
(2016) 06 MEG CK 0008
In the Meghalaya High Court
Case No : WP (C) No. 40 of 2015

Sujata Deb Roy

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Citation : (2016) LIC 2843 : (2016) 5 NEJ 334

Hon'ble Judges : S.R. Sen, J.

Bench : Single Bench

Advocate : Mr. L.R. Das, Advocate, for the Appellant; S. Bhattacharjee, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.R. Sen, J.(Oral)—Heard Mr. L.R. Das, learned counsel for the petitioner as well as Mrs. S. Bhattacharjee, learned GA for the State.

2. The instant writ petition is directed against the impugned order dated 6th November, 2014 bearing No. SDSEO/LP/M/APPT/2010/48156 Dated Shillong, the 6th November, 2014 which is at Annexure-4 of the writ petition.

3. The petitioner's case in a nutshell is that:

"The petitioner was appointed on 5-4-2004 as an assistant teacher, on a temporary basis, by the management of the Umpling (R) Primary School, Shillong managed by the proforma respondent, at a consolidated pay of Rs. 1000/- (Rupees one thousand) only, per month. Following piece meal increment given over the years she is currently paid a consolidated sum of Rs. 2,500/- (Rupees two thousand five hundred) per month. The school is under the deficit scheme of the state respondent with a sanctioned strength of 6(six) regular teachers. After the retirement of the senior most teacher from the sanctioned strength the school management vide advertisement dated 11-3-2014 published in The Shillong Times, Shillong, called for applications from deserving candidates.

The petitioner applied for the post and after completion of the selection process she came first and her name was forwarded by the school management to the Sub-Divisional School Education Officer, East Khasi Hills, Shillong (second respondent) for approval. Approval refused holding the petitioner over age although in similar cases ignoring age of the serving senior most temporary teacher's appointment as regular teacher were approved by the first respondent as a matter of course. Hence, the writ application".

4. The learned counsel for the petitioner submits that the petitioner entered in service as an Assistant Teacher in Umpling, (R) L.P. School situated at Shillong in the year 2004 when she was only 26 years old. Since then, she has given her best service with sincerity, honesty and with full integrity and against a consolidated pay of Rs. 1000/- (Rupees one thousand) only, per month. The learned counsel also submits that, the school is a Government Aided Deficit school having six numbers of sanctioned post/strength of regular teachers. On 11th March, 2014 an advertisement have been floated by the Managing Committee of the said school inviting an application to sit for the examination. Accordingly, the petitioner also applied for the said post and successfully came out as first position. Thereafter, the School Committee recommended her name to the Sub-Divisional School Education Officer, Government of Meghalaya, Shillong, for confirmation against the sanctioned post, but the same has been denied by the respondent vide letter dated 6th November, 2014. Hence, being aggrieved by the said letter the petitioner approached this court by way of this instant writ petition.

5. The learned GA for the State submits that, as per Rule 6 Clause 4 of the Meghalaya Fundamental Rules and Subsidiary Rules, 1984 the petitioner is not entitled as she is overage and further argued that the age limit for the post of teacher is 35 years in case of general category and 40 years for SC and ST. Therefore, the Government could not consider the case of the petitioner. In reply to the submission advanced by the learned GA, the learned counsel for the petitioner relied on Meghalaya Education Code and pointed out to Service Rule for Employees of Government Aided Schools.

6. After hearing the submissions advanced by the learned counsel for the parties, a crux issue involved before this court in this instant writ petition is whether the petitioner is debarred to get confirmation against the sanctioned post? To answer this, I have perused the SR Rule 6 which is reproduced herein below:

"S.R. 6 - Except as otherwise provided by rules governing recruitment to a particular service a person whose age exceeds twenty-seven years (on the 1st January of the year in which the recruitment is made) may not ordinary be admitted into service of the State Service without the sanction of Government. This ordinary limit is extended to:-

(a) Thirty years in the case of -

(i) Appointments to teaching posts in college in Meghalaya Education Service.

(ii) Appointment to teaching post on non-technical subjects in Engineering and technical institution.

(iii) Twenty nine years in the case of appointment of Medical Graduates in the State Service.

(iv) Thirty five years in respect of candidates in employ in aided schools for appointment to Meghalaya School Service provided they are eligible for the same otherwise and have acquired necessary experience".

On bare perusal of the SR Rule 6 quoted above, it appears that the SR Rule 6 is purely applicable in the case of Government Service and in my view, the petitioner serving in a Government Aided School. Persons serving in a Government Department and a Government Aided School stands in two different footings.

7. I have also perused the Service Rule for Employees of Government Aided Schools at Section 1 Clause 3 and the same is reproduced herein below for ready reference:

"1. Appointment and dismissal :- The Managing Committee of a school is the authority to appoint persons in connection with the affairs of the school and as such it is the authority to dismiss or remove such persons. Provided that -

(3) No person over 60 years of age shall be retained in the teaching staff except on production of a certificate of physical fitness from a Government Medical Officer not below the rank of Assistant Surgeon Grade I and with the approval of the Director of Public Instruction".

On perusal of the said Section 1, I do not find any age barrier for appointment or confirmation of a teacher in Government Aided School except at Clause 3, it is mentioned that, no person shall be retained in the service after the expiry of the age of 60 years unless and until he is physically fit.

8. It is an undisputed fact that the petitioner initially entered in the service in the year 2004. She was definitely within the age limit and continued her service and applied for sanctioned post when the sanctioned post was available. Therefore, we cannot say that her age should be counted from the date of sitting for the examination or passing the examination. I am of the view that her age should be considered from the date of her initial service or date of entering the service and not from the date of passing her exam. We must also remember that there may be so many rules, but no rule can bypass or overrule the principle of natural justice.

9. There are also instances available in the Annexure-IV of the rejoinder affidavit filed by the petitioner that some overage candidates were considered and confirmed against the sanctioned post. If it is so, why not the petitioner. This amounts to violation of Article 14 of the Constitution of India. The said Annexure-IV of the rejoinder affidavit filed by the petitioner is reproduced herein as under:

Sl. No.

Name of Schools & name of Teachers

Date of Appointment

Date of Birth

10

Gurkha Pathsala

iii

Smti S. Gurung

1.7.2001

22.9.1968 (41 years)

13

K.J.P. Girl LP School

ii

Smti. S. Synrem

1.5.1997

10.10.1960 (37 years)

18

Lumparing Pres LP School

i

Smti. Iohtilang Kharkongor

1.2.1998

7.8.1970 (38 years)

21

Lumparing RCLP

i

Sr. Arsida Songthiang

1.3.2011

27.3.1983 (38 years)

ii

Shri B. Wahalang

1.3.2002

13.5.1964 (38 years)

42

St. Dominic Savio LP School

iv

Smti. A. Doloi

16.3.2005

15.9.1968 (37 years)

53

Sein Jaintia LP School

iii

Shri. F.L. Shullai

15.2.2006

1.1.1967 (39 years)

Non-Govt. L.P. Schools under Pynursla Block

Sl. No.

Name of Schools

Name of teacher

Date of Birth

Date of appointment

9

Nongsken Pratlynti RCLP School

Smti. S. Massar

18.3.1956

1.3.1995 (39 years)

22

Nongthymmai Pres LP School

Smti. M. Ryndong

2.2.1971

1.9.2009 (38 years)

List of teachers appointed on 1995 till date

Name of the incumbent (to Indicate Male/Female)

Date of Joining

Date of birth

Remarks

1

2

3

4

Auxillium RCLP

Smti. Christina Nonghuloo

1.2.2004

6.10.1967

37 years

S. Fernando RCLP

Smti. Cathrine Kyntiewmon Lyngdoh

1.3.1995

31.8.1957

38 years

St. Peter Madanrting RCLP

Smti. Khrelbon Nongrum

1.3.2005

04/03/66

39 years

Smti. Theresia Kharumnuid

1.3.2003

13.6.1964

39 years

St. John Bosco RCLP Lawsohtun

Smti. Jim Paul Nongkynrih

2.7.2008

11.11.1971

37 years

Sacred Heart Girls? RCLP

Sr. Bertina Kurbah

1.8.2010

16.3.1974

36 years

Smti. Annavella Shangpliang

14.6.1975

1.4.2012

37 years

Smti. Rosy Mary Warjri

1.2.2011

4.2.1974

37 years

Smti. Daplin M. Thongni

1.3.2009

10.9.1972

37 years

Sacred Heart Boys? RCLP

Smti. Blestina Lyngkot

1.3.2006

21.2.1967

39 years

Pomlakrai Pres. LP

Smti. E. Sohtun

1.10.2009

20.6.1970

39 years

Mawlai Iewrynghep Pres. LP

Shri. M.H. J. Dhar

1.6.2014

22.8.1975

39 years

Phudmuri Pres. LP

Smti. Lakyntiew Kharsyntiew

1.3.2010

1.12.1972

38 years

Madanrting Pres. LP

Smti Baiahunlang Syiem

22.9.2000

15.5.1967

Umlympung Pres. LP

Smti. Secreentila Nongbet

1.7.2014

1.3.1975

39 years

Christian LPS Mawlai Umthlong

Smti. Pricilyn Kharbudon

1.8.1999

13.10.1961

38 years

Christ Church LP Mawlai

Smti. M. Basanshrieh

1.1.2009

11.5.1971

38 years

Smti B. Lyngdoh

1.9.2013

26.7.1970

43 years

Umpling Rynjah LP

Smti. Mira Chakravorty

1.3.1996

15.3.1954

The Office of the SDSEO has no record of her approval of appointment

10. For the foregoing reasons discussed above, I am of the considered view that the impugned order dated 06.11.2014 bearing No. SDSEO/LP/M/APPT/2010/48156 Dated Shillong, the 6th November, 2014 has no stand or not confirmative in the eye of law. Hence, it is hereby set aside and the respondents are directed to issue a confirmation letter of the service of the petitioner within 15(fifteen) days from the date of receipt of a certified copy of this judgment and order.

11. With this observation and direction the instant writ petition is allowed to that extent and stands disposed of.