

(2015) 08 MEG CK 0016
In the Meghalaya High Court
Case No : Writ Petition (C) No. 371 of 2013

Abul Hashem and Others

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) 08 MEG CK 0016

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : M.F. Quershi, for the Appellant; N.D. Chullai, Sr. GA and K.P. Bhattacharjee, GA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J—Heard Mr. MF Quershi, learned counsel for the petitioners and Mr. ND Chullai, learned Sr.GA assisted by Mr. K.P. Bhattacharjee, learned GA appearing for the State respondents.

2. The prayer sought for in the present writ petition reads as follows:--

"In the premises aforesaid, it is therefore, prayed that your Lordship would be pleased to admit this writ petition, call for the record, issue rule calling upon the State respondents to show cause as to why a writ of mandamus or any other writ or direction of like nature shall not be issued directing them to include the name of the petitioners in the list of the candidates qualified for appointment as the Assistant Teacher in the Government Lower Primary School under Dadenggiri Sub-Division by removing the anomalies and proper distribution of marks in the score sheets and to provide appointment to the petitioners by placing them in appropriate position in the select list in order of merit and on the basis of the marks obtained by them and upon cause or causes being shown and after hearing the parties be further please to make the rule absolute.

Pass such further order/orders as deem fit and proper.

And for which act of kindness the humble petitioners as in duty bound shall ever pray."

3. The concise fact leading to the filing of the present writ petition is noted. The petitioners pursuant to the advertisement dated 15.06.2006 applied and passed the State Eligibility Test for the purpose of applying for appointment to the post of Lower Primary School Teacher. The petitioners having the requisite qualification and after passing the said State Eligibility Test applied for their appointments to the post of Assistant Teacher in the Govt. L.P. School in prescribed standard form in response to the Notification vide No. EDN/360/85/Pt.II/428 dated 24.11.2008 published in the Gazette of Meghalaya wherein, the marks were to be distributed by the Selection Committee in the interview was clearly provided in Clause 30 of the said Notification dated 24.11.2008.

4. The petitioners also appeared for the interviews held on 24.08.2009, 25.08.2009, 26.08.2009, 27.08.2009 and 28.08.2009 respectively which were conducted in a phase manner and after the interviews were over, the State respondents published the result of the alleged successful candidates. It is also stated that the result of the alleged successful candidates published by the State respondents received widespread criticism after the copy of the score sheets were obtained under the RTI Act which reflected large scale manipulation in the score sheets apart from overwriting in allotting the marks. It is also stated that the petitioners who were the deserving candidates suffered due to large scale anomalies committed in allotting the marks including overwriting in the score sheets in distribution of marks. It is also stated that the guidelines of the notification dated 24.11.2008 was completely ignored.

5. It is stated that the selection test of the candidates for the said post had been conducted and the list of the qualified candidates was published on 23.12.2009. The Government of Meghalaya had also issued the appointment orders for appointing the selected candidates as teachers in the Government L.P. School. The 9(nine) writ petitions being WP(C) No. 106(SH)/2010, WP(C) No. 51(SH)/2010, WP(C) No. 52(SH)/2010, WP(C) No. 88 (SH)/2010, WP(C) No. 408(SH)/2010, WP(C) No. 267 (SH)/2010, WP(C) No. 50 (SH)/2010, WP(C) No. 15 (SH)/2010 and WP(C) No. 182 (SH)/2010 had been filed by the failed candidates challenging the said select list dated 23.12.2009 and also for quashing the entire selection process alleging manipulations, partiality and illegality committed by the Selection Committee in the selection process. The 9(nine) writ petitions had been disposed of by the learned Single Judge vide common judgment and order dated 21.10.2011 directing the CBI to enquire into the allegations of the petitioners made in the said writ petitions. Para No. 40 of the common judgment and order of the learned Single Judge dated 21.10.2011 read as follows:--

"40. For what has been stated in the foregoing, all the writ petitions are allowed. The CBI is, therefore, directed to inquire into the allegations of the petitioners in Paper Mark-"A", Paper Mark-"B" and Paper Mark-"C" annexed to WP(C) No.

106(SH) of 2010, the allegations made in paragraphs 8 and 9 of the writ petition in WP(C) No. 88(SH) of 2010, the allegations in paragraphs No. 5 and 9 of the writ petition in WP(C) No. 52(SH) of 2010, the allegations made in paragraphs No. 13 and 16 of the writ petition in WP(C) No. 408(SH) of 2010, the allegations made in paragraphs No. 5,6 and 7 of the writ petition in WP(C) No. 51(SH) of 2010, the allegations made in paragraphs No. 15 and 16 of the writ petition in WP(C) No. 15(SH) 2010, the allegations made in Paper Mark-"A", Paper Mark-"B" and Paper Mark-"C" of the writ petition in WP(C) No. 267(SH) of 2010, the allegations made in paragraphs No. 5,6 and 7 of the writ petition in WP(C) No. 50(SH) 2010 and the allegations made in Paper Mark-"A" and page 86 of the writ petition in WP(C) No. 182(SH) of 2010 as expeditiously as possible and submit the inquiry report within a period of three months from the date of receipt of this judgment. The original files relating to the DPC proceedings bearing No. DEME-2/Per/2009 (Amlarem), No. DEME-8A/Per/2009 (Jowai), No. DEME-1/Per/2009/1 (Shillong), No. DEME/GA/8/Appt/2008 (Jowai), No. DEME/GA/Appt/7/2008 (Dedengre) and No. DEME-3/Per/2009 (Tura) shall be kept by the Registry under sealed cover and shall be handed over to the CBI as and when required after duly obtaining their acknowledgment thereof. On the basis of the inquiry report so submitted, the respondent authorities shall take necessary and consequential actions on the basis of the inquiry report submitted by the CBI including cancellation of the entire selection processes and the appointments already made in connection therewith and restarting of the recruitment process to fill up the posts in question within a period of two months thereafter. If the petitioners are still aggrieved by the decision of the State-respondents, they are at liberty to approach this Court again for further and appropriate orders. The parties are, however, directed to bear their respective costs. Communicate this order to the Superintendent of Police, CBI, Shillong for necessary compliance. It is expected that the State-respondents extend cooperation to the CBI for smooth and effective inquiry into the matters".

6. The respondents in the said 9 (nine) writ petitions had filed the writ appeals being No. WA. No. (SH) 52/2011, WA. No. (SH) 55/2011, WA. No. (SH) 56/2011, WA. No. (SH) 57/2011, WA. No. (SH) 59/2011, WA. No. (SH) 60/2011, WA. No. (SH) 61/2011, WA. No. (SH) 62/2011, WA. No. (SH) 53/2011, WA. No. 63 (SH)/2011 and WA. No. 65 (SH)/2011. The said writ appeals also had been disposed of by the learned Division Bench vide common judgment and order dated 16.08.2012. The operative portions of the said common judgment and order of the Division Bench dated 16.08.2012 read as follows:--

"29. Hence, taking into consideration the above and by balancing the circumstances, in our opinion, cause of justice would be met, if the Principal Secretary to the Government of Meghalaya in the Education Department is directed to constitute a High Level Scrutiny Committee of Officials without any stigma to scrutinize and review the records regarding the candidature of the selected and unselected candidates involved within the ambit and scope of connected writ petitions being WP(C) Nos. 106(SH)/2010, 51(SH)/2010,

52(SH)/2010, 88(SH)/2010, 408(SH)/2010, 267(SH)/2010, 50(SH)/2010, 15(SH)/2010 and 182(SH)/2010 so as to ascertain the legality/basis of such selection or non-selection, as the case may be, and thereafter by segregating the tainted candidates from the non-tainted, take appropriate actions in accordance with law to offer appointment/confirm appointments of duly selected candidates whether already appointed or not and also terminate the candidature/appointment of the ineligible candidates and appoint eligible candidates including the writ petitioners, if found suitable. While undertaking this exercise the authorities shall also take beneficial assistance and guidance of the findings, if any, recorded legitimately by the CBI in its enquiry report now lying at the custody of the State Authorities. Needless to say, it will also be the duty of the State Government not to spare any officer or authority, howsoever high he may be, if any deliberate complicity is found in the matter of vitiating or otherwise interfering with the selection process."

7. Mr. ND Chullai, learned Sr.GA appearing for the State respondents strenuously contended that the present writ petition is squarely covered by the common judgment and order of this Court dated 01.06.2015 passed in WP(C) No. 30/2014, WP(C) No.158/2014, WP(C) No. 159/2014, WP(C) No. 160/2014, WP(C) No. 161/2014, WP(C) No. 162/2014 & WP(C) No. 163/2014 under which this Court had dismissed those writ petitions filed by the unselected candidates like the present writ petitioners in the selection test for appointment as teacher in the Govt. L.P. Schools on the ground that there are considerable delay in filing the writ petition and also they are the fence sitters eagerly waiting for the benefits of the writ petitions which were promptly filed by the unselected candidates. The copy of the said common judgment and order of this Court dated 01.06.2015 was also furnished to the learned counsel for the petitioners. Paras 8, 9, 10, 11, 12 & 14 of the said common judgment and order dated 01.06.2015 read as follows:--

"8. The Apex Court in *Rup Diamonds and Others Vs. Union of India and Others*, AIR 1989 SC 674 : (1989) 20 ECC 15 : (1989) 40 ELT 226 : (1989) 1 JT 7 : (1989) 2 SCALE 356 : (1989) 1 SCALE 1 : (1989) 2 SCC 356 : (1989) 1 SCR 13 : (1989) 1 UJ 306 held that the writ petitioners who were sitting on the fence till somebody else takes up the matter to the Court cannot be given the benefit of the relief granted in the writ petitions which were filed promptly. (SCC page 356-357) in *Rup Diamond*'s case (Supra) read as follows:--

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after almost a year after the first rejection. As observed by the Court in *Durga Prashad*

case (Durga Prashad Vs. Chief Controller of Imports and Exports, AIR 1970 SC 769 : (1969) 1 SCC 185 : (1969) 2 SCR 861 , the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners" case in any such appeal."

9. The Apex Court is of the similar view in Jagdish Lal and others Vs. State of Haryana and others, AIR 1997 SC 2366 : (1997) 5 JT 387 : (1997) 4 SCALE 202 : (1997) 6 SCC 538 : (1997) SCC(L&S) 1550 : (1997) AIRSCW 2257 : (1997) 5 Supreme 1 and re-affirmed the rule if a person choose to sit over the matter and wake up after the decision of the Court, then such persons cannot stand to benefit (SCC p 542 in Jagdish Lal's case (Supra) read as follows:

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case Union of India and others etc. Vs. Virpal Singh Chauhan etc., AIR 1996 SC 448 : AIR 1995 SC 448 : (1995) 7 JT 231 : (1995) 6 SCC 684 : (1995) 4 SCR 158 Supp The appellants" desperate attempt to redo the seniority is not amenable to judicial review at this belated stage".

10. The Apex Court in Union of India and Others Vs. C.K. Dharagupta and Others, AIR 1997 SC 1357 : (1996) 11 JT 677 : (1996) 9 SCALE 712 : (1997) 3 SCC 395 : (1997) SCC(L&S) 821 : (1997) AIRSCW 1465 : (1997) 5 Supreme 641 held that:

"9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi (R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-03-1987) gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case (Supra) In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi case (supra) and nobody else, even Dharagupta is not entitled to any relief"

11. The Apex Court in Government of West Bengal Vs. Tarun K. Roy and Others, (2003) 9 JT 130 : (2004) 1 LLJ 421 : (2004) 1 SCC 347 : (2004) SCC(L&S) 225 held that the respondents are not even entitled to any relief on the ground of gross delay and lapses on their part in filing the writ petitions. (SCC p 359-360 para 34) in Tarun K. Roy's case (Supra) read as follows:

"34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein

approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in *Debdas Kumar (State of West Bengal and Others Vs. Debdas Kumar and Others*, (1991) 62 FLR 647 : (1991) 2 JT 36 : (1995) 3 LLJ 294 : (1991) 1 SCALE 271 : (1991) 1 SCC 138 Supp : (1991) 1 SCR 517 : (1991) 2 UJ 30) The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

12. The Apex Court in *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, AIR 2007 SC 924 : (2007) 112 FLR 243 : (2006) 10 JT 500 : (2007) 2 LLJ 17 : (2006) 12 SCALE 347 : (2006) 11 SCC 464 : (2006) 8 SCR 916 Supp held that the petitioners who are non-vigilant in invoking the protection of their right cannot be heard after delay on the ground that same relief should be granted as was granted to other persons similarly situated, but who are vigilant of their right. Paras 13 and 16 of the SCC in *UP Jal Nigam's* case (Supra) read as follows:

"13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why should the Court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?

16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the Court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to

these persons in terms of two years" salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the Court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others. We have been given a chart of those nine persons, who filed writ petitions and obtained stay & are continuing in service. They are as follows:

1. Shri Bhawani Sewak Shukla
2. Shri Vijay Bahadur Rai
3. Shri Girija Shanker
4. Shri Yogendra Prakash Kulshresht
5. Shri Vinod Kumar Bansal
6. Shri Pradumn Prashad Mishra
7. Shri Banke Bihari Pandey
8. Shri Yashwant Singh
9. Shri Chandra Shekhar

And the following persons filed Writ Petitions before retirement but no stay order was granted.

1. Shri Gopal Singh Dangwal (WP No. 35384 of 2005 vide order dated 5-5-2005)
2. Shri R.R. Gautam (WP No. 45495 of 2005 vide order dated 15-6-2005)."

14. For the foregoing reasons, this Court is of the considered view that the writ petitioners, who are the fence sitters, approached this Court after a considerable delay for questioning the said select list dated 23-12-2009 and also for extending them the benefit of the common judgment and order of the learned Division Bench dated 16-08-2012 passed in the said 11(eleven) writ appeals which are confined only to the writ petitioners of the said 9(nine) writ petitions who are vigilant of their right and promptly approached this Court. Accordingly, the relief sought for in the present writ petitions cannot be granted to the writ petitioners who are fence sitters and woke up after a considerable delay for taking the hard earned benefits of others who are prompt and vigilance of their rights. Hence, all the writ petitions are dismissed."

8. After careful consideration of the earlier common judgment and order of this Court dated 01.06.2015 and also the pleadings as well as the relief sought for in the present writ petition, this Court is of the considered view that this writ petition is squarely covered by the earlier common judgment and order of this Court dated 01.06.2015. Accordingly, this writ petition is devoid of merit and it is

dismissed.