

Raj Kumar Kheroda Singh and Others Vs State of Manipur and Others

Court: Gauhati High Court (Imphal Bench)

Date of Decision: April 9, 2010

Acts Referred: Constitution of India, 1950 Article 16

Citation: (2010) 2 GLD 858 : (2011) 1 GLT 237

Hon'ble Judges: T. NK. Singh, J

Bench: Single Bench

Advocate: M. Devananda, for the Appellant; H. Debendra, GA, for the Respondent

Final Decision: Dismissed

Judgement

T. NK. Singh, J.

By this writ petition, the petitioners, (47 in numbers), who are the selected candidates for appointment to 146 posts of

Hindi Graduate Teachers under the Centrally Sponsored Scheme for the State of Manipur, for which the Central Government sanctioned as first

and last installment of total grant of Rs. 83.26 lakhs, towards salaries of 484 posts of Hindi Graduate Teachers in High/Junior Schools, pray for

quashing the order of the Government of Manipur being No. 11/1/03-SE (S) Pt. Imphal 21.9.2007 for cancelling the order of the Government of

Manipur for extension of terms of the said 146 posts of Hindi Graduate Teachers beyond 31.3.2002 w.e.f. 1.4.2007.

2. Heard Mr. M. Devananda, learned Counsel appearing for the petitioners as well as Mr. H. Debendra, learned Counsel appearing for the State

respondents.

3. Some of the selected candidates including some of the petitioners for the said 146 posts of Hindi Graduate Teachers had approached this Court

by filing two writ petitions being W.P. (C) Nos. 1356/01 and 991 of 2006 for the reliefs viz.:

(1) for a direction to the respondents to issue appointment orders for regularly appointing the writ petitioners to the post of Hindi Graduate

Teachers under the Centrally Sponsored Scheme of the Government of Manipur,

(2) Quash and set aside the requisition letter dated 13.9.2006 for appointment of 46 Hindi Graduate Teachers on regular basis in the Directorate

of Education (S), Government of Manipur.

4. This Court (Justice T.NK. Singh) dismissed the said writ petitions by a common judgment and order dated 30.11.2007 for the reasons that the

decision of the State Government not to appoint the petitioners as Hindi Graduate Teachers on regular basis to the said 146 posts of Hindi

Graduate Teacher under the said Centrally sponsored schemes under the 9th five-year plan as the terms of the said 146 posts of Hindi Graduate

Teachers had not been extended beyond 31.3.2002 does not suffer from bias and arbitrariness. In the said earlier two writ petitions, the State

respondents had filed affidavit in opposition, in that, the State respondents had mentioned that by the impugned order i.e. order of the Government

of Manipur being No. 11/1/03-SE (S) Pt. Imphal 1.4.09 had cancelled the earlier order of the Government of Manipur which was issued through

bona fide mistake for extension of the terms of the said 146 posts of Hindi Graduate Teachers beyond 31.3.2002 w.e.f. 1.4.2002. And

accordingly, as the said 146 posts of Hindi Graduate Teachers under the said centrally sponsored scheme of the Government of Manipur had

ceased to exist, the writ petitioners, even though they are selected candidates cannot be appointed against the non-existent posts of 146 posts of

Hindi Graduate Teachers.

5. The said common judgment and order of this Court dated 30.11.2007 passed in W.P. (C) Nos. 1356 of 2001 and 991 of 2006 had been

affirmed by the Division Bench of this Court vide judgment and order dated 15.1.2008 dismissing the Writ Appeal No. 3 of 2008 filed by the writ

petitioners against the said common judgment and order dated 30.11.2007. The case of the present petitioners is exactly similar with those of

W.P. (C) Nos. 1356/01 and 991/06 and, accordingly, in order to avoid repetition of facts and decisions in deciding the present writ petition it

would be more convenient to quote the relevant portions of the earlier common judgment and order of the Court (T.NK., J.) dated 30.11.2007 as

follows:

4. By filtering unnecessary detailed facts it would be required to note a few facts of deciding the issues in the present writ petitions. The

Government of India, Ministry of Human Resource Development, department of Secondary and Higher Education, New Delhi sponsored a

scheme for appointment and training for Hindi Graduate Teachers in non-Hindi Speaking States. The Government of India, Ministry of Human

Resources Development (Department of Education), New Delhi under the letter of the Under Secretary to the Government of India being No.

F.9787/90-D88(L) dated 7.12.1998 conveyed the sanction of the President of India to the payment of Grant-in-aid amounting to Rs. 83.26 lakhs

(Rupees eighty-three lakhs and twenty-six thousand) only as first and last installments to the total grant of Rs. 83.26 lakhs to be released in 1998-

99 towards salary to the posts of 484 (four hundred eighty-four) of Hindi Graduate Teachers in High/Junior High Schools to the Principal

Accounts Office, Department of Education, New Delhi for the State of Manipur for the Centrally Sponsored Scheme of appointment and training

of Hindi Graduate Teachers in non-Hindi Speaking State. The Cabinet/Government of Manipur had taken a decision on 27.3.1999 for creation of

484 (four hundred eighty-four) posts of Hindi Graduate Teachers and the Matriculate Hindi Teachers for the year 1999-2000 for the said

Centrally Sponsored Scheme and in pursuance of the said Cabinet decision taken on 27.3.1999, the Government of Manipur issued order being

No. 4/14/1999-SE (S), dated Imphal 16.4.1999 for creation of 484 posts of Hindi Graduate Teachers and Matriculate Hindi Teachers for the

year 1999-2000. For easy reference, the said letter of the Under Secretary to the Government of India dated 7.12.1998 as well as the said order

of the Government of Manipur dated 16.4.1999 are quoted herein below:

No. F.978/90-D88(L)

Government of India

Ministry of Human Resource Development (Department of Education) New Delhi.

The 7th December, 1998

To

The Principal Accounts Officer

Department of Education,

New Delhi.

Sub : Centrally sponsored scheme of appointment and training of Hindi Teacher in non-Hindi Speaking State, Release of Central Assistance to the

Government of Manipur during 1998-1999. Sir,

I am directed to convey the sanction of the President of India to the payment of a grant-in-aid amounting to Rs. 83,26,000/- (Rupees eighty-three

lakhs twenty-six thousand only) as First and last instalment of the total grant of Rs. 83.26 lakhs to be released in 1998-1999 towards the salary of

484 post of Hindi Teachers in High/Junior High Schools to the Secretary to the Government of Manipur, Department, of School Education,

Imphal, Manipur.

2. The expenditure is debitable to Demand No. 48 Department of Education Major Head 3601-Grant-in-aid to State Governments 04-Grants for

Centrally Sponsored Plan Scheme. 161-Language-Development-promotion of Modern Indian Language and Literature-03-Appointment and

Training of Hindi Teachers in Manipur.

3. The payment sanctioned above is subject to the adjustment on the basis of actual expenditure as may be incurred and certified by the Audit in

accordance with the orders issued by the Ministry of Finance from time to time.

4. It is certified that the grant has been sectioned in accordance with the pattern of assistance, permitted by the Planning Commission and

approved by the Ministry of Finance. The sanction is in conformity with the rules and regulations of the scheme approved by the Ministry of

Finance.

5. This issues in exercise of the delegated powers in consultation with the internal Finance Division vide their Dy. No. 9787/90; IFC, dated

2.11.1995 and Dy. No. 1430/98-IF.II, dated 2.12.1995. The grantee is situated in Manipur circle of accounts.

Yours faithfully

Sd/-

(Manek Chand)

Under Secretary to the Government of

India.

GOVERNMENT OF MANIPUR

SECRETARIAT : EDUCATION

DEPARTMENT (SCHOOL SECTION)

ORDERS BY THE GOVERNOR OF

MANIPUR

Imphal, the 16th April, 1999.

No. 4/14/99-SE (S): In pursuance of the Cabinet decision taken on 27.3.1999, the Governor of Manipur is pleased to accord approval to the

creation of 484 (four hundred and eighty-four) posts of Graduate Hindi Teachers and Matriculate Hindi Teacher for the year 1999-2000 as

detailed below:

Sl. Name of Post No of Sale of pay (pre

No. post revised)

1. Graduate Hindi 392 Rs. 1400-2300/- p.m.

Teacher

2. Matriculate Hindi 92 Rs. 1200-1800/- p.m.

Teacher

Total 484

(2) The expenditure is debitable to Major Head 2202-General Education (Plan), 01-Elementary Education, 101-Government Primary Schools,

901-Salaries (Committed) and 02-Secondary Education, 109-Government Secondary Schools, 383-Strengthening of existing Schools, 901-

salaries committed for the year 1999-2000.

(3) This issue with the concurrence of the Finance Department vide their UO No. 1/99-2000/FD (10-MISC/25) date 15.4.1999.

By order and in the name of Governor

Sd/-

(Ch. Birendra Singh)

Commissioner to the Government of

Manipur.

Memo No. 4/14/99-E(S)

Imphal, the 16th April, 1999

5. The writ petitioners pleaded in the writ petition that out of the 484 (four hundred eighty-four posts) so created, 192 (one hundred ninety-two)

posts were allotted to grant-in-aid High/Junior High Schools and grant-in-aid Primary Schools and the remaining posts are sub-divided for

promotion quota and direct recruitment quota. Accordingly, 146 (one hundred forty-six) posts of Hindi Teachers out of the said 484 (four hundred

eighty-four) posts for the said Centrally Sponsored Scheme were to be filled up by direct recruitment from the eligible and qualified candidates.

The Director of Education (S), Government of Manipur under his letter being No. 9/90/84-ED (Hindi) (Pt), Imphal dated 30.4.1999 requested the

Director of Employment, Government of Manipur to sponsor candidates for recruitment of 146 (one hundred forty-six) posts of Hindi Graduate

Teachers in the Primary/Junior/High and Higher Secondary Schools both for hill and valley against that post of Central Plan. It is also stated in the

letter that Class III DPC (Selection Committee) for appointment of the said 146 (one hundred forty-six) posts of Hindi Graduate Teachers would

be held on 25.5.1999. The said letter of the Director of Education (S), Government of Manipur dated 30.4.1999 read as follows:

Government of Manipur

Office of the Director of Education (S) No. 9/90/84-ED (Hindi) Pt, Imphal, the 30th April/99

To

The Director of Employment Government of Manipur.

Sub : Requisition of candidates for recruitment to the post of Hindi Graduate Teachers in the Schools under the Department of Education (S).

Sir,

I am to say that Class III DPC for appointment of 146 (one hundred forty-six) Hindi Graduate Teachers in the Primary/Junior/High and Higher

Secondary Schools both for hill and valley against the post of Central Plan is going to be held on 25.5.1999. Detailed information is shown in the

prescribed requisition form enclosed.

Further, I am to request you to sponsor 1200 candidates in total including candidates sponsored by different districts. The candidates should have

passed B.A. with Ratna Hindi and HSLC/Rashtrabhasa/or its equivalent of a recognized University/Board. Preferably the candidates must be a

resident of concerned District and also indicate their home address clearly.

The list of sponsored candidates may be made available on or before 20.5.1999 so that the Department may complete the process of DPC within

a reasonable time.

Encls As Above. Yours faithfully,

(Th. Shamungou Singh)

Director of Education (S)

Memo No. 9/98/84-ED (Hindi)

Dt. Imphal, the 30th April, 1999

7. The said Class III DPC which was scheduled for 25.5.1999 was postponed and rescheduled from 16.6.1999 to 9.7.1999 and notified by the

Director of Education (S), Government of Manipur by way of Press release dated 11.6.1999. For the said 146 (one hundred forty-six) posts of

Hindi Graduate Teachers, the petitioners and others had appeared before the Selection Committee (Class III DPC). It is also stated that the said

Class III DPC was held as per the schedule notified under the said notification dated 11.6.1999. Even after completion of selection

process/recruitment process for direct recruitment of the said 146 (one hundred forty-six) posts of Hindi Graduate Teachers, authority failed to

declare the result of the DPC. The candidates who had appeared before the said DPC held from 16.6.1999 to 9.7.1999 for direct recruitment to

the said 146 (one hundred forty-six) posts of Hindi Graduate Teachers formed an association in the name and style of ""1999 Hindi Graduate

Teachers DPC faced candidates Association, Manipur"" and filed writ petition being W.P. (C) No. 860/2000 through its Secretary in this Court for

directing the respondents to declare the result of the said DPC held from 10.6.1999 to 7.9.1999. This Court was pleased to dispose of the said

W.P. (C) No. 860/2000 by passing judgments and order dated 18.7.2000 to declare/make public not later than one month from the date of

receipt of the order which read as follows:

ORDER

Heard Mr. C. Kamal, learned Counsel for the petitioners. Heard also Mr. R.K. Jayanta Singh, learned Additional Government Advocate.

The petitioners are seeking a direction to be issued to the respondents to declare the results of DPC held during the period from 16.6.99 to 9.7.99

in the office of the Director of Education (S), Government of Manipur for recruitment of 146 Hindi Graduate Teachers. The said DPC was held

after requisition was duly made. Mr. C. Kamal, learned Counsel submits that Ban that has been imposed by the State Government, against new

recruitment does not affect inasmuch as the said DPC was held in respect of recruitment of Hindi Graduate Teachers, a scheme which is centrally

sponsored. Though Mr. R.K. Jayanta, learned Additional GA is not able to make definite statement that it is centrally sponsored scheme, he is also

agreeable to the submission that if indeed it is centrally sponsored scheme, the ban order that has been issued shall not affect such recruitment.

In the result, if recruitment of the said 146 Hindi Graduate Teachers is centrally sponsored, the results of the DPC held from 16.6.1999 to

9.7.1999 as stated above shall be declared/made public not later than one month from the date of receipt of this order.

Petition is accordingly disposed of.

.. ..

.. ..

10. Ultimately in compliance with the directions of this Court in judgment and order dated 18.7.2000 passed in W.P. (C) No. 860/2000 and order

dated 14.6.2001 passed in Contempt Case (C) No. 140/2001 (arising out of W.P. (C) No. 860/2000, the Director of Education (S),

Government of Manipur issued notification being No. 2/366/2000-ED (S) Pt, Im-phal dated 31st July, 2001 for publishing list of the selected

candidates and wait list candidates for appointment by direct recruitment to the said 146 posts of Hindi Graduate Teachers under the Centrally

Sponsored Scheme.

11. It is stated that the petitioners are some of the selected candidates/recommended candidates as per the said notification dated 31.7.2001. The

only case of the petitioners for seeking the main relief stated above in these two writ petitions are that as there are substantive vacant posts of 146

Hindi Graduate Teachers under the Centrally Sponsored Scheme the petitioners being the selected candidates should be appointed regularly

against the said posts of 146 (one hundred forty-six) Hindi Graduate Teachers by direct recruitment.

12. For regular appointment in a certain post, there should be a substantive vacancy in that post. In other words, there should be

permanent/regular posts of Hindi Graduate Teachers for regular appointment even if the petitioners being the selected candidates have no vested

right for appointment, the State Government cannot arbitrarily decline to appoint the writ petitioners in case the said 146 (one hundred forty-six)

posts of Hindi Graduate Teachers are regular and permanent and still available for appointment of the writ petitioners.

13. The petitioners also stated that for extension of 484 (four hundred eighty-four) posts of Hindi Graduate Teachers which were created under

the Central Sponsored Scheme for the year 1999-2000 during the 9th Plan, the Commissioner, Education (S), of the Government of Manipur

under letter dated 21.10.2002 requested the Joint Secretary, Department of Elementary Education and Literacy, Ministry of Human Resource

Development, Shastri Bhawan, New Delhi.

14. It is also stated that the Government of Manipur by issuing the order No. 11/1/2003-SE (S), Imphal dated 21.5.2005 had accorded sanction

to the extension of 9137 (Nine thousand one hundred thirty-seven) numbers of temporary post of Education (S) Department, Manipur for the

period from 1.3.2005 to 28.2.2006. 9137 (Nine thousand one hundred thirty-seven) posts mentioned in the order of the Government of Manipur

dated 21.5.2005 also include the 146 (one hundred forty-six) posts of Hindi Graduate Teachers for direct recruitment quota under the said

Centrally Sponsored Scheme. By another letter of the Director of Education (S), Government of Manipur being No. 2/26/68-ED(S), Imphal dated

3.2.2006 requested the Commissioner (Education/S), Government of Manipur to obtain approval of the Government of Manipur to the extension

of temporary posts of Hindi Teachers numbering 8239 (Eight thousand two hundred thirty-nine) including the said 146 (one hundred forty-six)

posts of Hindi Graduate Teachers for direct recruitment quota. As such, it is the case of the petitioners that even though the said 146 (one hundred

forty-six) posts of Hindi Graduate Teachers for direct recruitment quota for which the writ petitioners had been recommended for appointment

available for regular appointment, the State respondents without any jurisdiction and reason had denied to issue appointment orders for

appointment of the petitioners on regulars basis.

15. The State respondent also filed affidavit in opposition stating that since the Ministry of Human resource Development, Government of Manipur

has not extended assurances that the said Centrally Sponsored Scheme will continue after IX Five-Year Plan, the State Government placed the

matter before the Governor in council to abolish the said 146 (one hundred forty-six) posts of Hindi Graduate Teachers. The Governor in Council

had taken decision on 20.9.2001 that Administrative Department may ascertain from the Government of India whether funds of the posts created

during the IX Plan under CSS will be provided in the Xth Plan also i.e. beyond 31.3.2002. In case funds are not provided under CSS, the posts

will automatically stand abolished w.e.f. 1.4.2002.

16. The State respondents also stated in their affidavit in opposition that the Ministry of Human Resource Development, Department of Secondary

and Higher Education, Government of India under letter No. 7/6/2002/D.III(1) dated 1.6.2002 clearly stated that as per the provisions of the

Scheme the liability of the posts created with the approval of the Department during the IXth Five-Year Plan is to be taken over by the respective

State Government administration and such post should not be included against in the proposal for the Xth Five-Year Plan. In view of the non-

availability of the permanent posts of 146 (one hundred forty-six) Hindi Graduate Teachers, no order for appointing the petitioners on regular basis

could be issued. For easy reference the said order of the Government of India, Ministry of Human Resource Development, Department of

Secondary and Higher Education dated 1.7.2002 is quoted hereunder:

F.7-6/2002.D.III(I)

GOVERNMENT OF INDIA

Ministry of Human Resource Development Department of Secondary & Higher Education.

New Delhi, the 1st July, 2002

To,

Shri Abdul Sattar

Education Secretary, Government of Manipur New Secretariat Building Imphal 795001

Sub : Scheme of financial assistance for appointment of language Teachers in the States/Uts-continuance of these scheme in the Xth Plan.

Sir,

The Government of India has been operating different Centrally Sponsored Plan Schemes of financial assistance to the States/Uts for the

Appointment of various language Teachers (Hindi, Urdu and Modern Indian Languages) during the IXth Five-Year Plan period. The Schemes will

be merged into one namely the Appointment of Language Teachers and continued in the Xth Plan also. A copy of the single Scheme will be

forwarded to you after formal approval for its continuation obtained.

2. Pending the formal continuation of the three Schemes (as one) in the Xth Plan, it has been decided to request the State Government/Uts to

formulate their proposal for financial assistance in accordance with the scheme. The basic provisions of the Schemes without undergo any change.

3. It may be pointed out that as per the provisions of the Scheme the liability of the posts created with the approval of this Department during the

IXth Five-Year Plan is to be taken over by the respective State Governments/Uts administration. Such posts should not be included again the

proposals for the Xth Five-Year Plan. While submitting the new proposals for the Xth Plan, a certificate may also be provided to the effect that no

posts created during the IX of earlier Plans have been included in the new proposal.

Yours faithfully,

Sd/-

(Upamanyu Chatterjee)

Director (Languages)

17. The State respondent also filed the additional affidavit stating that after thorough examination of the matter relating with the said 484 (four

hundred eighty-four) posts of Hindi Teachers under the Central Sponsored Scheme by the Finance Department, Government of Manipur some

mistakes had been detected. After detecting such mistakes the matter had been processed and with the concurrence with the Finance Department,

Government of Manipur vide their UO No. 5/2007-2008-ED (10-Misc/13) dated 21.9.2007, the Secretary (Education/S) issued an order

bearing No. 11/1/2003 SE (S) Pt, Imphal the 21st September, 2007 to the effect that the Governor of Manipur has been pleased to order that the

extension of term of aforesaid 146 posts Hindi Graduate Teachers beyond 31.3.2002 shall be deemed to have been cancelled accordingly treating

the said 146 posts of Hindi Graduate Teachers as non-existent with effect from 1.4.2002. The said order of the Government of Manipur dated

21.9.2007 reads as follows:

No. III/03-SE(S) Pt : Whereas, the State Government had created 484 posts of Hindi Graduate Teachers falling under the direct recruitment

quota vide orders No. 4/14/99-SE(S) dt. 16.4.1999 during the Ninth Plan under the Centrally Sponsored Scheme;

2. And, whereas the then Governor-in-Council had taken a decision in its meeting held on 20.9.2001 to ascertain from the Government of India

whether the posts created during the Ninth Plan CCS will be provided in the Tenth Plan also, that is beyond 31.3.2002 and in case funds are not

provided under CSS, the 146 posts of Hindi Teachers will stand automatically abolished w.e.f. 1.4.2002;

3. And, whereas, the Government of India informed the State Government that no posts created during the Ninth or earlier Plans should be

included in the proposal for the Tenth Plan vide Government of India's letter F. No. 7-6/2002 D.11(I) date 1.7.2002.

4. And, whereas, the Government of India had created funding the scheme for appointment of Hindi teachers created during the Ninth Plan w.e.f.

1.4.2002 and, accordingly, the above said 146 posts of Hindi Graduate Teachers shall be deemed to have ceased to be in existence w.e.f.

1.4.2002;

5. And, whereas, another 100 posts of Hindi Graduate Teachers out of the 484 posts created during the Ninth Plan were also abolished vide

order No. 12 (HC) 216/2001 SE (S) dated 7.2.2002 and the wrong extension of the term of these abolished posts beyond 7.2.2002 had been

reviewed and cancelled vide Order No. 12 (12)/104/2003-SE (S) dated 4.8.2007;

6. And, whereas, the terms of the aforesaid 146 posts of Hindi Graduate Teachers has been found to be wrongly extended beyond 31.3.2002

upto 28.2.2003 vide order No. 11/1/2003 SE (S) dated 17.7.2003; and further wrongly extended for the period from 1.3.2003 to 28.2.2004

with the concurrence of the Finance Department vide their UO No. 15/2003-04-FD (10-Misc/6) dated 17.7.2003; and again wrongly further

extended for the period from 1.3.2005 to 28.2.2006 with the concurrence of the Finance Department vide their UO No. 4/2005-2006/FD (10-

p/18) dated 21.5.05 under order No. 11/1/2003-SE(S) dated 21.5.2002 without source of funding ;

7. And, whereas, it is considered necessary to review the extension of the term of the 146 Hindi Graduate Teachers beyond 31.3.2002 in view of

the fact situation as stated above in public interest;

8. Now, therefore, the Governor of Manipur, after careful consideration and review of the matter, is pleased to order that the extension of the term

of the aforesaid 146 posts of Hindi Graduate Teachers shall be deemed to have been cancelled accordingly and these 146 posts of Hindi Graduate

Teacher shall be treated as non-existent w.e.f. 1.4.2002.

9. This issues with the concurrence of the Finance Department, Government of Manipur vide their UO No. 5/2007-2008/FD (10-Misc/13) dated

21.9.2007. The UO Nos. allotted by the Finance Department, Government of Manipur with regard to the extension of the terms of the above 146

posts of Hindi Graduate Teachers as mentioned in Para 6 above shall stand modified and corrected to the above extent.

By order and in the name of the Governor

(S. Sunderlal Singh)

Secretary (Education-S),

Government of Manipur.

18. As directed by this Court, the learned Government Advocate makes the related files of the Government of Manipur regarding the said posts of

484 Hindi Graduate Teachers under the Centrally Sponsored Scheme are available before this Court for perusal. This Court also meticulously

applied mind to the contents of the file and found that there is no decision of the Government of Manipur for extending the said 146 posts of Hindi

Graduate Teachers under the Centrally Sponsored Scheme beyond 31.3.2002.

6. For the foregoing reasons mentioned in the earlier judgment and order dated 30.11.2007, relevant portions of which are quoted above, had

come to the finding that there was no decision of the Government of Manipur for extending the said 146 posts of Hindi Graduate Teachers under

the Centrally sponsored scheme beyond 31.3.2002 and also that the centrally sponsored scheme under the 9th five-year plan had not been

extended under the 10th five-year plan. And, accordingly, the impugned order dated 21.9.2007 was issued for correcting the earlier order which

was issued through bona fide mistake for extension of the term of the said 146 posts of Hindi Graduate Teachers beyond 31.3.2002. However, an

observation was made by this Court in the common judgment and order dated 30.11.2007 that dismissal of the writ petition will not be a bar for

the writ petitioners from challenging the said order of the Government of Manipur dated 21.9.2007 (impugned order) which was issued during

pendency of this writ petition or/suit, hence the present writ petition.

7. In the present writ petition, new facts and grounds which was not pleaded and taken in the earlier writ petitions in W.P. (C) Nos. 1356/07 and

991/07 are not mentioned. The grounds for filing the present writ petition are:

(a) The constitutional scheme under Article 16 of the Constitution is violated. The abolition order is Unconstitutional.

(b) The Governor sanctioned 484 posts of Hindi Graduate Teachers, out of its, 338 Hindi Graduate Teachers were appointed and 146 Post of

Hindi Graduate Teachers were selected and documents, antecedent were verified, Governor cannot review its own order without sanction of law.

(c) The abolition order was not communicated to the affected petitioners, hence it has no legal force upon them.

(d) The poor and humble petitioners were Condemned Unheard, natural justice is violated.

(e) The order does not contain satisfaction of Governor hence Governor without application of mind, passed it.

(f) The order of selection was declared pursuant to Court order, implicitly that they should be appointed, respondents misconduct it

(g) The order is on the basis of refusal to carry over the post under the IXth five-year plan to the Xth five-year plan is arbitrary and unreasonable,

since the scheme made it clear that posts under IX the five-year plan will get fund from the Centre, thereafter State will provide and no carry over

to Xth five-year plan, it is an escape route for respondents to avoid punishment, respondents are not even 30% honest.

(h) The order is a device to take advantage of its own wrong.

(i) The order is against the doctrine of promissory estoppel.

(j) The order does not disclose the source of power.

(k) The Order is against the public interest rather in the interest of private Whims, and form of the order, Public interest is not mentioned.

8. The respondents filed their affidavit in opposition taking same plea and same ground taken in the earlier writ petitions i.e. W.P. (C) 1356 of

2001 and 991 of 2006 repeatedly in the present writ petition and also that the matter in issue in the present writ petition had already been decided

by the earlier common judgment and order of this Court dated 30.11.2007, which had been affirmed by the Division Bench vide judgment and

order dated 15.1.2008 passed in WA No. 3 of 2008; and also that the fact of dismissal of WA No. 3 of 2008 had been concealed by the present

writ petitioners in filing the present writ petition.

9. The Apex Court in State of Haryana and Others Vs. Navneet Verma, had summarized the power of the Government in abolishing a post and

role of the Court for interference; and also further held that the Government is fully competent to take a decision for abolition of the post and Court

is least competent to interfere in such matters in the face of scant matters. In the present case, the said 146 posts of Hindi Graduate Teachers

under the centrally sponsored scheme for the 9th five-year plan for the State of Manipur ceased to exist because of non-extension of the said

centrally sponsored scheme under the 10th five-year plan. Even for abolition of the post, Government is fully competent to take decision and if

such decision was taken in good faith, the Court's interference is not warranted. Para 17 of the SCC in Navneet Verma's case (supra), (SCC p.

70) reads as follows:

17. We summarise the power of the Government in abolishing a post and role of the Court for interference:

(a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of

internal administration;

(d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

(e) the Court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or

refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the Court is not warranted.

With the above principles, let us consider whether the abolition of the posts of Accounts Executive are justified and consequential order of

termination terminating the respondent herein from the said post is sustainable.

10. The Apex Court in Union of India and Anr. v. Narendra Singh (2008) SCC 750, held that mistakes are mistakes and they can always be

corrected by following due process of law. In that case, through mistake, respondents who were not eligible and qualified were promoted to the

higher posts. The said promotion order after coming to know the mistakes was corrected and cancelled it. The Apex Court upheld the said order

for correcting the mistake. Para 32 and 33 of the SCC p. 757, read as follows

32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot

countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by

following due process of law. In Indian Council of Agricultural Research and Another v. T.K. Suryanarayan and Others, 1997(6) SCC 766. it was

held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in

correcting the mistake. It may cause hardship to the employees but a Court of law cannot ignore statutory rules.

33. As observed by us, statutory rules provide for passing of departmental examination and the authorities were right in not relaxing the said

condition and no fault can be found with the authorities in insisting for the requirement of law. In the circumstances, the action of the authorities of

correcting the mistake cannot be faulted.

11. The Apex Court in Videsh Sanchar Nigam Ltd. and Another Vs. Ajit Kumar Kar and Others, held that bona fide mistake does not confer any

right on any party and it can be corrected. In that case, through bona fide mistake made wrong payment of the TA to the respondent retirees

calculated on the IPA pay-scale and as such, employees are getting double benefit of TRs. The employees who are getting IDA pay-scales with

IDA pattern of DR could not draw pension calculated on IDA emolument with IDA pattern of DR. The bona fide mistake does not confer any

right on any party, it can be corrected. Para 46 and 47 of the SCC in VSNL's case (supra), reads as follows:

46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected. VSNL vide subsequent Office Order

bearing Ref. No. HQ-A/01-04/91-PEI dated 18.10.1995 had rectified its mistake appearing in earlier order dated 3.9.1993 and the said office

order was again modified by another Office Order bearing No. HQ-8A/01-04/91-PEI dated 19.12.1995 by which Para 2(A) of the Office Order

dated 18.10.1995 was modified to the extent as stated in the earlier part of this judgment. The modified order was a one-time exercise for

choosing the alternatives of settlement of pension and the pensioners were required to submit their consent to the regional heads in a prescribed

format by 15.1.1996. The Government of India, Ministry of Personnel, Public Grievances and Pension (Director, Rural Development and

Panchayati Raj and PW), New Delhi, issued OM dated 22.11.1996 (Annexure P-14) which is the nodal department of the Government of India

for taking policy decisions on pensionary matters sent clarificatory order, a copy thereof was sent to the Ministry of Telecommunications,

Department of Communications, dealing with the subject of payment of pension to the employees of erstwhile OCS who were absorbed in VSNL.

47. In view of the above, we are of the opinion that the benefit of DR of the CDA scales, which had been given to the respondent retirees by

mistake at the time of their retirement, is not to be given again as clarified by the Government of India from time to time in their various office

memoranda referred to above and the respondent retirees are entitled to pension to be calculated on emoluments in the IDA pay scales.

12. In the instant case, it is crystal clear from the pleading of the parties and records that there were bona fide mistakes in issuing the order for

extension of the terms of the said 146 posts of Hindi Graduate Teachers beyond 31.3.2002 and as such, as held by the Apex Court in the cases

discussed above, there is no illegality committed by the State respondents in issuing the impugned order dated 21.9.2007 for cancelling the earlier

order which was issued through bona fide mistake for extension of the term of 146 posts of Hindi Graduate Teachers. Over and above, there is no

mala fide on the part of the State respondents in issuing the impugned order.

13. For the foregoing reasons this Court is of considered view that the writ petitioners had utterly failed to make out a case calling interference of

this Court to the impugned order dated 21.9.2007. Accordingly, this writ petition is devoid of merit and hereby dismissed.