
(2008) 03 GAU CK 0031
In the Gauhati High Court

Takhelmayum Thoiba Singh	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 2 GLT 718

Hon'ble Judges : Asok Potsangbam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Asok Potsangbam, J.—Heard Mr. Roshni Piba, learned Counsel for the petitioner. Also heard Mr. Y. Nirmolchand, learned Counsel for the private Respondent as well as Mr. Y. Ashang, learned Additional Government Advocate, Manipur.

2. Challenge in this case is the transfer and posting of the petitioner as Officer on Special Duty (for short "OSD") in the Directorate of Higher Education, Government of Manipur, from the post of Principal In-charge, Imphal College, Imphal.

3. Before we enter into the merit of the case, it is considered appropriate to discuss the provisions of rule and law relating to the post of Principal of a College and OSD in the Directorate of Higher Education. In conformity with the norms and qualification laid down by the UGC for the purpose of recruitment to the post of Principal of College, the Government of Manipur, though belatedly, issued Recruitment Rules (RR) dated 4.9.2002 for appointment to the post of Principal. As per this Recruitment Rules, the post of Principal in a Government College is to be filled up by direct recruitment through Public Service Commission and a candidate has to possess the qualification prescribed in Col-umn-7 of the aforesaid Recruitment Rules of 2002, in order to be eligible for consideration of appointment to the post of Principal of a College. Paras-1 and 2 of Column-7 are relevant for consideration of this case and, accordingly, they are quoted below:

Essential Qualification for Direct Recruitment:

1) A Master's Degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale with letter grade O, A, B, C, D, E & F from a recognized University.

2) Ph. D. or equivalent qualification.

4. As noticed from the aforesaid Recruitment Rule of 2002, any person, who does not have the qualification as laid down in Column-7, is not eligible even to compete for selection to the post of Principal. From the above discussion, it will be clear that only the persons who fulfil the qualification prescribed in the Recruitment Rules of 2002, shall be eligible for consideration and appointment as Principal of a Government College and those who do not have the qualification prescribed in the Recruitment Rules of 2002, shall not be eligible for consideration of appointment to the post of Principal. Secondly, the post of OSD is neither a teaching post nor a post within the cadre of any of the teaching posts, like Lecturer, Senior Lecturer, Selection Grade Lecturer, Reader and Professor. It is not in dispute that the post of OSD is not one transferable with any of the teaching posts mentioned above. In the backdrop of the aforesaid discussion, we have to consider and decide the case.

5. The petitioner who is a Ph.D. holder was working as a Reader in the Oriental College, Imphal, before he was transferred as Principal In-charge, Imphal College, Imphal, (vice Smt. P. Nalini Devi, retired on 31.3.2006), vide order dated 1.3.2006. In this order dated 1.3.2006, eight teachers holding Ph.D. were transferred and posted as Principal In-Charge of various colleges mentioned therein as the selection for regular appointment to the post of Principal have not yet been finalized by the Public Service Commission. All the transferees mentioned in the order dated 1.3.2006, are Ph.D. holders and as such they possess the requisite qualification prescribed for the post of Principal in the Recruitment Rules of 2002, as discussed above. The order dated 1.3.2006 reads as follows:

Government of Manipur Secretariat: Higher Education Department Orders by the Governor: Manipur Imphal, dated the 1st March, 2006

No. 7(4)/4/2003-S/HE: The Governor of Manipur is pleased to order the transfer and posting of the following Principal-in-charge/Readers, to the Colleges shown against their names with Immediate effect and untill further orders:

Place	No.	&	College	of	Posting	Sl. Name of the Reader New Principal-in-charge
-----	-----	-----	-----	-----	-----	1. Dr. C. Kullabidhu As Principal-In- Singh, Reader, C.I. charge, C.I. Col College, Bishnupur lege, Bishnupur vice Shri K. Ibungo Singh Retired. -----
-----	-----	-----	-----	-----	-----	2. Dr. K. Manihar Singh, As Principal-in- Reader, Oriental charge, Kha- College, Manipur College Imphal vice Smti. Th. Sanahanbi Devi Retired.

----- 3. Dr. Th. Nandababu As Principal-In- Singh, Reader, charge, Modern Modern College, College vice Shri Porompat. A. Saratchandra Sharma, Retired.

----- 4. Dr. Ak. Sunderkumar As Principal-In- Singh, Principal-in- charge, Moirang charge, Modern College vice Shri College, Porompat. A. Saratchandra Sharma, Retired.

----- 5. Dr. T. Thoiba Singh, As Principal-In- Reader, Oriental charge, Imphal College, Imphal College, Imphal vice Smt. P. Nalini Devi (to be retired on 31.3.2006).

----- 6. Dr. S. Nabachandra As Principal-In- Singh, Reader, charge, Manipur Manipur College, College, Imphal Imphal vice Dr. Y. Ibehalbi Devi, Retired.

----- 7. Dr. A. Lalit Singh As Principal-In- Principal-In-charge, charge, Nambol L. Pettigrew College, Sanoi College, Ukhrul Nambol vice M. Ibohal Singh, Retired.

----- 8. Dr. Kh. Ibohanbi As Principal In- Singh, Reader, charge, Pettigrew Modern College, College, Ukhrul Imphal. vice Dr. A. Lalit Singh transferred.

2. Dr. T. Thoiba Singh, Reader appearing at. SI. No. 5 should take charge of the Principal, Imphal College, with effect from 31.3.2006.

By order & in the name of the Governor

Sd/- (T. Thongkhopao) Joint Secretary (Hr. Edn.) Govt. of Manipur

6. By the impugned order dated 27.11.2006, the petitioner was transferred as OSD in the Directorate of Higher Education, Manipur, from the post of Principal In-charge, Imphal College, Imphal and Respondent No. 3 was brought-in in his place as Principal In-charge, Imphal College, Imphal. Aggrieved by this order, this petition has been filed and the impugned order reads as follows:

Government of Manipur Secretariat: Higher Education Department Orders by the Governor: Manipur Imphal, dated the 27th November, 2007

No. 7(4)/8/2003-S/HE: The Governor of Manipur is pleased to order the transfer and posting of the following Principal (i/c)/Teachers of Government Colleges as noted against their names with Immediate effect and untill further order in the public interest.

Sl. Name of the Teacher New Place of Posting No. & College 1. 2 3 1. Th. Lokendro Singh, As Principal (i/c), Principal (i/c) Oriental Imphal College, College, Imphal Imphal. 2. Dr. T. Thoiba Singh, As Officer on Principal (i/c), Imphal Special Duty College, Imphal (OSD) in the Directorate of Higher Education, Manipur 3. Smt. Y. Sumati Devi, As Principal (i/c), OSD, Directorate of Oriental College, Higher Education, Imphal Manipur 2. Serial No. 1 will move first.

By order & in the name of the Governor

Sd/- (BobbyWaikhom) Joint Secretary (Hr. Edn.), Govt. of Manipur

7. There are two grounds on which the argument of the petitioner is founded. The first ground is that the petitioner being a Ph.D. Holder and also working as Reader, is well qualified and eligible for appointment to the post of Principal in terms of the recruitment rules and, as such, it is perfectly legal and proper that he was transferred and posted as a Principal-In-charge of Imphal College by a common order dated 1.3.2006. It is evident from the impugned order, as extracted above, that the Respondent Nos. 3 and 4 do not have the requisite qualification as not being a Ph.D. Holder and, as such they are not eligible for consideration and appointment to the post of Principal. Thus, it is submitted that the petitioner cannot be replaced as Principal In-Charge of Imphal College by another in-chargee appointment and that too by a person who does not have the requisite qualification for the post of Principal. Secondly, the post of OSD is not a post transferable with that of the Principal In-charge/Reader/Selection Grade Lecturer or Senior Lecturer etc. and, as such, the petitioner cannot be transferred to a post outside the aforesaid cadre of teaching posts without obtaining his prior consent and, as no consent was obtained, the impugned order is liable to be quashed as arbitrary and violative of statutory Rules, mother words, Recruitment Rules for the post of Principal or Reader do not contemplate transfer of an incumbent holding the post of either Principal on In-charge basis or Reader to any other post which is outside the cadre of the aforesaid two posts.

8. Per contra, the contention of the respondents is that the transfer being within the power of the Government in terms of FR 11 and 15, the petitioner cannot question the impugned order by which he was transferred as OSD to the Directorate of Higher Education. This submission is not acceptable, for reasons discussed above, as the post of OSD is not a transferable post with the post held by the petitioner, save and except with the prior consent of the petitioner, and consent having not been obtained, the transfer order cannot be sustained. Secondly, when qualified persons is available, as is evident from order dated 1.3.2006(Annexure-A/2), as extracted above, to hold the post of Principal of a College either on In-charge basis or officiating basis, it is not understandable why a person not having the requisite qualification for appointment as Principal of a College, should be transferred and posted as Principal In-charge of a College. Having considered the matter, as discussed above, this Court has no hesitation to hold that the action of the Government in issuing the impugned order dated 27.11.2007 is arbitrary, violative of statutory provisions and, as such, the same is liable to be quashed.

9. The learned Counsel for the Respondent No. 3 has submitted an affidavit as well as an additional affidavit-in which it is stated that the transfer order has already been carried out/effectuated and, as such, question of quashing the same does not arise. This submission cannot hold water as the impugned order dated 27.11.2007 is not only an extreme case of arbitrariness, but is also in violation of

the statutory provisions. The Apex Court, by a Constitution Bench, in E.P. Royappa Vs. State of Tamil Nadu and Another, , held that Articles 14 and 16 strikes at arbitrariness of State action and to ensure fairness, State action must be based on valid and relevant principles which are applicable alike to all similarly situated and it must not be guided by extraneous and irrelevant consideration. It is seen from the order dated 1.3.2006, as extracted above, that out of the eight Ph.D. holders/Principal In-charge, only the petitioner is picked up for posting to a non-transferable post and in his place a nonqualified person has been appointed as Principal In-charge. There is nothing more arbitrary than this action of the State Government.

10. This Court is fully aware of the limited scope of judicial review on transfer matter and normally transfer order issued by the authority, is not interfered with, except in case where transfer order is in violation of the statutory provisions and is fraught with arbitrariness and malafide and the case at hand is one hit by the aforesaid principles which have already been discussed and settled by the Apex Court in a number of cases.

11. Having regard to the rival submissions of the learned Counsels for the parties, as discussed above, I am of the opinion that the impugned order dated 27th November, 2007 under No. 7(4)/8/2006-S/HE is fraught with palpable illegality and also without the sanction of law and, as such, the order dated 27th November, 2007 is quashed in so far it relates to the transfer of the petitioner to the post of OSD in the Directorate of Higher Education and posting of the Respondent No. 3 as Principal In-charge, Imphal College, in place of the petitioner.

12. With the above direction, this writ petition stands allowed. No costs.