa- Lokayukta, as the case may be, may at any stage of inquiry or investigation under this Act, forward an interim report to the competent authority recommending to take such action as may be considered necessary by him against the public functionary, pending inquiry or investigation-

(a) To safeguard wastage or damage of public property or public revenue by the administrative acts of the public functionary;

(b) To prevent further acts of misconduct of the public functionary;

(c) To prevent the public functionary from secreting the assets earned by him allegedly by corrupt means;"

19. A perusal of the provisions extracted above reveals that Section 9 prescribes the matters which are not subject to investigation by the Upa-Lokayukta/Lokayukta, Nagaland. A plain reading of Section 9, it is seen that the complaints which are filed before the Upa-Lokayukta are classified into two categories, namely complaint raising any grievance and complaints involving an allegation. In so far as a complaint raising a

grievance is concerned, the Lokayukta will not entertain such a complaint if it involves any matter under Second Schedule read with Section 9(1)(a).

20. As such if it is a complaint raising a grievance with regard to the conditions of service which will certainly include a grievance regarding promotion, then the Upa-Lokayukta will not investigate into such a matter as per the prescription of Section 9(1)(a) read with the Second Schedule. However, if the complaint is to be treated as an allegation then the bar under Section 9(1)(a) read with Second Schedule or Section 9(1)(b) will not operate as a bar. However, the bar expressed under Section 9 does not appear to be with regard to grievance raised through by way of a complaint. There is a further restraint on the Lokayukta or Upa-Lokayukta in respect of matters to be investigated as is prescribed under Section 9(3). In so far as any complaint involving a grievance is made after expiry of 12 months from the date on which the complaint is known to the complainant, then such investigation by the Lokayukta is barred. However, in so far as a complaint relating to an allegation is concerned, the limitation is extended to five years from the date on which the action or the conduct complained of is alleged to have taken place. As such which Section 9(3)(a) prescribes a limitation of one year for any complaints raising a grievance, Section 9(3)(b) prescribes a limitation after expiry of five year in respect of complaints involving allegation.

21. In W.A No. 1/2024, a Division Bench of this Court while examining the prescription of Section 9(1)(a) has held that this limitation is under Section 9(1)(a) read with the Second Schedule is only as regards a complaint who is aggrieved by any action relating to any matters prescribed under the Second Schedule. The Division Bench however held

that this bar does not extend to an allegation by a third party and in the context of the facts of the matter before the Division Bench, the appeal came to be allowed interfering with the Judgment passed by the learned Single Judge. The Division Bench Judgment however did not have the occasion to interpret the limitation prescribed under Section 9(3). In the Judgment referred to by the Bombay High Court rendered in *Vishwasrao Chudaman Patil (Supra)* also similar view was taken.

22. From the pleadings available, it is seen that the petitioner does not dispute that he has obtained B.Ed Degree certificate from different Universities namely CMJ University, Shillong, Meghalaya and the other CSJM University, Kanpur. The explanation offered by the petitioner in this writ petition is that the petitioner had initially obtained his B.Ed Degree from CMJ University, Shillong in the year 2011 and subsequently he had pursued the same course from CSJM University, Kanpur in the year 2016 and the reason to undergo the same course twice is only for the purpose of enhancing personal intellectual capacity and knowledge. This particular explanation offered by the petitioner prima facie does not appear satisfactory to this Court as the petitioner has not spelt out any special courses or activities undertaken in the CSJM University, Kanpur which degree the petitioner claimed to have pursued notwithstanding the B.Ed degree obtained from CMJ University. No findings on merits in this aspect at this stage is called for or is expressed by the Court at this stage.

23. Coming to the provisions of Section 9(3), it is evident that the prescription under 9(3) comes with a clear mandate. Any complaint raising a grievance shall not be entertained after expiry of one year from the date of the knowledge of the action complained and under Section 9(3)(b), the

limitation is five years in cases of complaints raising any allegations. Section 9(3)(b) provides clearly that the Lokayukta or the Upa-Lokayukta shall not investigate any complaint involving an allegation made after the expiry of five years from the date on which the action or the conduct complained of against is alleged to have taken place.

24. Coming to the facts of this case, from a perusal of the orders passed by the Upa-Lokayukta and a consequential orders passed by the Education, it is seen that the complaint filed by the respondents No. 5 to 9 is in respect of the lack of eligibility of the writ petitioner for being considered to the post of Principal even on an officiating basis as the petitioner did not possess a valid B.Ed Degree Certificate as the certificate obtained by the petitioner from CSJM University, Kanpur which was forwarded to the department was found to be not genuine on the verification report sought for from the university. Under such circumstances, this complaint was filed by the private respondents No. 5 to 9 raising the complaint against the petitioner and seeking an investigation into the whole matter.

25. A perusal of the complaint dated 26.05.2020 which is enclosed as Annexure-C to the affidavit in opposition filed by the respondents No. 5 to 9 reflects that the respondents No. 5 to 9 along with other complainants are all employees of the Department of Education as their primary grievance against the writ petitioner is that he was officiating promotion to the post of Principal from his earlier post of PGT whereas the feeder post for promotion to the post of Principal is that of a Vice Principal and all the complainants including the private respondents No. 5 to 9 are regular vice Principals. It is alleged in the complaint that upon verification made in the

website of Nitynand Mahavidyalay, Lakhna, Etawah, Chhatrapatir Sahooji Maharaj University, Kanpur (CSMU) or (CSJMU), Uttar Pradesh. The website did not reflect the Roll No. of the petitioner in respect of the B.Ed Degree that the petitioner claimed to have completed and furthermore the university did not offer distance education courses including that of B.Ed. The further allegation in the complaint is that the ex-post facto approval given by the Director in favour of the petitioner and other persons regarding completion of the B.Ed Degree is not in order as the concerned official is not the appropriate authority for issuance of such an order. From the complaint, it is seen that the complainants are aggrieved by the seniority given to the petitioner which it is alleged that the petitioner was allowed to incorrectly supersede the complainants including the respondents No. 5 to 9. There is no explanation as to why the complaint was filed in the year 2020 when the allegation made against the petitioner is in respect of the officiating promotion given to the petitioner as Principal in the year 2014. The grievance of the petitioner being Senior or wrongly given the benefit of seniority over the complainants including the private respondents No. 5 to 9 is also prima facie not open to re-consideration by the department or the Upa-Lokayukta in view of the said issue already decided in an earlier writ petition filed by the petitioner being W.P(C) No. 107(K)/2012 decided on 04.09.2013. No materials has been placed before this Court by the parties before the Court to suggest that this order has been reversed by any higher Court. Consequently this order has attained finality.

26. The Upa-Lokayukta is a statutory body constituted under the Nagaland Lokayukta Act, 2017 and to investigate into the matters which

are prescribed under Section 8 of the Act. For convenience Section 8 is extracted below:

“Section - 8: Matters which may be investigated by Lokayukta or UpaLokayukta.

(1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken, by or with the general or specific approval of-

(a) The Chief Minister or a Minister or a Secretary;

(b) A member of the State Legislature;

(c) Vice-chancellor or Registrar of a University;

(d) The Chairman and Vice-Chairman (by whatever name called) or a member of an Authority, Board, or a Committee, a Statutory or non Statutory Body or a Corporation established by or under any law of the State Legislature.

(e) Any other public servant.

(2) The Lokayukta or Upa-Lokayukta may, if he thinks fit, investigate an action taken by or with the general or specific approval of a public functionary, if it is referred to him by the State Government.

(3) The Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Upa-Lokayukta whether or not a complaint has been made to the Lokayukta in respect of such action.”

27. The matter, which is required to be investigated by the Lokayukta/Upa-Lokayukta, clearly falls under Section 8 of the Nagaland Lokayukta Act, 2017 as extracted above. Under Section 8(1) of the Nagaland Lokayukta Act, 2017, Lokayukta may investigate any action which is taken up or with general or specific approval of the authorities specified under Clauses (i) to (e) of Section 8(1). The Lokayukta may also investigate an action if things fit with the general or the specific approval of a public functionary if it is referred to him by the State Government. The Lokayukta may also for reasons to be recorded in writing, investigate any action which may be investigated by an Upa-Lokayukta whether or not, a complaint has been made to the Lokayukta in respect of such

action.

28. From the discussions made hereinabove, it is seen that the order taking cognizance by the Upa-Lokayukta dated 28.01.2021 and proceeding to investigate the matter in respect of the writ petitioner appears to have taken cognizance without the materials being available to proceed against the writ petitioner. The direction to have the matter investigated by the investigating officer appears to have been undertaken upon a decision by the Upa-Lokayukta to "*proceed against the petitioner for committing fraud by submitting a fake certificate of B.Ed*". It would appear upon a plain reading of the order that the Upa-Lokayukta proceeded to take cognizance of a complaint by a prima facie finding that the petitioner committed fraud by submitting a fake certificate of B.Ed and thereupon directed the I.O to seized or collect the letter submitted by the petitioner. Subsequently, upon the affidavits and objections being exchanged, the Upa-Lokayukta passed the order dated 20.08.2021 given an interim recommendation to the respondent authorities to recall the order of officiating promotion to the post of Principal. The order dated 20.08.2021 is an interim recommendation and the matter is presently is pending before the Lokayukta.

29. Perusal of both the orders dated 28.01.2021 and 20.08.2021 which are available before the Court do not reflect that the Lokayukta has proceeded to examine the maintainability of the complaint filed by the private respondents No. 5 to 9 from the stand point of Section 8 and Section 9(3) of the Act. It was incumbent on the Upa-Lokayukta to examine the complaint filed by the complainants in view of the expressed provisions of Section 8 and Section 9(3) and thereafter proceed to pass

orders as to whether the Upa-Lokayukta should take cognizance the complaint and proceed for passing interim recommendation. Notwithstanding that in view of the serious allegations levelled against the writ petitioner that petitioner has resorted to fraud in respect of the B.Ed Certificate submitted by him to the Department and which certificate was taken into account for giving him the officiating promotion to the post of Principal as also no specific order having been issued by the department and/or relied upon by the petitioner to show that where the feeder category for promotion to the higher post of Principal is post of Vice Principal whether the petitioner could have been considered for promotion to the post of Principal from his present post of Post Graduate Teacher. The Court refrains from expressing any opinion on merit as these matters are presently under the scrutiny of the Upa-Lokayukta as well as by the Department by way of the departmental proceedings initiated against the petitioner and which departmental proceedings has not presently assailed in the present proceedings.

30. The allegations made against the petitioner are grave and serious and it appears that the department did not initiate any departmental proceedings with regard to the controversy at hand namely, the verification of the genuineness of the certificate of B.Ed degree which course the petitioner claims to have been successfully undergone from the CSJM University, Kanpur. There is also no material placed before the Court to show if any order(s) are passed by the School Education Department pursuant to the process of verification of educational qualification/certificates of the employees under the Department more particularly with respect to the petitioner. There are also no materials

which suggest that any such enquiry was undertaken by the State Department and that no infirmity was found in so far as the certificate of B.Ed degree issued by the CSJM University which was submitted by the petitioner. Under such circumstances and in view of any specific facts before the Court, this Court is disinclined to issue a writ and/or any direction interfering with the proceedings undertaken by the Upa-Lokayukta followed by and/or the consequential order of revocation of the officiating promotion granted to the petitioner pursuant to the directions issued by the Upa-Lokayukta.

31. In that view of the matter, considering the fact that the Upa-Lokayukta is seized of the matter at present and the interim recommendation passed on 28.01.2021 is subject to such final recommendation being passed by the Upa-Lokayukta, this Court at this stage refrains from interfering with the orders passed by the Upa-Lokayukta and/or the Department by the Notification dated 24.03.2023 whereby the petitioner's officiating promotion was revoked. This Court expresses hope that the Upa-Lokayukta will expeditiously consider the matter in its entirety and dispose of the complaint finally by a speaking order within a period of 60 (Sixty) days from the date of receipt of a certified copy of this order. This Court hopes that the Upa-Lokayukta while considering the matter in its entirety and disposing of by a speaking order, will also examine the scope of passing any such recommendations, in view of the prescriptions under Section 8 read with Section 9(3). This Court hopes that the Upa-Lokayukta being a statutory authority will consider this aspects and pass appropriate orders.

32. In view of the discussions made above, the other Judgments

pressed into service are not required to be referred or discussed at this stage.

33. The writ petition, therefore, stands disposed of in terms of the above. No order as to cost. The interim order shall be extended for 60 (Sixty) days till the final disposal of the proceedings of the Upa-Lokayukta as directed.

JUDGE

Comparing Assistant