

(2002) 05 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (C) No. 26 of 2002

C. Lalneihkimi and Another	Vs	APPELLANT
State of Mizoram and Others		RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Citation : (2003) 3 GLR 126 : (2002) 2 GLT 141

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : George Raju, for the Appellant; N. Sailo, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kar, J.—The petitioners Mrs. C. Lalneihkimi and Mr. C. Ngurthanmawia with intent to enforce their Fundamental Rights have come up with this petition u/s 226 of the Constitution for appropriate relief by way of order/direction from this Court. The petition is in-connection with their expected promotion to the next higher grade of Principal, Government Higher Secondary School on the plea that they are holders of M.Ed. degree and challenging the interpretation of M.Ed. degree made by the respondents and thereby refusing their claim to promotion as arbitrary and illegal.

2. Fact of the case, in brief, are as below.

Both the petitioners belong to Mizo Scheduled Tribe Community entitled to enjoy all rights and privileges granted under the Constitution. That petitioner No. 1 is presently working as the Headmistress of Mamawii Girl's Higher Secondary School, Aizawl since April, 2001 and had good academic records and was holder of M.Ed. degree from NEHU. Petitioner No. 2 is also holder of M.Ed. degree from NEHU presently working as Vice Principal, Government Chaltlang Higher Secondary School since 2001. Both the petitioners also having their other academic qualifications. That they were appointed as Graduate Teacher under the Assam School Service, Class II in March, 1971. Vide paras 8 to 14 of the petition

it was contended as follows by them.

"8. That according to the provisions of the Mizoram Education and Human Resources Department (Group A Post Recruitment) (First Amendment) Rules, 1996 as notified by the respondent government in the Mizoram Gazette on 10.6.1996, the post of Principal of Government Higher Secondary Schools is to be filled up by promotion from the feeder post of Vice-Principal, Government HSS/Headmasters of Government High Schools, possessing Master Degree with BT/B.Ed. and having not less than 5 (five) years experience as Vice-Principal/Headmaster. Further, such promotion is to be effected in the ratio of 66 3/2% by promotion and 33 1/3% by direct recruitment through written competitive examination respectively, failing both by deputation.

9. That according to the criteria laid down in the aforesaid recruitment rules, both the petitioners are fully qualified and eligible for promotion to the next higher post of Principal, Government Higher Secondary Schools in the scale of pay of Rs. 10,000 - 15,500 p.m.

10. That at present there are five vacancies for the post of Principals in the following Government Higher Secondary Schools :-

(a) KM. Government HSS, Aizawl.

(b) Government Saitual HSS.

(c) Government Hnahthial HSS.

(d) Government Kawrthah HSS.

(e) Government Gandhi Memorial HSS, Champhai (Post became vacant recently due to the expiry of the existing incumbent).

11. That as against the above mentioned five vacant post of Principal, Government HSS, the respondent government proposed/decided to fill up four of the said vacancies and in pursuance of the said decision, a notification was issued on 22.8.2000 by the respondent No. 2 wherein the Governor of Mizoram was pleased to relax the provisions of the aforesaid Recruitment Rules, 1996 regarding the quota of vacancies reserved for the promotees and the direct recruits respectively to enable the respondent government to fill up the four posts of Principal Government Higher Secondary Schools by promotion.

12. That the final inter-se-seniority list of the Headmasters of all the Government High Schools in Mizoram was published by the respondent Government vide its notification dated 29.5.2001 in which the names of 53 such Headmasters are mentioned starting from serial No. 4 to 56. Serial No. 1, 2 and 3 having been promoted earlier, their names have been omitted from the said list. Sl. Nos. 4, 5 and 6 are not having Master Degree and as such they are not eligible for promotion. Out of the remaining, serial No. 7 is the petitioner No. 1. Serial No. 8 is also a Master Degree holder and serial Nos. 9 and 10 are not having Master Degree. Serial No. 11 is the petitioner No. 2. It is, therefore, obvious that out of

the names of eight persons mentioned from serial Nos. 4 to 11 of the inter-seniority list, only three are eligible for promotion to the post of Principal, i.e., serial No. 7, 8 and 11 whose relative seniority position will be 1, 2 and 3 respectively in the zone of consideration.

13. That the petitioners state and submit that both of them were having very legitimate expectation and right to be promoted to the post of Principal, Government Higher Secondary Schools against any of the above mentioned four out of five vacancies by the next available DPC on the basis of the selection to be made by the respondent No. 4.

14. That the petitioners however, submit that the respondent government has not included their names in the zone of consideration submitted to the respondent No. 4 (MPSC) for making necessary selection in accordance with the provisions of the relevant recruitment rules. The reason for the non-inclusion of the name of the petitioners in the said proposal, as learned by the petitioners from reliable sources, is that they are not eligible for promotion to the post of Principal, Government Higher Secondary Schools as their degree, i.e., M.Ed. is not recognised as equivalent to a Master Degree."

3. That the petitioners have submitted, representations before the appropriate authority which was not honoured. It was contended by the petitioners that M.Ed. degree possessed by them is a Master Degree for all practical purpose. By reproducing the criteria for admission into programme of Master of Education and giving the details of structure and syllabi for M.Ed. Education Programme, and also referring to Policy Prospective in teaching education, they have contended that they are qualified to be appointed as Principal but the Government, unfortunately, being biased towards them was not taking any action in this respect. Hence they prayed for a Writ to direct the respondents to consider the petitioners in zone of consideration for promotion to the post of Principal of Government Higher Secondary School by declaring that M.Ed degree as equivalent to any other Master Degree for the purpose of the said promotion and for any other such relief to which they may be entitled.

4. The respondents come up with counter-affidavit to submit that M.Ed degree is not an academic qualification but professionally qualification and, therefore, cannot be equated to each other. That for promotion, as per the Recruitment Rules, 1996, the Basic Educational Academic Qualification for the post of Principal, Government Higher Secondary School is Master Degree with B.T/B.Ed. with not less than 10 years of teaching experience in recognised Institutions. It was an admitted position that both the petitioners are B.A. degree holders but not M.A./ M.Sc. degree holders although they are having professional qualification of M.Ed degree. That unless they possess Master Degree Plus B.T/ B.Ed. they are not eligible to be put on the consideration zone for promotion to Principal, Government Higher Secondary School. They submitted that it was the settled law that qualifications prescribed by competent authority is not a subject of Judicial review. That it is also noted that a Master Degree in Arts, Science or

Commerce is two years course with four semester where as BT or M.Ed decrees are one year courses. That similar stand has been accepted by the Mizoram Public Service Commission and as such there is nothing irrational in interpreting the status of M.Ed under the principles and procedure. That petitioners do not come under the zone of consideration for promotion to the post of Principal and there is nothing illegal, arbitrary, mala fide or discriminatory and there is no question of violation of Articles 14, 16 of the Constitution of India etc. as alleged.

5. I have heard both sides and considered the relevant materials placed before this Court by attached annexures. Now, this Court in Pawan Kumar v. State of Mizoram 2000 (1) SLR 666 has held in a claim for promotion it is the established principle of law that promotion cannot be claimed as a matter of rights and that it is the appropriate authority to consider and promote an officer to next higher grade as per administrative necessity. Thus, rights to promotion, the court held, is not enforceable in a court of law.

6. The factual position was some what similar or same in a case before Hon'ble Apex Court in Dr Prit Singh Vs. S.K. Mangal and Others, The relevant para of the judgment will speak out for itself the legal proposition in this context. I quote

"11. It need not be pointed out that the Degree of Master of Arts is an academic qualification, whereas Degree of Master of Education is a professional qualification. According to us, when the qualifications required "a consistently good academic record with first or high second class (55% marks/grade B in the seven point scale) Master's Degree in any subject"; it shall mean an academic qualification like Master of Arts. The said requirement was prescribed with "a consistently good academic record". That Master's Degree shall mean Degree of Master of Arts in any subject, is apparent also from the fact that apart from that degree the candidate was required to possess also "Degree in Education" which will mean B.Ed. or M.Ed. Normally if the expression "Master's Degree" was to include even the Master's Degree in Education (M.Ed.) there was no necessity of prescribing the third requirement of a "Degree in Education."

If the claim of the appellant that "Master's Degree" shall include a Degree of Master of Education, is accepted, it will lead to an anomalous position. A person having secured third division in M. A. who cannot be considered by any University even for the post of Lecturer, will become qualified for being appointed as a Principal of any College, if later he secures a high second class marks in M.Ed. Examination by completing a course of one year. It need not be pointed out that the sole object of prescribing qualification that the candidate must have a consistently good academic record with first or high second class Master's Degree for appointment to the post of a Principal, is to select a most suitable person in order to maintain excellence and standard of teaching in the institution apart from administration."

7. Thus, it is reiterated that in promotion prescribed norms and academic qualification are to be strictly followed and that there would be no plea to equate

M.Ed. with M.A./M.Sc/M.Com degrees for such purpose. The petition has been misconceived. For all practical purpose M.Ed. may be superlative in qualitative equation to B.Ed. but cannot be equated with the degrees of M.A./M.Sc./M.Com etc.

8. Therefore, I find there is absolutely no merit in the petition which stands dismissed.

9. No costs.