

THE HIGH COURT OF MEGHALAYA

WP(C). No. 150 of 2015

Shri Banbit Roy Sohlang
S/o Late R. Gatpoh,
R/o New Hill, Jowai,
West Jaintia Hills District,
Meghalaya.

... **Petitioner**

-Versus-

1. The State of Meghalaya,
Represented by the Secretary,
Education Department to the Govt.
Of Meghalaya, Shillong.
2. The Director of Higher and
Technical Education, Govt. of
Meghalaya, Shillong.
3. The Chairman, Meghalaya Public
Service Commission, Meghalaya,
Shillong.
4. The Inspector of School,
East Jaintia Hills District, Jowai.
5. The Principal,
Jowai Public School,
Meghalaya.
6. Smti. Deisa Cara Laloo,
Asstt. Mistress
Pine Mount School, Shillong.
7. Smti. Jahari R. Marak,
Pine Mount School, Shillong.
8. Smti. Engida Mary Laloo
Jowai Public School, Jowai.
9. Smti. A. Hynniewta,
Shillong Public School, Shillong.
10. Smti. Jennyline Laloo,
Tura Public School.
11. Smti. Evanrilyn Sawain,
Pine Mount School, Shillong.

12. Smti. Rachna Dohling,
Pine Mount School, Shillong.
13. Shri. P. Mangara War Sohlang
Jowai Public School, Shillong.
14. Smti Derdrie D.Dkhar
Pine Mount School, Shillong.
15. Smti. Shelley A. Deingdoh,
Pine Mount School.
16. Smti. Melarika Warjri,
Pine Mount School, Shillong.
17. Smti. Angelina Sohliya,
Pine Mount School, Shillong.
18. Smti. Naphibanoi Warjri,
Pine Mount School, Shillong.
19. Smti. Sophia Shylla,
Jowai Public School, Shillong.
20. Smti. Mona R. Lyngdoh
Shillong Public School, Shillong.
21. Smti Supriya L.Swer,
Pine Mount School, Shillong.
22. Smti. Arimeka Chynret,
Pine Mount School, Shillong.
23. Smti Mebalajer Shullai,
Pine Mount School, Shillong.
24. Shri. N.Passah,
Jowai Public School, Jowai.
25. Smti Arridapha Shullai,
Pine Mount School, Shillong.
26. Smti Mebalaker Warjri,
Pine Mount School, Shillong.
27. Smti Mayorita Nongkynrih,
Pine Mount School, Shillong.
28. Smti. Connie Marbaniang,
Pine Mount School, Shillong.

29. Smti. F. Syiemlieh,
Shillong Public School, Shillong.
30. Smti. M.Shaingshai,
Jowai Public School, Jowai.

....**Respondents**

**BEFORE
THE HON'BLE MR JUSTICE S.R.SEN**

For the petitioner : S.Thapa, Adv.

For the respondents : Mrs. S.Bhattacharjee, GA
Mr. B.Khyriem, Adv.

Date of hearing : 08.06.2017

Date of Judgment : 08.06.2017

JUDGMENT AND ORDER (ORAL)

Heard Mr. S.Thapa, learned counsel on behalf of the petitioner as well as Mrs. S.Bhattacharjee, learned GA on behalf of the respondents.

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

"This is an application under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus and/or certiorari and/or any other writs/orders/directions etc of like nature assailing the impugned action of the Respondents in denying the Petitioner his seniority from the date of joining of service against the principle of service jurisprudence as well as the directives of the Hon'ble Gauhati High Court, Shillong passed in WP(C) No. 432 (SH) 2002.

Being aggrieved by such illegal and arbitrary action of the Respondents in not according Petitioner's seniority from the date of joining, the humble Petitioner is approaching this Hon'ble Court for redressal of his genuine grievances."

3. Learned counsel for the petitioner, Mr. S.Thapa submits that the petitioner joined his service on 21-05-2001 as officiating teacher and he was terminated from service in the year 2002. Petitioner was re-appointed again on 15-11-2002 only for a period of 89 days w.e.f. 16-11-2002. The petitioner then challenged the said action of the respondents before the Hon'ble Gauhati High Court, Shillong Bench and on the basis of the judgment passed by the Hon'ble Gauhati High Court, Shillong Bench, petitioner sat for the selection process conducting by the Meghalaya Public Service Commission. Thereafter, on the recommendation of the Meghalaya Public Service Commission, petitioner was regularised on 08-04-2010. Learned counsel for the petitioner further contended that the respondents themselves in Annexure-12 of the writ petition recommended for necessary regularisation of the petitioner's service from the date of joining i.e. 21-05-2001, but no action was taken till date by the respondents, hence the petitioner approached this Court and prayed that direction may be issued to maintain the seniority of the petitioner from the date of his initial joining.

4. In reply to that, Mrs. S.Bhattacharjee, learned GA referred to the appointment letter which is at Annexure-4, page 27 of the writ petition and submits that in the appointment letter itself, condition is put that his seniority will not be considered from the date of his initial appointment i.e. 21-05-2001. Hence, petitioner is not entitled for the seniority from his initial appointment. Learned State counsel also relied in the judgment passed by the Hon'ble Apex Court in the case of ***B.Varadha Rao vrs State of Karnataka and Anr. (1986) 4SCC 624 para 23 .***

5. After hearing the submissions advanced by the learned counsels for the parties, I perused the judgment passed by the Hon'ble Gauhati High Court, Shillong Bench in WP(C) No. 432 (SH) 2002, dated 24-04-2008 wherein it is clear that initially the petitioner was appointed illegally without following the procedure and norms, however, that was not his fault. The Hon'ble Gauhati High Court, Shillong Bench in the judgment passed in WP(C) No. 432 (SH) 2002, dated 24-04-2008 at para 5 made the following observation:

“5. I have given my anxious consideration on the aforesaid submissions of the learned counsel for the parties. The fact remains that the petitioner was appointed on the basis of an advertisement issued by the Director of Higher and Technical Education and he was appointed after going through the necessary selection process at the Directorate level. The appointment letter

of the petitioner indicates that he was appointed on officiating basis. If the post in question is to be filled up through the selection process of the MPSC there appears irregularities in the appointment of the petitioner. However, the petitioner is not to be blamed for the purpose. The authorities have favourably considered the case of the petitioner and referred his case to the Government for consideration of regularization. But no such decision has been taken as yet. In view of above fact situation, this writ petition is disposed of with the direction that the respondent authorities are at liberty to advertise the post to be filled-up after selection by the MPSC and in accordance with Rules and in the event of making such advertisement, the petitioner would also be entitled to apply for the same. If in the meantime, the petitioner has crossed the age bar the authorities shall not reject his application on this count. The authorities shall also favourably consider the period of service rendered by him and experience earned by him in the post. Till the aforesaid process is completed, the service of the petitioner shall not be disturbed.”

6. The Hon'ble Gauhati High Court, Shillong Bench in the judgment passed in WP(C) No. 432 (SH) 2002, dated 24-04-2008 disposed of writ petition by directing the respondent authorities to advertise the post and fill up the same after selection by the MPSC in accordance with the Rules and in the event of making such advertisement, petitioner should be given an opportunity to face the selection process in case he is over-age. It is further observed in the said judgment that petitioner's service and experience should also be taken into consideration.

Hon'ble Apex Court in the case of ***B.Varadha Rao vrs State of Karnataka and Anr. (1986) 4SCC 624 para 23*** made it clear that seniority can therefore be “reckoned only with reference to the date of regularization of service and the date of promotion.” Para 23 of the said judgment is reproduced herein below:

“ 23. Yet another infirmity in the case of the appellant is that he claims a right of placement in a promotional post at the very commencement of his service. When the appellant’s services were regularised in 1967 he was placed in the category of Labour Inspector and it is only in 1982 he has been promoted to the post of Senior Inspector of Labour. His seniority can therefore be reckoned only with reference to the date of regularization of service and the date of his promotion viz March 1, 1982 as Senior Labour Inspector. On the basis of relevant materials, he has been assigned serial Number. 99. By no stretch of imagination can the appellant claim seniority along with the transferred officers Varadha Bhat, Umanath Rao and Venkataramana in the final seniority list because they were holding regular posts on a higher scale of pay even on November 1, 1956 when the Mysore State was formed. Being a regular appointee in 1967 and a promotee to the senior post only in 1982 the appellant has no right whatever to claim seniority along with the officers transferred from Madras State. We, therefore, find all the contentions of the appellant to be without merit or substance. The High Court has rightly dismissed the writ appeal and this appeal too deservedly fails.”

7. After hearing the submissions advanced by the learned counsels for the parties and scanning the

Annexures discussed above, the judgment passed by the Hon'ble Gauhati High Court, Shillong Bench as well as the judgment of the Hon'ble Apex Court, I am of the considered view that the petitioner is entitled for his seniority from the date of his regularization and not from the date of his initial appointment i.e. 21-05-2001. The respondents are directed to look into the seniority of the petitioner in the light of this judgment and the judgment passed by the Hon'ble Apex Court.

8. With this observation and direction, writ petition is dismissed and stands disposed of. No order as to costs.

JUDGE

S.Rynjah