
(2002) 08 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (C) No. 32 (SH) of 2002

Ferisha Phalley

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2003) 3 GLR 163 : (2002) 3 GLT 541

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : R. Kar and A.S. Siddique, for the Appellant; V.K. Jindal, for the Respondent

Judgement

I.A. Ansari, J.—When the State fails to make its writ run in accordance with its administrative decisions and policies, it is but natural that it may fail to safeguard and protect the interest of those citizens, whose interest it aimed at protecting by its such administrative decision and policies. Obviously, casualty of such a dreadful situation will be the cause of justice. The present one is one of such few unfortunate cases.

2. By this application made under Article 226 of the Constitution of India, the petitioner, a helpless woman, who has been helplessly running from pillar to post to retain her appointment as an Assistant teacher in Government Lower Primary School in the Garo Hills Autonomous district, following abysmal failure of the State to make its writ run over the Government Lower Primary School in the said Autonomous district, has approached this Court for obtaining necessary reliefs.

3. In a short compass petitioner's case may be put as follows : By notification No. DCA-2/80/Part. I/II740, dated 16.7.1980, Governor of Meghalaya assumed to himself, under sub-para (2) of para 16 to the 6th Schedule of the Constitution of India the administration of Primary Education including schools in the Garo Hills Autonomous District (hereinafter referred to as "the said district") and by another notification No. DCA 2/80/Pt-II/40, dated 22.7.1980, Governor of

Meghalaya appointed Deputy Commissioner of the said district to exercise the function and powers of the Garo Hill District Council in respect of Primary Education including schools and designated him, for this purpose, as the "Administrator, Primary Education, Garo Hill Autonomous Council." By Office Order No. 32, dated 21.7.1982 issued by the said Administrator, the petitioner and 39 others were appointed as additional teachers against 40 additional posts sanctioned by the Government vide letter No. EC.DC/19/77-A, dated 8.3.1978, and the petitioner was posted as a lower primary school teacher (hereinafter referred to as "L.P. Teacher") at Mother Union English L. P. School, West Garo Hills, Tura, and the petitioner, upon joining the said post, became a government teacher, though the said school was not a government school. The Meghalaya (Taking Over of District Council Lower Primary School) Act, 1993, (hereinafter referred to as "the said Act") provided, inter alia, for taking over of all D.C.L.P. (i.e., District Council Lower Primary) schools in the autonomous districts of Meghalaya by the State Government on and from the appointed day. By notification No. ETN. 130/93/123, dated 24.8.1994, the Governor of Meghalaya, in exercise of the powers conferred by Section 1(2) of the said Act, notified 2.6.1994 as the date with effect from which the said Act shall come into force in respect of the three Autonomous District Councils of Meghalaya including Garo Hills and by virtue of Section 3 of the said Act, all the D.C.L.P schools in the Garo Hills Autonomous District stood taken over by, and vested in the Government of Meghalaya and the State Government became liable for payment of salary, allowances etc., to the teachers of all the L.P schools in the said districts including Mother Union English L.P. Schools. However, Mother Union English L. P. school refused to hand over management of their school to the State Government on the ground that it was a minority. Institution and informed the respondent No. 3, namely, Deputy Inspector of School, Tura accordingly. However, the management of the said school left their teachers free to apply for transfer of their services to Government L.P. schools or for absorption as teachers in Government L.P. schools. The petitioner accordingly applied to the respondent No. 2 for transferring her services to some other Government L P school. By letter contained in Memo No. DIST-MINORITY-PRY/96/3254, dated 18.10.1996. Deputy Inspector of Schools, Tura, addressed to the Director of Public Instruction, Meghalaya, informed the latter that Mother Union English L P School and two more such schools had decided not to hand over their schools to the Government on the ground that they were minority schools, but the managing committee of the said school had no objection if the teachers, serving in the said minority schools, were transferred to any other Government schools so that these teachers would be able to avail the same benefit as Government teachers of DCLP schools. Along with this letter, respondent No. 3, namely, Deputy Inspector of Schools sent a proposal to the Director aforementioned for transfer of teachers of such minority schools including the petitioner to other government schools. In the list so prepared, the petitioner was proposed to be transferred to Proper Wadanang L P School, Tura. By order contained in memo No. DIST/PRY/97-98/6277-89, dated 26.02.1998, the respondent No. 3

transferred the petitioner to Akhonggiri Government L. P. school, Tura, with effect from date of her joining against a post, which had fallen vacant on account of retirement of its incumbent, and, in the vacancy so caused in the Mother Union English L. P. School, appointed one Smt. Tenderly Changma as an assistant teacher. However, the petitioner was not allowed to join Akhonggiri Government L P school by its managing committee. When the petitioner brought the matter to the notice of respondent No. 3, the latter with the previous approval of the respondent No. 2, appointed the petitioner, vide order No. DIST.PRY-TRS/APTT/2000/1102-11, dated 16.5.2000, as an assistant teacher at Upper Chandmari L P School, Tura, in place of one Smt. Rosebell. D. Shera, who had retired, but even managing committee of this school (which stands impleaded as respondent No. 4) did not allow the petitioner to join her services there and this fact too was brought to the notice of the respondent No. 3. When the petitioner was awaiting necessary action in this regard from the end of the State respondents, she received a copy of the letter No. DEME/GA/WGH/ALG/6/01, dated 28.11.2001, issued by Joint Director of Elementary & Mass Education, Meghalaya, Shillong addressed to the respondent No. 3 that the approval for appointment of the petitioner conveyed, vide letter No. DEME/GA/WGH/APTT/3/99/34, dated 28.04.2000, aforementioned may be treated as cancelled and further conveying approval for appointments of respondent Nos. 5 and 6 as Assistant teachers. The petitioner has termed this cancellation of her appointment as wholly illegal and unjust, particularly, when out of the 40 teachers, who had been appointed by the said Administrator as per Order No. 32, dated 21.7.1982, aforementioned stand already accommodated in different Government L P Schools in the said autonomous districts except the petitioner and one more person. The petitioner claims that the treatment meted out to her has been discriminatory and unfair.

4. The private respondents including the managing committee of Upper Chandmari Government L P School have been chosen not to contest this case. The State respondents, namely, respondent Nos. 1, 2 and 3 have, however, contested this case by filing their affidavit-in-opposition, their case being, briefly stated, thus : As the Mother Union English L P School refused to hand over its assets to the Government, the said school remained a non-governmental school, but the respondent No. 2 erroneously accorded approval for transfer of the petitioner to Akhonggiri L.P. School without taking into consideration the fact that under the said Act, only those teachers, who were appointed before 22.7.1980, could have been considered for transfer to, and absorption in, Government L.P. Schools in the said autonomous district inasmuch as by notification issued u/s 4 of the said Act, State Government had fixed 22.7.1980 as the cut off date in respect of the said autonomous district and since the petitioner was appointed in Mother Union English L.P. School as a teacher, initially, on 21.7.1982, her appointment was long after the cut off date fixed by the State Government. As the respondent No. 2 had, without taking this aspect of the matter into consideration, approved transfer of the petitioner from Mother Union English L.P.

School to Akhonggiri L.P. School, the said transfer did not vest any substantive right in the petitioner to claim retention as a teacher in any Govt. L P School. Since the petitioner, according to her service records, was born on 17.10.1961, it is clear that when she was appointed as an assistant teacher of Upper Chandmary L.P. School, Tura, she was already 40 years of age, whereas the qualifying age for appointment as teacher in L.P. Schools is between 18 and 27 years. The appointment of the petitioner as a teacher of upper Chandmary school was, thus, a fresh appointment and since she was appointed, when she was above the prescribed age. State, respondents had no option, but to cancel her appointment. Such bona fide mistake on the part of the respondent Nos. 2 and 3 did not vest in the petitioner any right to claim appointment as a teacher of L.P. School, in the said autonomous district. The respondents have, therefore, prayed for dismissing the writ petition.

5. I have carefully perused the materials available on record. I have heard Mr. R. Kar, learned counsel for the petitioner, and Mr. V.K. Jindal, learned Senior Counsel appearing on behalf of the respondents.

6. It has been submitted, on behalf of the petitioner, that while she was working as a teacher in Mother Union English L.P. School, the said Act of 1993 came into force. Where by all L.P. Schools in the said district including the Mother Union English L.P. School stood taken over by the State Government and the teachers serving therein became Government teachers, whereupon the State Government became liable to pay their salaries, allowances, etc., including pensionary benefits, but when the managing committee of the Mother Union English L.P. School, on account of its being a minority institution, refused to hand over its management to the State Government, the petitioner applied to the respondent No. 3 for transferring her services to some other Govt. L.P. School and respondent No. 3 accordingly transferred the petitioner to Akhonggiri L.P. School as a teacher, but when the petitioner was not allowed by the managing committee of Akonggiri L.P. School to join the post of teacher, the respondent No. 3 instead of enforcing their order, transferred the petitioner, with approval of the respondent No. 2, to Upper Chandmary Government L.P. School as an assistant teacher. It is also submitted by Mr. Kar that though the appointment letter, dated 16.5.2000, issued by the respondent No. 3 mentioned that the petitioner was being appointed as an assistant teacher in the upper Chandmary L.P. School, the said appointment was, in fact, not a fresh appointment, but was merely a transfer and in this view of the matter, question of treating the petitioner as over-aged person for appointment as assistant teacher did not arise at all, but the State respondents, most illegally, unjustly and arbitrarily, cancelled this appointment without affording the petitioner any opportunity of hearing on wrong premises that since the petitioner was, for the first time, appointed, on 21.7.1982 as assistant teacher, which date was after the cut off date allegedly fixed by the State Government, she (the petitioner) could not be treated to have been covered under the said Act. It is further submitted by Mr. Kar that though the petitioner was originally appointed along with 39 other persons as teachers

and all the teachers so appointed have been transferred to, and absorbed in, different Government L.P. School, it is only the petitioner and one more person, who have not been so absorbed. The petitioner has, thus, been, contends Mr. Kar, discriminated against by the State respondents.

7. Controverting the above submissions, made on behalf of the petitioner, Mr. Jindal has submitted to the effect, inter alia, that by virtue of notification, dated 17.9.1994, the State Government announced 22.7.1980 as the cut off date for Garo Hills Autonomous District, which means that only those teachers, who were working in L.P. Schools in the said autonomous district on 22.7.1980 were the ones, who had been covered by the said Act and since the petitioner was, admittedly, appointed, on 21.7.1982 as an assistant teacher L.P. School, she could not be said to have been covered by this cut off date and, thus, her transfer to Akhonggiri L.P. School and/or Upper Chandmary Government L.P. Schools were really fresh appointment as a teacher of Government L.P. School, but when it was subsequently discovered that she had crossed the age limit for appointment as teacher, her appointment had to be cancelled by the State respondents and the petitioner can not, now, claim that she has the right to obtain appointment as a teacher, in Government L.P. School in the said district. Mr. Jindal has also submitted that if this Court is of the view that notwithstanding the age-bar, which disqualified the petitioner from being appointed as a teacher in the Government L.P. School, the petitioner, on account of peculiar fact and circumstances of the case, needs to be appointed as a teacher of Government L.P. School, the State respondents may be given the freedom to appoint her in any Government L.P. School in any of the three autonomous districts of the State of Meghalaya. Reacting promptly to this offer, Mr. Kar has submitted that so far, no Rules have been framed by the Govt. regarding service conditions of the teacher of L.P. Schools in autonomous districts and in such a situation, with the help of order of the Court, the petitioner cannot be taken out of Garo Hills Autonomous District, when she has successfully established that she was unjustifiably and illegally denied the opportunity to serve as a teacher in Government L. P. Schools of Garo Hills Autonomous district.

8. For the sake of brevity, let me quote relevant provisions of Section 3 of the said Act of 1993, which run as follows :

"3(1) On and from the appointed day, all the DCLP schools in the autonomous districts shall stand taken over by, and vested in the State Government.

(2) On the taking over of the schools under Sub-section (1), the liability, on account of (a) salary and allowances, including any arrear thereof, of a teacher, who, immediately before the 20th December, 1993, is a teacher of such school shall pass on to the State Government; and (6) gratuity and pensionary benefits of DCLP school teacher, including any arrear thereof, for any period commencing from the cut off date shall be borne by the Sate Government.

9. A bare reading of the above provisions of Section 3(1) shows that all DCLP

schools, in the autonomous districts shall stand taken over by, and vested in, the State Government on and from the appointed day. As to what "appointed day" means is denied by Section 2(6) of the said Act, which lays down that "appointed day" means the date appointed by the State Government under Sub-section (2) of Section 1. What Sub-section (2) of Section 1 states is that the said Act shall come into force on such date as the State Government may, by a notification in the Official Gazette, appoint and different dates may be appointed for different autonomous districts.

10. It is worth noticing that by Government Notification issued, on 24.8.1994, in exercise of powers conferred on the Governor of Meghalaya under Sub-section (2) of Section 1 of the said Act, 2nd of June, 1994, was made as the appointed day for coming into force of the said Act in all the three Autonomous districts, which obviously included Garo Hills.

11. Notwithstanding, therefore, what the State respondents have contended, it is clear that the said Act of 1993 came into force in respect of Garo Hills Autonomous district with effect from 2.6.1994 and on and from this date, all DCLP schools in the said autonomous district, except minority schools and private schools, such as, Mother Union English L. P. School, stood taken over by and vested in, the State Government inasmuch as Section 7 of the said Act exempted the minority schools as well as private schools from the purview of application of the said Act except in respect of the matter relating to payment of salary and allowances of teachers, their educational qualifications, discipline, standard of education, etc.

12. Thus, strictly speaking, minority schools, such as, Mother Union English L. P. School did not vest in the State Government but, then, the State Government was free to enforce its rules, regulations or orders relating to payment of salaries of their teachers their educational qualifications, etc.

13. Let me, now deal with the submissions of Mr. Jindal that by virtue of notification, dated 17.9.1994 issued in exercise of powers conferred u/s 4 of the said Act, the cut off date for the Garo Hill Autonomous district was 22.7.1980 and since the petitioner was appointed as a teacher of Mother Union English L. P. School, on as late as 21.7.1982, she was not covered by this cut off date. What is worth noticing in this regard is that Section 4 empowers the State Government to fix cut off date for the purpose of calculating length of service of DCLP schools teachers in order to enable the Government to determine their gratuity, pension retirement benefits, etc. In other words, when a DCLP school teacher's length of service, for the purpose of pensionary benefits etc., is to be calculated, in cut off date will be 22.7.1980, but it did not mean that the State Government had the power u/s 4 of the said Act, to fix 20.7.1980 as cut off date for treating status of a person as a teacher in any of the DCLP school.

14. Upon hearing both sides and upon perusal of the materials on record, what I notice is that by Government notification No. DCA 2/80/Pt.II/40, dated

16.7.1980, the Governor of Meghalaya, in exercise of powers conferred under sub-para (2) of para 16 to the 6th Schedule of the Constitution of India, assumed to himself the administration of primary education including schools in the Garo Hills Autonomous District and by another notification No. DCA.2.80/ZP1-II/40, dated 22.7.1980, Governor of Meghalaya appointed Deputy Commissioner of the said district to exercise the function and powers of the Garo Hills District Council in respect of Primary Education including Schools and designated him, for this purpose, as the "Administrator, Primary Education, Garo Hills Autonomous Council". With the issuance of notification, dated 16-7.1980, read with notification dated 22.7.1980, aforementioned, Deputy Commissioner of the said district became responsible for discharge of the functions and powers of Garo Hills District Council in respect of the administration of primary education including schools. When vested with such a power, the Deputy Commissioner, as Administrator, appointed, vide Office Order No. 32, dated 21.7.1982 (Annexure A to the writ petition), the petitioner and 39 others as teacher of various L.P. Schools against 40 additional posts sanctioned by the Government vide letter No. EC.DC/19/77-A, dated 8.3.1978, these teachers including the petitioner became Government teachers irrespective of the fact whether the school in which he or she was appointed as a teacher was a Government or non-Governmental or private school.

15. Keeping in view the above, when I come to the said Act of 1993, what I notice is that with the coming into force of the Act on and from the appointed day, i.e., 2nd June, 1994, all schools, except the minority or private schools, stood taken over by, and vested in, the State Government.

16. What logically follows from the above discussion is that by virtue of the notifications, dated 16.7.1980 and 22.7.1980, aforementioned, the teachers appointed in L. P. schools in Garo Hills Autonomous district became Government teachers irrespective of the fact as to whether the school in which such teachers were serving and/or newly appointed was a Government school or not. In other words, while the schools retained their identity as minority or private schools, the teachers serving there became Government teachers by virtue of notification, dated 22.7.1980, aforementioned. What the said Act of 1993 achieved was that all the L. P. schools managed by the district Councils were taken over by, and vested in, the State Government, but the minority schools or private school retained their independent identity. Viewed from this angle, when the petitioner was appointed as an Assistant teacher, on 21.7,1982, (i.e., after 22.7.1980) as hereinabove stated, she became a Government teacher working in a minority school, but since she became a Government teacher, she could have been transferred to, and posted in, any DCLP school as a teacher.

17. In the above backdrop, when Mother Union English L. P. school refused to hand over its management to the State Govt. they were acting within the provisions of Section 7 of the said Act, but the teachers were free to be transferred to, and/or posted in, any other DCLP school.

18. Upon hearing learned counsel for the parties and upon perusal of the relevant materials on record, what attracts my eyes, prominently, is that the essential facts of the this case are not in dispute. What emerges as the admitted facts of the parties is that by notifications, dated 16.7.1980 and 22.7.1980 aforementioned, the Governor of Meghalaya not only assumed to himself the administration of primary education including the schools in Garo Hills Autonomous district, but also appointed the Deputy Commissioner of the said district as administrator of the primary Education of Garo Hills Autonomous District Council. Having been so appointed, the Deputy Commissioner, in his capacity as administrator, appointed not only the petitioner, but also 39 other teachers against sanctioned posts. Some of the these teachers were appointed in DCLP schools and some were appointed in private or minority schools. When the said Act of 1993 came into force on 22.6.1994, all the DCLP schools in the said district stood taken over by, and vested in, the State Government except the private schools and minority schools.

19. However, notwithstanding the fact that the minority and, or private schools were kept excluded from the purview of the application of the said Act, the teachers appointed vide order, dated 21.7.1982, aforementioned by virtue of notifications, dated 16.7.1980 and 22.7.1980, remained as appointees of the Administrative of private education, Garo Hills Autonomous District Council. In other words all the teachers so appointed, remained as Government teachers. It will be illogical to infer that only because, accidentally, some one got appointed as a teacher in the DCLP schools, his/her services were protected and those, who, by coincidence, got appointed in the minority or private schools, their services were not protected. Any other interpretation will lead to an anomalous situation, where a person will be denied the right to continue as a teacher only because of coincidence or accidental factors.

20. In fact, one of the specific assertions of the petitioner in para 8 of her rejoinder is that all the 40 teachers appointed by the Administrator as per the list, dated 21.7.1982, aforementioned were accommodated in Government L. P. schools except the petitioner and one more person. This assertion of the petitioners has not been disputed directly or indirectly by the respondents. If all the teachers appointed along with the petitioner could be accommodated in Government L. P. schools, there is no reason to treat the petitioner differently from the said other teachers.

21. Coupled with the above, it is also worth noticing that there is no dispute before me that Akhingiri Government L. P. school and Upper Chandmary Government L. P. school are not minority school or private school, but that these two are Government Schools.

22. In the above backdrop, if the transfer of the petitioner to Akinggiri Government L. P. school is considered, it becomes clear that the respondent No. 3 acted within the ambit of law in transferring the petitioner to Akhingiri Government L. P. school inasmuch as it was a Government L. P. school and its

managing committee had no legal right to refuse to permit the petitioner to join the post of teacher there. The inability of the petitioner to join this post was basically a failure on the part of the State respondents to enforce their powers vested in them under the said Act. Sadly enough, however, the State respondents succumbed to the unlawful pressure put by Akhingiri Government L. P. school and, then, initially transferred, but subsequently appointed, the petitioner as a teacher in Upper Chandmary Government L. P. school. Though the State respondents fact remains that since the petitioner, on her appointment as stated hereinabove, became a Government teacher, as early as on 21.7.1982, the question of her being appointed anew/afresh in the Government L. P. school did not arise at all.

23. It may be noted that the Secretary of the Managing Committee of the Upper Chandmary Government L. P. school was made respondent No. 4 in this writ petition, but neither this respondent nor the two private respondents, who have been appointed in the said schools as teachers, have contested this case. Hence, reliefs, which the petitioner is entitled to, must be granted to her even if it is not convenient for the State or the private respondents.

24. Any other interpretation will lead to anomalous situation inasmuch as the teachers appointed along with the petitioner by the same Administrator, who were posted in DCLP schools, will remain irremovable and may be transferred, if the teachers concerned does not disagree, to any other DCLP schools, whereas the petitioner or any other person, who was appointed by the same order as a teacher in a minority or private school, will not have the status of a Government teacher. Further, harmonious reading of the entire scheme shows that irrespective of the school to which a person was appointed, the moment such a person was appointed as a teacher, in the circumstances as stated hereinabove, he or she became Government teacher, notwithstanding the fact whether the school was a DCLP school or a minority and/or a private school.

25. In the result and for the reasons discussed above, this writ petition succeeds and this writ petition is disposed of with direction to the State respondents to appoint within a period of 3(three) months from today the petitioner as an Assistant teacher in any DCLP school in Garo Hills Autonomous District treating her appointment as a teacher and giving her all back wages and service benefits since the time she has ceased to be a teacher of Mother Union English L P Schools and if necessary, a superannuary post of Assistant teacher may be created in any Government L. P. school for the purpose of appointing the petitioner treating petitioner's service as unbroken.

26. No order as to costs.