
(2017) 02 MAN CK 0003
In the Manipur High Court
Case No : W.P. (C) No. 588 of 2014

Shri Akoijam Chaoba Singh	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Manipur Aided College Employees (Service) Rules, 1974 — Rule 4(B), Rule 4(B)
Manipur Education Code, 1982 - Chapter 11, Section 1

Citation : (2017) LIC 1229

Hon'ble Judges : KH. Nobin Singh, J.

Bench : Single Bench

Advocate : Shri A. Mohendro, Advocate, for the Petitioners; Shri Athouba Kh., Addl. G.A. Shri Phungyo Zingkhai, Jr. to Shri B.P. Sahu, Sr. Advocate, for the Respondents

Final Decision : Allowed

Judgement

K.H. Nobin Singh, J.—Heard Shri A. Mohendro, the learned counsel appearing for the petitioners; Shri Athouba Kh., the learned Addl. Govt. Advocate for the State respondents and Shri Phungyo Zingkhai, the learned counsel on behalf of Shri B.P. Sahu, the learned conducting counsel for the respondent No. 3 in W.P. (C) No. 588 of 2014. None is present for the Mayai Lambi College, the private respondent.

2. Since both the writ petitions have arisen out of the similar set of facts, the same are being disposed of by this common judgment and order.

WP (C) No. 588 of 2014:

3.1. The present writ petition has been filed by the petitioners praying for quashing the impugned order dated 23-05-2014 issued by the Secretary, Governing Body, Mayai Lambi College, Yumnam Huidrom, Manipur.

3.2. According to the petitioners, the Mayai Lambi College is a Government Aided

College established in the year 1981 and at the time of its establishment, it did have facilities only for teaching students upto Degree course in some of the subjects. In the year 1997, the Manipur University issued an Ordinance by which the Honours Courses were introduced, as a result the Colleges were required to have Degree Courses both in Honours and Pass Courses. Accordingly, a meeting of the Governing Body of the Mayai Lambi College was held on 13-03-1997 for consideration of various Agenda including the one relating to vacant posts. On 11-07-1997, the Director, College Development Council, Manipur University addressed a letter to the Principal, Mayai Lambi College directing him to adhere to the intake capacities as mentioned in its earlier letter dated 13-01-1997 and as per the said letter, the Mayai Lambi College was allowed to open honours courses in respect of various subject mentioned therein.

3.3. On 26-08-1997, the Governing Body, Mayai Lambi College issued an advertisement inviting applications from amongst the eligible candidates for recruitment of 37 Lecturers in respect of subjects mentioned therein and in response thereto, the petitioners applied for the said posts. Thereafter, a DPC for appointment of Lecturers was held on 14-09-1997, the recommendation of which was approved by the Governing Body on 15-09-1997 and the result of the DPC was also declared. All the petitioners having been appointed, they joined the Mayai Lambi College as the Lecturers. After the petitioners started working as the Lecturers, there was some misunderstanding between the State Government and the members of the then Governing Body because of which two Civil Rules being C.R. No. 244 of 1997 and C.R. No. 862 of 1997 came to be filed by the petitioners and some of the members of the then Governing Body created all kinds of hurdles in the administration of the College thereby preventing the petitioners from discharging their duties properly. The Mayai Lambi College became a full-fledged Aided College running Honours Courses only because of the appointment of the petitioners as required in the Ordinance issued by the Manipur University in the year 1997. The services of the petitioners were utilized not only by the College but also by the State Government as well as by the Council of Higher Secondary Education, Manipur for evaluation of examination papers and some of the petitioners were detailed for the 12th Lok Sabha Election and in recognition of their services, the petitioner No. 2 was awarded Minor Research Project by the University Grants Commission. In recognition of their appointment as Lecturers of the Mayai Lambi College, the Directorate of Education (U), Government of Manipur issued Identity Cards to the petitioners and the names of the petitioners were included in the College Statistics published by the College Development Council, Manipur University for the year 2002-03. But the petitioners were prevented from discharging their duties without assigning any reason.

3.4. Being aggrieved by the actions of the respondents and in particular, the Principal, Mayai Lambi College, the petitioners and other similarly situated Lecturers filed a writ petition being W.P. (C) No. 1541 of 2001 wherein an interim order dated 03-10-2001 was passed by the then Hon'ble Gauhati High Court

directing that the petitioners should not be disturbed by the respondents until further order. In spite of the said court's order and since the petitioners were not allowed to discharge their functions, the petitioners submitted a representation dated 07-05-2004, on receipt of which the Governing Body, the Mayai Lambi College issued a notification dated 11-07-2005 stating that a meeting be held on 19-07-2005 but the meeting was not held on that day and thereafter, the petitioners submitted another representation dated 10-06-2010 for the same purpose. When the writ petition being W.P. (C) No. 1541 of 2001 came up for consideration, the petitioners were asked to withdraw the same on the assurance that their cases would be considered by the Governing Body. But the Governing Body, the Mayai Lambi College failed to consider the cases of the petitioners thereby compelling the petitioners to file another writ petition being W.P. (C) No. 315 of 2013 wherein the Hon"ble High Court expressed the view that the petitioners ought to approach the authority concerned because of which the petitioners submitted a representation dated 27-05-2013 requesting it to allow the petitioners to discharge their function. In spite of the receipt of the said representation, the Governing Body, the Mayai Lambi College failed to take up appropriate steps with the result that the petitioners filed another writ petition being W.P. (C) No. 642 of 2013 which was disposed of on 13-09-2013 with the direction that the respondents and in particular, the respondent No. 4 therein shall consider the representation submitted by the petitioners. Since the said representation was not considered by the Governing Body, the Mayai Lambi College, a contempt petition being Cont. Case (C) No. 3 of 2014 was filed against the Secretary, the Mayai Lambi College. As the Secretary of the Mayai Lambi College failed to appear before the Court, the Superintendent of Police, Imphal West was directed to produce the Secretary before the Court on 16-05-2014 and in a purported compliance of the court's order dated 13-09-2013, the Secretary, Mayai Lambi College issued the impugned order. The instant writ petition has been filed praying for quashing it.

4. The stand of the State Government as indicated in its affidavit, is that the affairs and functions of Aided Colleges are solely and exclusively managed by the Governing body of the College under the General Principles and conditions governing payment of Grand-in-aid. In terms of the provisions of Chapter-XI, Section-I Rule 4(b) of the Manipur Aided College Employees (Service) Rules, 1974, the appointment of teaching staff of Aided College shall be done on the recommendation of the Selection Committee only after obtaining prior approval of the Director of Education. No such prior approval was obtained by the College at the time of alleged appointment of the petitioners and therefore, in case the petitioners were serving as teachers, the payment of their pay and allowances in respect of unapproved teachers of Government Aided Colleges is within the purview and responsibility of the Governing body of the College. Since the Directorate of Education (U) did not issue identity cards to the petitioners, there is no question of recognising the petitioners as teachers of the Mayai Lambi College. The inclusion of the names of the petitioners in the College Statistics

published by the College Development Council, Manipur University does not accrue any right in favour of the petitioners to claim that they are Government approved teachers. Since the petitioners were appointed by the Governing Body of the College without approval of the Director of Education (U), they are unapproved teachers. No affidavit-in-opposition has been filed on behalf of the respondent No. 4, the Mayai Lambi College.

WP (C) No. 37 of 2015:

5. This writ petition has been filed by the petitioners praying for quashing the Notification (un-numbered & un-dated) issued by the Secretary, Governing body, the Mayai Lambi College published in the local newspaper called SANGAI EXPRESS.

6.1. The grievance of the petitioners is that during the pendency of the writ petition being W.P. (C) No. 588 of 2014 filed by them, the Secretary, Governing Body, the Mayai Lambi College issued a Notification in a local daily called Sangai Express inviting applications from amongst the eligible candidates for appointment of Lecturers in respect of certain subjects. According to them, the intention of the College is to defeat the purpose of filing the writ petition being W.P. (C) No. 588 of 2014; if the College does require the services of Lecturers, it could have utilised the services of the petitioners who have been appointed on the recommendation of the DPC and that in case the College is allowed to go ahead with the recruitment, no posts will be available for them.

7. The stand of the Mayai Lambi College as indicated in their affidavit, is that the file being No. 1/MLC/Appt./97 regarding the alleged appointment of the petitioners by the then Secretary, Governing Body is not available in the College. On enquiry at the Directorate of Education (U), there is no document available with it for having granted any approval as regards the appointment of the petitioners nor could the petitioners produce any document with regard to any approval being granted by the Directorate of Education. As per provisions of the Manipur Aided College Employees (Service) Rules, 1974, no appointment of a teacher can be made without any approval of the Directorate of Education, Government of Manipur. The alleged DPC was not constituted as per rules and the recommendation thereof, if any, would be void ab-initio. The further stand of the Mayai Lambi College is the total denial that the petitioners, after having been appointed, joined their services as Lecturers of the Mayai Lambi College.

8. It is not in dispute that the Mayai Lambi College is an Aided College and the relationship between the State Government and the Mayai Lambi College is governed by the provisions contained in the Manipur Education Code, 1982 which is not a statute enacted by the State Legislature but is an executive instruction. In other words, it is a code containing Guidelines. Rule 2 of the Manipur Aided College Employees (Service) Rules, 1974 provides that these rules shall apply to all persons recruited to the service of an Aided College and also to persons already in service to an Aided College at the time of commencement of these

rules and approved by the Director of Education. "Aided College" means a College receiving maintenance grants from the Government of Manipur. Rule 4 provides for the method of recruitment as to how the appointments are to be made in respect of Principal, Lecturers etc. Rule 18(a) Section-IV, Chapter-XI states that the Aided Colleges shall have to employ adequate number of qualified teaching and other staff as may be required by the University. Rule 4(B) which is relevant for the case, reads as under:

"4(B) Teaching staff including senior Lecturers, Demonstrators/Tutors etc.

The Selection Committee for the teaching staff will be constituted with the following officials:-

(a) Principal of the College Chairman

(b) Head of the Department concerned ... Member

(Where there is no Head of Department concerned in the College, the Governing Body may invite the Head of Department in the subject concerned from another College).

(c) One nominee of the Director of Education to be nominated by the Director of Education for each occasion from among experts in the subject concerned: Member

Provided that the Principal/Secretary shall advertise all vacancies in the papers and the State Gazette for a reasonable period of time and that the Governing Body shall make the appointment on the recommendation of the Selection Committee after obtaining the prior approval of the Director of Education, Manipur."

9. On perusal of the Manipur Education Code, 1982, it is seen that the provisions thereof will apply to all persons recruited to the services of an Aided College and also to persons who are already in service to such Aided College and approved by the Director of Education. In other words, these rules will apply to all persons, recruited to the services of an aided college, whose appointments have been approved by the Director of Education. One thing to be noted is that the word "recruited" is qualified by the word "approved". The Mayai Lambi College was recognised as an Aided College in the year 1981. The present issue involved herein relates to the validity and correctness of the appointment of the petitioners. Shri A. Mohendro, the learned Counsel appearing for the petitioners has submitted that the provisions of the Code will not apply to appointment of unapproved teachers and therefore, at the time of appointment of unapproved teachers, the provisions of Rule 4 need not be followed by the College. On the other hand, the stand of the Mayai Lambi College as indicated in its affidavit, is that at the time of appointment of the petitioners, provisions of Rule 4 have not been followed for the reason that no approval was granted by the Director of Education. The stand of the State Government is similar to that of the Mayai Lambi College when it states that the State Government has not granted any

approval to the appointment of the petitioners and that they are all unapproved teachers. But the terms "approved teacher" and "unapproved teacher" are not defined in the Manipur Education Code 1982, because of which the present problem has cropped up and there are many questions for which answers are not available in the Code. The first and the foremost question is as to whether all the teachers who were working at the time when the Mayai Lambi College was recognised as an Aided College, have been approved by the Director of Education or not. The answer seems to be "no". It appears that all have not been approved by the State Government but some of them have been approved against the posts created by it. The plain meaning of the term "approved teacher" appears to be a teacher whose appointment has been approved by the Director of Education. But it is not so under the Code and from the averments made in the affidavit of the State Government, it appears that an "approved teacher" is one whose appointment has been approved by the Director of Education and whose salary is paid by the State Government. The State Government under the Code is concerned with the "approved teacher" only whose appointment is approved only after the substantive post being created for it by the State Government for purpose of payment of salary. In case one "approved teacher" dies or retires from the service, another person appears to be recruited as "approved teacher" in terms of the procedure prescribed under Rule 4 of the Code or an "unapproved teacher" is appointed as "approved teacher" following the said procedure.

10. The problem arises mainly in respect of the "unapproved teacher". It is not in dispute that only the "approved teachers" are not sufficient to run an Aided College which needs to have adequate number of teacher other than "approved teacher". In respect of an Aided College, the relationship is only between the State Government and the Aided College. There is no master and servant relationship between the State Government and the unapproved teachers who are neither appointed by the State Government nor have they been paid their salary by the State Government. The salaries of the unapproved teachers are paid by the College only. The next question is as to what will happen when an unapproved teacher dies or retires from service? The answer is very simple that since the College is required to employ adequate number of teachers, somebody in his place will have to be appointed by the College, otherwise teaching in the College and in particular, the students will suffer. While making a process for appointment of an unapproved teacher, the question is whether prior approval of the Director of Education is required to be obtained or not. The answer appears to be "no", although the same is not readily available in the Manipur Education Code, 1982. But there is one aspect which needs to be noted and a proviso to Rule 18 (a) states that prior approval of the Government would be required for opening a new subject or a new section in a class. In the event of new subjects being opened with the approval of the State Government, the teachers are to be appointed by the College and if the State Government is agreeable to create some posts in respect of the said new subjects for payment of salary, the teachers appointed against the said posts will be known as "approved teachers"

and the rest be known as "unapproved teachers". In respect of the appointment of any teacher by the College, other than the teacher appointed against the posts created by the State Government as "approved teacher", no prior approval is required from the State Government. If the stand of the Mayai Lambi College is accepted and if all the appointments of teachers are to be made by the College with the prior approval of the State Government, the question of describing them as "unapproved teachers" will not arise at all and in that event, there will be no difference between the "approved teacher" and "unapproved teacher". Thus, it can be inferred that what the Rule 2 of the Code provides, is that these rules shall apply to persons recruited as "approved teachers" only.

11. In the present case, two short issues arise for consideration by this court - one, whether a writ lie against an Aided College and two, whether the appointment of the petitioners by the College, without any prior approval of the State Government, is valid or not. As regards the first issue, Shri A. Mohendro, the learned counsel appearing for the petitioner, relying upon the decision rendered by the Hon'ble Supreme Court in Unni Krishnan v. State of A.P. & ors., reported in (1993) 1 SCC 654 has contended that the Mayai Lambi College being a body discharging public duties, a writ lie against it. His contention has some substance and force. In Unni Krishnan case, the Hon'ble Supreme Court, referring to its earlier decisions wherein a writ of mandamus was issued to a Private College, has observed that the meaning of authority under Article 226 of the Constitution is distinguishable from the same term from Article 12 of the Constitution and has affirmed that if the body discharges public duty with aid being provided by the Government, mandamus will lie. In the present case, it is an undisputed fact that the Mayai Lambi College is an Aided College and since there is existence of a relationship between the staff and management, mandamus cannot be denied to them. As regards the second issue, it may be noted that an advertisement dated 26-08-1997 was issued in a daily local paper inviting applications for appointment of Lecturers at the Mayai Lambi College and in response thereto, the petitioners applied for it; that on the recommendation of a DPC, the petitioners were appointed, some copies of which are filed as Annexure-A/6 (Colly.); that some of the petitioners were appointed as external examiners by the Council; that some of them were appointed as Presiding Officers and Polling Officers in respect of the General Election, 1998 and that their names were shown in the College Statistics, 2002-03 published by the College Development Council, Manipur University. No counter affidavit has been filed on behalf of the Maya Lambi College in W.P. (C) No. 588 of 2014, even though notice has been sent to them and an affidavit has been filed on behalf of the petitioners stating that it be deemed to have been served with the notice. However, in the connected writ petition being W.P. (C) No. 37 of 2015, an affidavit-in-opposition has been filed by the Mayai Lambi College wherein it is stated that the file pertaining to the appointment of the petitioners is not available in the College and there is no document in the Directorate of Education, Manipur to show that prior approval has been granted by it. As has been

observed herein above that there is no provision at all in the Manipur Education Code, 1982 by which prior approval of the State Government is required at the time of appointment of unapproved teachers. Prior approval is required only in case of appointment against the post created by the State Government for payment of salary and the teacher so appointed against it, is described as "approved teacher" whose salary is paid by the State Government. If the file is not available in the College, it cannot be attributed to the petitioners and the College cannot take advantage of its own fault. Moreover, in the affidavit filed on behalf of the State Government also, it is stated that the petitioners are unapproved teachers meaning thereby that they were not appointed against the posts created by the State Government which is not liable to pay their salary. In view of the above, this court is of the view that the impugned order dated 23-05-2014 and the notification dated nil published in Sangai Express on 04-01-2015 are not sustainable in law and are accordingly liable to be quashed.

12. For the reasons stated herein above, the writ petitions being W.P. (C) No. 588 of 2014 and W.P. (C) No. 37 of 2015 are allowed and consequently, the impugned order dated 23-05-2014 issued by the Secretary, Governing Body, the Mayai Lambi College and the Notification (un-numbered & un-dated) issued by the Secretary, Governing body, the Mayai Lambi College published in the local newspaper called SANGAI EXPRESS of 04-01-2015 (Annexure-A/18) are quashed and set aside with the direction that the petitioners shall be taken into service by the Mayai Lambi College, within a month from the date of receipt of a copy of this judgment and order, without any back wages. There shall be no order as to costs.