

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP (C) No. 137 of 2018

1. Shri Oinam Manisana Singh, aged about 54 years, S/O (L) O. Dukanjao Singh of Chingmei Awang Leikai, P.O. & P.S. Moirang, Bishnupur District, Manipur.
2. Shri P.K. Mawi Guite, aged about 46 years, S/O Vumtuan Guite of Zehang Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
3. Shri N. Ibobi Singh, aged about 60 years, S/O (L) N. Angaton Singh of Khuga Tampak, Zehang Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
4. Shri Laishram Haridas Singh, aged about 58 years, S/O (L) L. Bokuljao Singh of Ningthoukhong Ward No. 11, P.O. & P.S. Ningthoukhong, Bishnupur District, Manipur.
5. Shri Thokchom Ingo Singh, aged about 59 years, S/O (L) Th. Ibobi Singh of Ningthoukhong, P.O. & P.S. Ningthoukhong, Bishnupur District, Manipur.
6. Khawllienkim, aged about 54 years, D/O J. Batlien of Khawmawi Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
7. Wungkathing Makang, aged about 53 years, S/O Okngai Makang of Tongou Village, P.O. & P.S. Somdal, Ukhrul District, Manipur.
8. Mathotmi Z. Ngalung, aged about 54 years, S/O (L) Tungshon Z. Ngalung of Tongou Village, P.O. & P.S. Somdal, Ukhrul District, Manipur.
9. S.R. Ningthar, aged about 58 years, S/O (L) S.R. Lungshim of Nondam Tangkhul Village, P.O. Lamlong, P.S. Litan, Ukhrul District, Manipur.
10. Shri Ningombam Heramani Singh, aged about 59 years, S/O (L) N. Ibobi Singh of Wangkhei Ayangpali, P.O. & P.S. Porompat, Imphal East District, Manipur.
11. Nongmaithem Sucheta Devi, aged about 29 years, D/O (L) N. Surendra Singh of Wangkhei Yonglan Leirak, P.O. & P.S. Porompat, Imphal East District, Manipur.

12. Shri Lourembam Rachandra Singh, aged about 56 years, S/O (L) L. Rajamani Singh of Koirengai Bazar, P.O. Mantripukrhi, P.S. Heingang, Imphal East District, Manipur.
13. Shri Nirmal Dornal, aged about 41 years, S/O Dhanbir Dornal of Kalapahar, P.O. Kalapahar, P.S. Kangpokpi, Kangpokpi District, Manipur.
14. Shri Dev Kumar Katwal, aged about 43 years, S/O (L) Bal Bahadur Katwal of Kalapahar, P.O. Kalapahar, P.S. Kangpokpi, Kangpokpi District, Manipur.
15. Shri T.S. Raisong, aged about 57 years, S/O (L) Sangba of Tumuyon Khullen, P.O. & P.S. Kangpokpi, Kangpokpi District, Manipur.
16. Shri Phairenbam Ibungcha Singh, aged about 57 years, S/O (L) Ph. Maipak Singh of Chingei, P.O. & P.S. Moirang, Bishnupur District, Manipur.
17. Shri Shelley P.H., aged about 40 years, S/O Hrani P.H. of Tungjoy Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
18. Shri P.S. Hepuni, aged about 57 years, S/O (L) P. Shehrii of Tungjoy Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
19. Shri Kamo Joseph, aged about 41 years, S/O (L) Y. Kamo of Ngari Lishang Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
20. Shri S. Hruni, aged about 53 years, S/O (L) S. Shirang of Ngari Lishang Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
21. Shri Wangkheimayum Opendro Singh, aged about 56 years, S/O (L) W. Tombi Singh of Wangkhei Khunou, P.O. & P.S. Porompat, Imphal East District, Manipur.
22. Shri Yarnao Keinam, aged about 58 years, S/O (L) K. Ophai of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
23. Shri Ngangbam Manidhaja Singh, aged about 53 years, S/O Ng. Chandramani Singh of Samaram, P.O. Wangjing, P.S. Khongjom, Thoubal District, Manipur.
24. Shri K.T. Ngalangzar, aged about 60 years, S/O (L) K. Kapong of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
25. Shri Chiri Keinam, aged about 60 years, S/O (L) K. Tungtor of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.

26. Shri S. Ngou, aged about 41 years, S/O (L) S. Sahrii of Laii Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
27. Shri A. Hillaryo, aged about 60 years, S/O Ahrai of Phaibung Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
28. Shri Thokchom Bijendra Singh, aged about 52 years, S/O (L) Th. Ingo Singh of Heirok Part-II, Mayai Leikai, P.O. Wangjing, P.S. Heirok, Thoubal District, Manipur.
29. Ngangkham Gomati Devi, aged about 59 years, D/O (L) Ng. Angouba Singh of Khurai Konsam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.
30. Shri Dennis T. Dongzahau, aged about 44 years, S/O T. Goukam of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.
31. T. Paudam, aged about 41 years, S/O (L) T. Vungkhum of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.
32. L. Gouchinkhup, aged about 45 years, S/O (L) L. Nengkhogin of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.

... PETITIONER/S

-Versus -

1. The State of Manipur, represented by the Principal Secretary (Education/S), Government of Manipur, Imphal.
2. The Director of Education (S), Government of Manipur, Imphal.

.....RESPONDENT/S

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioners	:	Mr.T. Rajendra, Adv.
For the respondents	:	Mr. K. Jagat, GA.
Date of Hearing	:	23.12.2021
Date of Judgment & Order	:	07.02.2022

Judgment & Order **(CAV)**

[1] Heard Mr. T. Rajendra, learned counsel appearing for the petitioners and Mr. K. Jagat, learned GA appearing for the respondents.

The present writ petition has been filed jointly by 32 petitioners with a prayer for quashing and setting aside the impugned order dated 07.11.2017 rejecting the representation submitted by the petitioners and also for directing the respondents to count/link up the uninterrupted services rendered by the petitioners as approved Teachers/LDCs just preceding the conversion of their aided schools to Government Schools and their regular appointment in Government service as qualifying services only for the purpose of availing pensionary benefits.

[2] During the pendency of the present writ petition, 15 (fifteen) petitioners out of 32, i.e., petitioners no. 3, 4, 5, 9, 10, 12, 15, 16, 18, 21, 22, 24, 25, 27 and 29 have already crossed the age of superannuation.

[3] The brief facts of the present case are that all the petitioners were appointed as Graduate Teachers (Sciences & Arts) and LDCs in erstwhile 13 (thirteen) Government Aided High Schools in the Hill Districts of Manipur by the respective School Managing Committees. Subsequently, their appointments were approved by the competent authorities of the

department of Education (S), Government of Manipur, by issuing different orders in this regard and the petitioners rendered their services as approved Teachers/LDCs in their respective aided schools.

The name of the petitioners, the post held by them, the Government approval orders number and date of giving approval are reproduced hereunder for ready reference:-

Sl. No.	NAME OF STAFF	POST	GOVT. APPROVAL ORDERS No. & DATE	DATE OF EFFECT
1	O. Manisana Singh, Petitioner No. 1	SGT	No. 3/2/2010-ED (CCP), Dt. 14.05.2012	23/12/2011
2	P.K. Mawi Guite, Petitioner No. 2	LDC	No. 4/4/86-DEO (CC), Dt. 10.08.1987	01/06/1987
3	N. Ibobi Singh, Petitioner No. 3	SGT	No. 4/4/86-DEO (CC), Dt. 19.01.1987	01/12/1986
4	L. Haridas Singh, Petitioner No. 4	AGT	No. 4/3/83-DEO (S), Dt. 27.09.1983	01/10/1980
5	Th. Ingo Singh, Petitioner No. 5	AGT	No. 4/3/83-DEO (S), Dt. 27.09.1983	01/10/1980
6	Khawllienkim, Petitioner No. 6	AGT	No. 4/4/87-DEO (CC), Dt. 07.11.1987	16/04/1987
7	Wungkathing Makang, Petitioner No. 7	AGT	No. 3/1/2012-ZEO/Appt/UKL, Dt. 25.4.2012	23/12/2011
8	Mathotmi Z. Ngalung, Petitioner No. 8	AGT	No. 3/1/2012-ZEO/Appt/UKL, Dt. 25.4.2012	23/12/2011
9	S.R. Ningthar, Petitioner No. 9	LDC	No. 12/10/74-DEO (UK), Dt. 28.11.1980	01/10/1980

10	N. Hiramni Singh, Petitioner No. 10	AGT	No. 2/16/69-ED (TML), Dt. 25.11.1980	01/10/1980
11	N. Sucheta Devi, Petitioner No. 11	AGT	No. 6/31/97-ED (TML), Dt. 26.07.2012	01/01/2012
12	L. Rachandra Singh, Petitioner No. 12	SGT	No. 2/16/69-ED (TML),Pt.II Dt. 01.09.1986	01/12/1986
13	Nirmal Dornal, Petitioner No. 13	AGT	No. 3/14/2005-ZEO (Kpi), Dt. 06.06.2012	01/01/2012
14	Dev Kumar Katwal, Petitioner No. 14	LDC	No. 3/4/91-DEO (K), Dt. 12.02.1993	11/11/1992
15	T.S. Raisong, Petitioner No. 15	LDC	No. 5/6/DEO-M/80, Dt. 15.11.1980	01/10/1980
16	Ph. Ibungcha Singh, Petitioner No. 16	SGT	No. 3/AAT/86-DEO (K), Dt. 27.02.1988	11/02/1988
17	Shelley P.H., Petitioner No. 17	SGT	No. 1/16/2005(ZEO-SPT), Dt. 09.05.2012	23/12/2011
18	P.S. Hepuni, Petitioner No. 18	LDC	No. 5/7/DEO-N-80, Dt. 06.01.1981	01/10/1980
19	Kamo Joseph, Petitioner No. 19	AGT	No. 1/16/2005(ZEO-SPT), Dt. 09.05.2012	23/12/2011
20	S. Hruni, Petitioner No. 20	LDC	No. 5/7/DEO-SPT/80, Dt. 21.12.1983	01/11/1983
21	W. Opendro Singh, Petitioner No. 21	SGT	No. 5/30/DEO-SPT/80, Dt. 24.06.1987	20/04/1987
22	Yarnao Keinam, Petitioner No. 22	AGT	No. 5/6/DEO-N/80, Dt. 25.11.1980	01/10/1980
23	Ng. Manidhaja Singh, Petitioner No. 23	AGT	No. 5/30/DEO-Spt/80, Dt. 21.06.1988	01/06/1988
24	K.T. Ngalangzar, Petitioner No. 24	LDC	No. 5/6/DEO-N/80, Dt. 25.11.1980	01/10/1980
25	Chiri Keinam, Petitioner No. 25	AGT	No. 5/30/DEO-SPT/80, Dt. 24.06.1987	20/04/1987

26	S. Ngou, Petitioner No. 26	AGT	No. 5/19/ZEO-SPT/81, Dt. 02.09.2003	17/07/2003
27	A. Hillaryo, Petitioner No. 27	LDC	No. 5/7/DEO-N/80, Dt. 01.09.1982	01/09/1982
28	Th. Bijendra Singh, Petitioner No. 28	SGT	No. 4/61/ZEO-SPT/80, Dt. 04.04.2003	29/11/2001
29	Ng. Gomati Devi, Petitioner No. 29	AGT	No. 3/1/2012-ZEO/Appt/UKL, Dt. 25.04.2012	23/12/2011
30	Dennis T. Dongzahao, Petitioner No. 30	SGT	No. 3/8/92-DEO(CC), Dt. 06.04.1993	01/01/1994
31	T. Paudam, Petitioner No. 31	AGT	No. 3/4/03-ED(CCP), Dt. 09.11.2006	01/10/2006
32	L. Gouchingkhup, Petitioner No. 32	AGT	No. 3/4/03-ED(CCP), Dt. 09.11.2006	01/10/2006

[4] While the petitioners were serving as approved Teachers/LDCs in their respective aided schools, the Secretary of the All Manipur Aided Secondary Schools Employees Association (Hills) (AMASSEA) submitted a representation dated 30.03.2014 to the Minister of Education (S), Manipur requesting for converting 13 (thirteen) Government Aided High Schools of the Hill Districts of Manipur having class IX and X into full-fledged Government High Schools with absorption of the existing approved staffs only. Acting on the said representation, a memorandum for Cabinet dated 27.11.2015 was prepared with the following proposals:-

“(I) the 13 (thirteen) Government Aided High Schools may be converted to full-fledged Government High Schools and amalgamated to the 13 (thirteen) Junior High Schools by way of absorbing the services of

the approved employees (3 Graduate Teachers and 1 LDC) for each schools with the new nomenclature as detailed at Annexure-III.

“(II) the untrained Graduate Teachers shall undergo the B.Ed course as per NCTE norms”.

[5] The aforesaid memorandum for Cabinet containing the above quoted proposals were placed before the State Cabinet in its meeting held on 27.11.2015 as Agenda No. 16 and the said proposals were approved by the Cabinet.

After obtaining the approval of the Cabinet, the matter was processed in the Finance Department and the Finance Department conveyed its concurrence with a rider that the order for implementing the Cabinet decision shall be with immediate effect, i.e., with effect from the date of issue of order by the Administrative Department.

[6] After obtaining approval of the Finance Department, the Commissioner (Education-S), Government of Manipur, issued an order dated 22.02.2016 according the Government approval to the takeover of the 13 (thirteen) Government Aided High Schools in the Hill District having classes IX and X only as Government High Schools with immediate effect under the terms and conditions as given in the said order. One of the conditions as mentioned in the said order is that all the 52 (fifty two) approved Staffs, i.e., 3 (three) Graduate Teachers and 1 (one) LDC for each of the 13 (thirteen) schools who were approved by the Education (S)

Department will be retained after conversion as Government employees and their services will commence from the date of conversion, but their pay and next date of increment will be protected after the particular of their services are duly verified by the Director of Education (S), Manipur.

[7] Subsequently, on the recommendation of the Class-III DPC held on 12.09.2016 and in pursuance of the approval of the Government, 51 (fifty one) approved employees, including the present writ petitioners, of the erstwhile (13) Government Aided High Schools which were converted as full-fledged Government High Schools were appointed temporarily as Graduate Teachers and LDCs with effect from 22.02.2016 by an order dated 08.11.2016 read with the corrigendum dated 22.12.2016.

[8] Feeling aggrieved by the Government's act of not absorbing their services with effect from the date of their appointment as approved Teachers, the petitioners submitted a representation dated 07.03.2017 to the respondents stating, inter alia, that many of the petitioners are on the verge of their retirement and if their past services as approved Teachers/LDCs are not absorbed or protected, the petitioners will be deprived of their valuable rights for availing their pensionary benefits and that they have been treated discriminatorily with other similarly situated persons and the respondents were requested to protect the petitioners'

past services by giving their date of appointment in Government service from the date of their appointment as approved Teachers.

[9] When the respondents failed to consider and dispose of the said representation, the petitioners approached this Court by filing W.P. (C) No. 342 of 2017 for redressing their grievances. The said writ petition was disposed of by this Court by an order dated 12.05.2017 by directing the respondents to consider the said representation dated 07.03.2017 submitted by the petitioners preferably within a period of 2 (two) months from the date of receipt of a certified copy of the said order. In purported compliance with the aforesaid order of this Court dated 12.05.2017 passed in W.P.(C) No. 342 of 2017, the Principal Secretary, Education (S), Government of Manipur, issued an order dated 07.11.2017 declining to grant the claim of the petitioners and rejecting their representation. Having been aggrieved, the petitioners approached this Court again by filing the present writ petition assailing the said rejection order dated 07.11.2017 with a prayer for directing the respondents to link up or count the uninterrupted services rendered by the petitioners as approved Teachers just preceding their regular appointment in Government service as qualifying services only for the purpose of availing pensionary benefits.

[10] Mr. T. Rajendra, learned counsel appearing for the petitioners submitted that all the petitioners are approved Teachers/LDCs and some of the petitioners have rendered about 36 years service as approved employees in the erstwhile 13 (thirteen) aided schools before their absorption in Government service on 08.11.2016. During the pendency of the present writ petition, as many as 15 petitioners out of 32 have already retired from service on attaining the age of superannuation without availing any pensionary benefits. It has also been submitted that in connection with the demand made by the petitioners for absorbing their services with effect from the date of their appointment as approved Teachers/LDCs, the Director of Education (S), Government of Manipur, made a recommendation to the Government under a letter dated 25.04.2016 to the effect that commencement of the services of the approved employees of the erstwhile 13 (thirteen) aided high schools effective from the date of entering services as approved employees may be considered as the approved employees have been enjoying the scale of pay like regular Government employees since the date of appointment as approved employees. The learned counsel further submitted that in the aforesaid memorandum for Cabinet, the financial liabilities in absorbing and payment of salary of the petitioners on their absorption in Government services were

clearly reflected and that in the proposal made in the said memorandum for Cabinet as well as in the Cabinet decision approving the proposals for conversion of the aided schools and absorption of the approved employees, there was not even a single whisper that the absorption of the approved employees will be with effect from the date of the issue of the order by the Administrative Departments. However, the Finance Department, while conveying their concurrence to the Cabinet decision, aided a rider that the conversion of the schools and the absorption of the approved employees will be with effect from the date of issue of the order by the Administrative Department, without assigning any reason whatsoever. The learned counsel, accordingly, submitted that such condition imposed by the Finance Department for absorption of the petitioners in Government services is extraneous and arbitrary and legally unsustainable as the same has been done without assigning any reason and such arbitrary action of the Finance Department as well as the Administrative Department has deprived the petitioners of their valuable right to enjoy the long and valuable services rendered by them as approved Teachers for the purpose of availing pensionary benefits. The learned counsel, therefore, submitted that the impugned order is liable to be quashed and set aside and the respondents should be directed to protect

the services rendered by the petitioners as approved Teachers so that the petitioners can enjoy their entitled pensionary benefits.

[11] In support of his contentions, the learned counsel relied on the following judgments of the Hon'ble Apex Court:-

(i) In the case of "East Coast Railway Vs. Mahadev Appa Rao" reported in (2010) 7 SCC 678, the Hon'ble Apex Court held in Para 23 that:

"23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

(ii) In the case of "S.G. Jaisinghani Vs. Union of India" reported in AIR 1967 SC 1427, the Hon'ble Apex Court held in Para 14 that:-

"14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision"

taken in accordance with the rule of law. (See Dicey – “Law of the Constitution” – Tenth Edn., Introduction ex). “Law has reached its finest moments,” stated Douglas, J. in United States V. Wunderlich, (1951) 342 US 98, “when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered”. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes, (1770) 4 Burr 2528 at p. 2539 means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful.”

[12] It has also been submitted by Mr. T. Rajendra that at the time of conversion of the Heirok Part-I aided high school into a Government School, the Government issued an order dated 15.12.1995, wherein one of the conditions for the said conversion was that the services of the staff as Government employee will commence from the date of entering their service as approved employees in the erstwhile aided school. Another such instance pointed out by the counsel for the petitioners is the order dated 29.02.2004, issued by the Government according approval to the linking up of services rendered by 18 Teachers of the erstwhile aided Sagang High School as approved Teachers for the purpose of their pensionary benefits only.

The learned counsel further submitted that in all instances of taking over of Government Aided Schools or Colleges by the Government, the services of the approved employees of such aided schools or colleges were absorbed in Government service with effect from the date of their

appointment as approved employee. The learned counsel submitted that the present petitioners are similarly situated with those persons in whose favour the Government had issued orders for absorption of their service with effect from the date of their appointment as approved Teachers and the petitioners are entitled to get the same benefit as are given to those persons. However, in the present case, the respondents has failed to give such benefits to the petitioners, who are similarly situated with those persons, in a most discriminatory manner and in complete violation of the equality clause enshrined under Article 14 and 16 of the Constitution of India.

[13] In support of his contentions, the learned counsel relied on the judgment rendered by the Hon'ble Apex Court in the case of "Union of India Vs. K.T. Shashtri" reported in AIR 1990 SC 598 wherein, the Hon'ble Apex Court held as under:

"5. It is this decision which is challenged before us by the appellants. Mr. Subba Rao, learned counsel appearing for the appellants contended that the Government had a right to prescribe different conditions of service for the members belonging to the different units, and merely because the superannuation age of the members of the DRDS was increased, it could not be held that the respondent who belonged to another unit, viz. DAQAS, was entitled to the said benefit. There is no dispute that the Government has power to vary the service conditions of the members of the services from time to time. The question involved in the present appeal is, however, not whether the Government had such power. The question is whether the respondent was also entitled to the benefit of the power so exercised in the facts and circumstances of the

case. The admitted facts are that in 1966 when the respondent was recruited to the Defence Science Service, the three units belonged to the said Service and the employees were recruited initially to that service and then sent to different units. The service conditions of the employees belonging to the three units were the same and their services were interchangeable between the three units. The Service Rules which applied to all the three units were also common, viz. Defence Science Service Rules. The three units, therefore, belonged to and constituted one single service. It is later in the year 1979, that the Defence Research Service was reconstituted into three different services as stated above. However, at that time, admittedly no option was given to the employees working in the different units to opt for one or the other of the units. It appears that those who were already working in either of the three units were deemed to belong to the respective newly constituted service. This being so, their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action. The classification made between them further has no rational basis and no nexus of such classification to the object sought to be achieved has been shown to us by Mr. Subba Rao appearing for the appellants. In the circumstances, the denial of the benefit of the enhanced superannuation age to the members of one unit while the same is granted to the members of the other unit amounts to discrimination, violative of Article 16 of the Constitution. We are, therefore, satisfied that the decision of the Tribunal is both proper and valid, and there is no substance in the present appeal. The appeal is, therefore, dismissed.”

[14] It has been submitted by the learned Government Advocate appearing for the respondents that the decision of the Cabinet taken on 27.11.2015 for conversion of the aided high school into a Government High School and absorption of the approved staffs in Government service was referred to the Finance Department and the Finance Department gave its concurrence to the decision of the Cabinet with the condition that the order shall be with effect from the date of issue of order by the Administrative Department and as such, the Administrative Department issued the order

for absorption of the petitioners in Government service with effect from the date of conversion of the schools as the Administrative Department has no power to dilute or divert from the decision of the State Cabinet.

[15] It has also been submitted that the petitioners were appointed by the Managing Committee of the respective erstwhile aided schools and thereafter approval about their appointment were obtained from the concerned Officials of the Department of Education (S) as laid down under the relevant Rules. It has, accordingly, been submitted that the petitioners, who were approved Teachers in the Government Aided Private Schools before their absorption in Government service, are not employees of the Government and they are mere employees of the Government Aided Private Schools and as such, they are not entitled to get pensions like Government employees.

[16] Mr. K. Jagat, learned Government Advocate appearing for the respondents further submitted that the conversion of 13 (thirteen) Government Aided High Schools in the Hill Districts as Government High Schools as well as the absorption of approved staff only, i.e., (three Graduate Teachers and one LDC), is a policy decision of the Government and as such, the petitioners have no legal right to claim the entitlement for giving effect of their services with effect from the date of their appointment

as approved Teachers in the erstwhile aided schools and accordingly, the present writ petition is liable to be dismissed.

[17] After hearing the learned counsel appearing for the parties at length and after careful examination of the records, this Court finds force and merit in the submissions made on behalf of the petitioners. On careful examination of the memorandum for Cabinet dated 27.11.2015 and the proposal made there under as well as the State Cabinet decision taken on 27.11.2015 approving the proposal for conversion of 13 (thirteen) Government Aided High Schools to full-fledged Government High Schools and absorption of the services of the approved employees (three Graduate Teachers and one LDC) for each schools, no condition was mentioned either in the said memorandum for Cabinet or in the said decision of the Cabinet for effecting such conversion or absorption with effect from the date of issue of order by the Administrative Department. However, the Finance Department, while conveying concurrence to the aforesaid State Cabinet decision, incorporated the condition that the order shall be with effect from the date of issue of order by the Administrative Department. On examination of the relevant files of the Finance Department produced by the respondents, no reason whatsoever were given or disclosed by the Finance Department for adding or incorporating the condition that the order

should be with effect from the date of issue of the order by the Administrative Department. Accordingly, this Court is of the considered view that the said condition imposed by the Finance Department is neither in conformity with the decision taken by the State Cabinet, nor is it supported by any reason, hence, the act of the Finance Department imposing such conditions is arbitrary and therefore legally unsustainable.

[18] In the case of “Shrilekha Vidyarthi Vs. State of U.P.” reported in (1991) 1 SCC 212, the Hon’ble Apex Court held as under:-

“36. The meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that ‘be you ever so high, the laws are above you’. This is what men in power must remember, always.”

[19] In the case of “East Coast Railway Vs. Mahadev Appa Rao” reported in (2010) 7 SCC 678 (Supra), it has been held by the Hon’ble Apex Court as under:-

“23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed

by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.”

[20] In the case of “Union of India Vs. International Trading Co.” reported in (2003) 5 SCC 437, it has been held by the Hon’ble Apex Court at Para 16 that where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

[21] In the case of “State of Orissa Vs. Dhaniram Luhar” reported in (2004) 5 SCC 568, it has been held by the Hon’ble Apex Court as under:-

“7. Reason is the heartbeat of every conclusion, without the same it becomes lifeless.”

“8. Even in respect of administrative orders Lord Denning M.R. in Breen V. Amalgamated Engg. Union observed: “the giving of reason is one of the fundamental of good administration”. In Alexander Machinery (Dudley) Ltd. Vs. Crabtree it was observed: “Failure to give reason amounts to denial of justice”. “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at”. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can be its silence, render it virtually

impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rational is that the affected party can know why the decision as gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance”.

[22] In the case of “Krishna Swami Vs. Union of India” reported in (1992)

4 SCC 605, it has been held by the Hon’ble Apex Court at Para 47 that –

“47. Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. But expectations are envisaged keeping institutional pragmatism into play, conscious as we are of each other’s limitations”.

[23] In view of the facts and circumstances of the present case and in view of the above-quoted well settled principle of law laid down by the Hon’ble Apex Court, this Court has no hesitation to hold that imposition of the condition by the Finance Department for absorption of the services of the petitioners with effect from the date of issue of order by the Administrative Department without assigning or disclosing any reason is per se arbitrary and accordingly unsustainable in law.

[24] There is yet another aspect of the matter with regard to the allegation of discriminatory treatment meted out to the petitioners by the respondents in the matter of their absorption in Government service. In this connection, the petitioners have enclosed two Government orders dated 15.12.1995 and 29.02.2004 in their writ petition, issued in connection with conversion of the erstwhile Heirok Part-I Aided High School and Aided Sagang High School into full-fledged Government High Schools and absorption of the employees of the said schools in Government service. In the said two orders, the State Government clearly allowed the absorption of the services of the approved employees of the said two schools in Government services with effect from the date of entering their services as approved employees for the purpose of pensionary benefits only. Such absorptions have been allowed by the State Government as per the provisions of the Manipur Civil Services (Appointment and other service conditions of employees of Government Aided/Private Institutions taken over by the Government) Rules, 1981. The respondents did not deny or controvert the existence or genuineness of the said two Government orders.

[25] The Government of Manipur in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India framed rules called the (Manipur Civil Service Appointment and other service conditions of

employees of Government Aided/Private Institutions taken over by the Government) Rules, 1981 (hereinafter referred to as 'the said rules' for short) for regulating the appointment and other service conditions of employees of the Government Aided/Private Institutions taken over by the Government. In Rules 7 of the said rules, it is provided as under:-

"7. Protection of past service :

(a) The persons so appointed in the Government service shall be deemed to have been appointed in the same capacity as in the Government Aided/Private Institutions, i.e. Temporary, Officiating, Substantive, as the case may be, and the condition of probation and confirmation shall be deemed to have been waived in case of substantive or permanent officials.

(b) The service rendered by the employees of the Government Aided/Private Institutions on an equated post shall be counted as experience or service required for promotion or direct recruitment as the case may be."

[26] Undoubtedly, a large number of approved employees of aided schools/colleges had been absorbed in Government service with effect from the date of their appointment as approved employees in their respective aided schools/colleges at the time of conversion of the said aided schools/colleges by the Government into full-fledged Government Schools/Colleges in terms of the provisions under Rule 7 of the aforesaid Rules as quoted hereinabove. The respondents have ignored or are oblivious of the existence of the said Rules, more particularly the provisions under Rule 7 of the said Rules, at the time of issuing the absorption orders

of the petitioners as well as at the time of rejecting the representations submitted by the petitioners. In view of the above, this Court is of the considered view that the respondents have acted arbitrarily and treated the petitioners discriminatorily by refusing to absorb their services with effect from the date of their appointment as approved Teachers.

In the result, the writ petition is allowed by quashing and setting aside the impugned order dated 07.11.2017 issued by the Principal Secretary, Education (S), Government of Manipur and the respondents are directed to consider the cases of the petitioners for absorption in Government service with effect from the date on which they have been approved by the Department of Education (S) as approved Teachers in their respective erstwhile aided high schools. The whole exercise should be completed within a period of 3 (three) months from the date of receipt of a copy of this order. With the aforesaid directions, the present writ petition is disposed of, however, without any costs.

JUDGE

FR/NFR

Lhaineichong