

## Toijam Thoibi Devi Vs State of Manipur and Ors.

**Court:** Gauhati High Court

**Date of Decision:** June 7, 1993

**Acts Referred:** Constitution of India, 1950 " Article 14, 14

**Citation:** (1994) 1 GLJ 103

**Hon'ble Judges:** W.A.Shishak, J

**Bench:** Single Bench

**Advocate:** K.Irabot Singh, B.I.Sharma , Advocates appearing for Parties

### Judgement

1. The petitioner is an Association known as All Manipur Ching Tam Matrons Association having a membership of 500 matrons represented by

Smti Toijam Thoibi Devi as its President.

2. All the 500 members of the Association were appointed by various Govt. orders within October 1979 and November 1979 as School Matrons

in the consolidated pay of Rs. 50/ (Rupees fifty) PM and they were posted in different schools indicated against their names with immediate effect.

Such appointment were issued consequent to the sanction accorded by the Governor of Manipur. In terms of para 2 of the appointment, the

expenditure is debatable under Major Head 277 Edn (MP) SubHead 83 (1) Salaries of the current year budget for 197980.

3. By two separate orders, the Governor of Manipur was pleased to accord sanction for payment of remuneration to the created 300 School

Matrons (100 for hills and 200 for valley) and to the created 200 School Matrons (56 for hills and 134 for valley) respectively. Order dated 10

October 1979 is in respect of 300 School Matrons and another order dated 15 November, 1979 is in respect of 200 School Matrons. Thus in

total the sanction for payment of remuneration by the aforesaid two orders is for 500 matrons.

4. By orders issued on 24th November 1979 Annexure A/2, 24th November, 1979 Annexure A/3, and yet by another order dated 24th

November 1979 Annexure A/3 A and also by another order dated 30th November 1979 Annexure A/ 3B the appointments of the 500 matrons

were cancelled with immediate effect.

5. Thereafter by order dated 5th May, 1980 as many as 200 matrons were appointed by the Director of Education (S) and by the same order in

accordance with the Schedule IIA to the Delegation of Financial Powers Rules, 1978 sanction to a sum of Rs. 59,700/ (Rupees fifty nine thousand

seven hundred) was accorded for payment of remuneration to the existing 199 matrons. It appears from this order that the appointment was made

for a period of six months from 1.3.80 to 31.8.80. By another order dated 12th September, 1980 the existing 200 matrons were temporarily

appointed on absorption to the School noted against their names wef 29.8.80 in the scale of pay of Rs. 19022003 2304270 per month and other

allowances as admissible under Rules against 200 posts of matrons created vide Govt. order No. 4/1/75SE (P) dated 29.8.80 subject to the

condition that the matrons should produce certificate of their having passed Class VIII from recognised schools. The said order was issued by the

Director of Education, Government of Manipur.

6. It is submitted on behalf of the petitioner Association that the said 200 matrons were appointed after the appointments of the members of the

petitioner was cancelled. It is contended that the said 200 matrons who were appointed in 1980 were fresh recruits. It is also contended that the

members of the Association were duly paid for the period they served as matrons. The petitioner impugns the order of appointment of the said 200

matrons on the ground that such appointments have been made against the posts earlier held by the members of this Association.

7. The Government has filed counter affidavit. I have perused it. I have heard Mr. BI Sharma learned counsel for the petitioner. Also I have heard

Mr. K. Irabat Singh learned Senior Govt. Advocate. It is contended on behalf of the Government that the 200 matrons aforesaid were not

appointed against the posts earlier held by the members of the petitioner Association. It is stated that the said 200 matrons were already in service

earlier and their services were simply continued by subsequent Government order issued on 5th May, 1980. At this stage it may be stated that in

order to satisfy this Court, the learned Senior Govt. Advocate was called upon to produce the initial appointment orders in respect of the 200

matrons. He has failed to do so. Government affidavit states that they were not new recruits and that they were already in service and as such they

were continued. If that is so there should be absolutely no difficulty in making the initial appointment orders available before this Court at the time

of hearing. It appears the appointments of the 200 matrons were made after the cancellation of the appointment orders in respect of the 500

matrons, members of the petitioner Association, It is in fact's background that Mr. BI Sharma submits that a clear case of discrimination has been

made out.

8. Another contention of the learned counsel for the petitioner is that once selection was made and appointment was issued, the manner in which

the service has been terminated by canceling such appointments is arbitrary and illegal. It is argued that there was no valid reason for the impugned

orders of cancellation. It is also further contended that assuming there existed reasons for such cancellation it is absolutely necessary that the

members of the Association ought to have been given an opportunity of being heard and having failed to do so the cancellation orders aforesaid are

in clear violation of the principle of audi alteram partem inasmuch as the members of the petitioner Association have been condemned unheard.

9. The learned Senior Govt. Advocate states that since the 200 matrons were absorbed against the newly created 200 posts by Government order

No. 4./1/75SE (Pt) dated 29.8.1980 and since the said 200 matrons were already in service, members of the petitioner Association cannot take

grievance against such order of absorption. As stated above there is no material to show that the said 200 matrons were continuing in service prior

to the issuance of orders of appointment and cancellation in respect of the 500 members of the Association. I would, therefore, hold that the said

200 matrons were appointed after the appointments of the members of the Association were cancelled. It is stated on behalf of the Government by

Mr. K. Irabat Singh that in view of a Government policy taken in this regard, in order to cope with financial constraint, the appointments, made in

respect of the 500s matrons were cancelled by way of abolition of posts, This submission of the learned Senior Govt. Advocate is not supported

by any material. No material which would go to show that there was such a policy in this behalf has been made available before this Court. In fact,

I do not understand how appointments made in October could have been cancelled in November, within a span of about one month on the ground

of "financial constraint." This submission does not appeal to me at all. It is further submitted by the learned Senior Govt. Advocate that since the

posts were abolished by Government policy, according to him, in such a situation no show cause is necessary. He states that the cancellation of

appointment leaves no stigma to any of the members of the petitioner Association since it is a matter of policy. I am afraid the submission made by

the learned Senior Govt. Advocate is not reasonable in the facts and circumstances as stated above. If there was financial constraint at the relevant

time how the members of the petitioner Association were selected and how appointments were actually issued to them. Once appointments were

issued how such appointments could be cancelled within a span of one month or so. As such the stand of the Government in this regard appears to

be very fickle and does not appear to be founded.

10. Mr. K. Irabat Singh learned Senior Government Advocate further submits that this petition has been filed very belatedly and hence the claim of

the petitioner is stale. According to the learned Senior Govt. Advocate no explanation has been given as regards the delay in approaching this

Court under Article 226 of the Constitution. A submission is made that on this score alone, this petition should be dismissed. Mr. BI Sharma

learned counsel for the petitioner submits that the members of the Association approached the competent authority to consider reinstatement. They

were hoping that their request would some day be complied with. At the same time since the members of this Association belong to the poorer

section of society it was not easy for them to approach this Court individually. Through the help of some good persons an Association was formed

so that the case might be fought unitedly. The prayer for reinstatement was rejected by the Government only in June, 1989 and soon after that this

petition was filed. I cannot lose sight of the fact that the members of this Association not only belong to the poorer section of society but they

indeed belong to the weaker section of our society. I can well imagine the impossible task of each individual approaching this Court for remedy

sought for in this petition. In such a situation to reject the petition on the ground of delay will not only be harsh but will also be unreasonable. In this

view, therefore, I reject the submission made on behalf of the Government.

11. I may also state that if there was financial constraint at the relevant time how could the 200 matrons have been given appointment. The same

yard stick that was applied to the said 200 matrons should have been applied to the members of this Association also. Not to do so, in my view,

amounts to discrimination. At the same time it appears to me that orders of cancellation were issued in violation of the principle of natural justice

inasmuch as no opportunity was given to the members of the Association of being heard before impugned orders of cancellation were issued.

12. In the light of the facts and findings above the petition is allowed. The impugned orders of cancellation at Annexure A/1, A/3, A/3A and A/3B

are quashed. The members of the petitioner Association shall be taken back to service. I pass no order as to back wages in view of the difficulties

expressed in this regard. The respondent shall see to it that the petitioners are reinstated as early as possible and at any rate not later than (3)

months from today by giving them suitable jobs in Class IV or Group D posts in various departments/ offices under the Government or local or

other authorities including Municipalities, Autonomous Hill District Councils, Panchayati Raj Institutions etc.

With the above observations and directions this petition is disposed of. No cost.