

GAHC030003972020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/116/2020

Junior Engineer Service Association of Mizoram represented by its President, Aizawl
Aizawl

VERSUS

State of Mizoram and 6 Ors.
Aizawl2:The Commissioner / Secretary Public Works Department
Govt of Mizoram
Aizawl

3:The Commissioner/Secretary
PHE Department. Govt Of Mizoram
Aizawl

4:The Commissioner / Secretary P and E Department Govt of Mizoram
Aizawl

Advocate for the Petitioner : Mr Anil Rinliana Malhotra

Advocate for the Respondent : Mr C Zoramchhana (Addl. AG/GA, Mizoram) for R1-R7

Linked Case : WP(C)/16/2022

Sh. R Lalrammawia and 3 Ors.
Republic Vengthlang
Aizawl

2: Sh Ramdinthanga
Nursery Veng
Aizawl

3: C Lalrosanga
Leitan Durtlang
Aizawl

4: Sh Lalzawmmawia
Mimbung
Saitual District
VERSUS

The State of Mizoram and 6 Ors.
Aizawl

2:The Commissioner/Secretary
Public Works Deptt.
Govt. of Mizoram
Aizawl

3:The Commissioner/ Secretary
PHE Deptt.
Govt. of Mizoram
Aizawl
Aizawl

4:The Commissioner/Secretary
P and E Deptt.
Govt. of Mizoram
Aizawl
Aizawl

5:The Commissioner/Secretary
Irrigation and Water Resources Deptt.
Govt. of Mizoram
Aizawl
Aizawl

6:The Commissioner/Secretary
Dp and AR
Govt. of Mizoram
Aizawl
Aizawl

7:The Commissioner/Secretary
Finance Deptt.
Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA
Mizoram) for R1-R7

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : **17.02.2023**

Date of Judgment : **17.03.2023**

JUDGMENT & ORDER (CAV)

This Order will dispose of both the writ petitions. WP(C) No. 116 of 2020 is filed by the Junior Engineer Service Association of Mizoram (JESAM) represented by its President, while WP(C) No. 16 of 2022 is filed by 4 (four) individuals, who are working as Junior Engineer in Public Health Engineering Department (PHE), Public Works Department (PWD) and Power & Electricity (P&E) Department. For the sake of convenience and brevity, the facts in WP(C) No. 16 of 2022 will be referred to.

[2.] Petitioner No. 1 was appointed as a Junior Engineer (JE for short) in the PHE Department on 26.02.1990 and the petitioner No. 2 was also appointed as JE under the PWD on 20.12.1990. As for the petitioner Nos. 3 & 4, they were appointed as JEs under the P&E Department on 15.01.1993. The post of JE is a feeder post to the Junior Grade of the Mizoram Engineering Services (MES). In

exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Mizoram framed the Mizoram Engineering Service Rules, 2013 (MES Rules, 2013). As per Rule 22 (6) of the MES Rules, 2013, 65% of the post of Junior Grade is to be filled up by way of direct recruitment while 35% of the total duty post in the Junior Grade is to be filled up by way of promotion from JE or Draftman Grade-I, who have completed 5 years of regular service in the Grade and have passed Departmental Examination in Engineering & Accounts unless exempted by special or general order. Promotion to the Junior Grade of the MES is to be made by way of selection method. The MES Rules of 2013 was amended by the Mizoram Engineering Service (Amendment) Rules, 2017 (MES Amendment Rules, 2017). Even after the said amendment, the method of filling up of the Junior Grade of the MES under Rule 22 (6) is the same. As per the Schedule to the MES Amendment Rules, 2017, the cadre strength in the post of Junior Grade of the MES is 349 posts and 35% of the same will be 122 posts. Therefore, out of 349 posts, 122 posts are to be filled up by way of promotion as contemplated under Rule 22 (6)(b)(1) of the MES Amendment Rules, 2017.

[3.] While the above is the position, the Govt. of Mizoram in the PWD vide Notification dated 09.11.2020 notified the up-gradation of 14 posts of Junior Grade MES (Civil) under the PWD cadre in the Level-10 of the pay matrix to

Senior Grade MES (Civil) in the Level-11 of the pay matrix and thereby, rendering the total posts available for filling up by way of promotion to only 108 posts. According to the petitioners, while there is stagnation in the post of JE, the State respondents by upgrading 14 posts of the Junior Grade has narrowed down the chances of promotion for the JEs. Faced with such situation, the Service Association i.e., JESAM submitted representation to the Chief Minister of the State stating that although the MES Rules of 2013 and its amendment provides that JE upon rendering 5 years of service in the grade will be qualified to be considered for promotion to the Junior Grade of the MES but however, due to the limited scope of promotion, there has been huge stagnation in the post of JE and in average, the JEs are rendering about 16.48 years of their service in the same post. Therefore, they requested that non-functional posts for JE, both Senior Grade and Selection Grade with qualifying years of 10 years and 20 years be created with a Grade Pay as Rs. 5,400/- and Rs. 6,600/- respectively. Since there was no reply to the representation, the service Association submitted their second representation to the Secretary to the Govt. of Mizoram, DP&AR on 10.02.2016 and thereafter, their third representation to the Chief Secretary, Govt. of Mizoram on 14.03.2016. The representation of the service Association came to be regretted vide Communication dated 11.07.2016 of the Finance Department (PRU) stating that their demand for creation of non-functional

Senior & Selection Grade would invite demand for the same from various categories of employees under different departments of the Govt. of Mizoram. The said decision was in turn conveyed by the Deputy Secretary to the Govt. of Mizoram, PWD to the Engineer-in-Chief, PWD on 28.07.2016 who then conveyed it to the service Association JESAM on 01.08.2016.

[4.] The service Association JESAM had also submitted their representation to the Finance Minister, Govt. of Mizoram on 26.09.2016 requesting for non-functional up-gradation of the post of Junior Engineer. They had also submitted a representation to the Minister in-charge of DP&AR on 27.01.2017 requesting the amendment of the MES Amendment Rules, 2017 by increasing the number of quota for promotion to the Junior Grade of the MES from 35% to 45% while reserving 5% quota for filling up by way of Limited Department Examination (LDE). In response to the representation made to the Finance Minister, JESAM was informed by the Under Secretary to the Govt. of Mizoram, Finance Department (PRU) vide Communication dated 11.10.2017 that there was no stark anomaly in their case and the members of JESAM were compensated by the MACP, 2010 from stagnation problem. Besides this, as was decided recently in the case of Mizoram Ministerial Service (MMS) [Lower Division Clerk (LDC) Unit] that the State Government sooner or later will have to consider

implementation of the recommendation of the 7th Central Pay Commission and therefore, any changes in the pay structure was not advisable. JESAM was therefore advised to approach the Government to give one time relaxation for filling up the post of Assistant Engineer/Sub-Divisional Officer (AE/SDO) so that stagnation of the Junior Engineers may be reduced. As advised, JESAM sought for one time relaxation of the MES Rules, 2013 vide their letter dated 23.10.2017 to the Chief Secretary, Govt. of Mizoram but the same was rejected vide Communication dated 26.02.2018 made by the Under Secretary to the Govt. of Mizoram, DP&AR (GSW) to JESAM.

[5.] JESAM upon coming to learn that a Sub-Committee to study the feasibility or otherwise of cadre review for time bound promotion/non-functional promotion in respect of AE/SDO under the Engineering Departments, applied for the information submitting an application under RTI. JESAM was accordingly provided with the information by furnishing them a copy of the recommendation of the Sub-Committee. As per the recommendation of the Sub-Committee, a member of the MES who has completed unblemished continuous service of more than 10 years shall be eligible for non-functional upgradation to the Grade pay of Rs. 6,600/- and be designated as Senior SDO/Senior AE. Secondly, any member of the Service who has already availed second stage in the MACP, 2010 shall be deemed to have been upgraded on non-functional basis to Senior SDO-

Senior AE. Thirdly, any member of the Service promoted on non-functional basis to Senior Grade of the Service shall be allowed to avail the benefit of MACP Scheme, 2010 and thereafter, the second upgradation on completion of the required qualifying service. It was further provided that in case time bound non-functional promotion to the Senior Grade Pay of Rs. 6,600 is allowed for members of the MES in the entry Grade (Junior Grade), it shall be automatically necessary to amend their service rules to make provision for such time bound promotion which shall be initiated after final decision is taken by the Cabinet and a notification issued by the State Government. The Committee also observed that the problem of stagnation is not restricted to just the MES and it is found in all other organized service as well. Therefore, any decision in this regard will have to be taken on the principles of parity also. Other services and departmental officers shall automatically demand non-functional time bound problem in case members of the MES are considered and granted time bound promotions. The recommendation was accepted and notified vide Notification dated 04.08.2015. Further, by Notification dated 12.08.2015, the effective date for implementation of non-functional upgradation to the Grade Pay of Rs. 6,600/- in respect of members of Junior Grade of MES will be from 04.08.2015 and the actual monetary benefit will also be given from that date.

[6.] Appearing for the petitioners, Mr. A.R. Malhotra, learned counsel

submits that the rejection of the prayer and demand of the petitioners vide Communication dated 11.07.2016 is most arbitrary and violative of Article 14 & 16 of the Constitution of India. He submits that while such benefit is being given to the Junior Grade of the MES, the State respondents cannot deny similar benefit to the Junior Engineers as they have been stagnating in their respective posts without any promotion for a number of years. He submits that in fact some of the JEs with the present state of affairs will retire from their service without any promotion. The learned counsel submits that from the impugned Communication dated 11.07.2016 rejecting the prayer and demand of the petitioners, the respondents are aware about the genuineness of the claim of the petitioners but have decided to reject their claim solely on the ground that it would invite a similar demand from other category of employees under the State Government. He submits that the same cannot be a justification to reject the genuine claim of the petitioners. He submits that a time bound promotion/non-functional promotion has otherwise been granted by the respondents to various categories of employees under different departments such as the Doctors working under Health & Family Welfare Department, the Primary, Middle and Higher Secondary Teachers under the Education Department including the College Teachers. Therefore, there is no reason as to why the petitioners should be deprived of similar benefits by granting them non-

functional promotion. In support of his submissions, Mr. A.R. Malhotra relies upon the case of ***State of Madhya Pradesh & Others -Vs- Mala Banerjee, (2015) 7 SCC 698.***

[7.] Mr. C. Zoramchhana, learned Addl. Advocate General appearing for the State respondents on the other hand submits that the petitioner Association JESAM who have filed WP(C) No. 116 of 2020 are not a registered Association and therefore, the writ petition filed by an unregistered service association being not maintainable should be dismissed. In support of this submission, he relies upon the case of ***Rangapara Development Circle -Vs- State of Assam & Others, (2007) 3 GLR 805.***

[8.] The learned Addl. Advocate General submits that since the issue raised in both the writ petitions are similar, besides the maintainability of WP(C) No. 116 of 2020, the State respondents have not filed a separate counter affidavit in WP(C) No. 16 of 2022. As such, he may be allowed to rely upon the counter affidavit filed in WP(C) No. 116 of 2020. Referring to the counter affidavit, the learned Addl. Advocate General submits that JESAM was already informed about the fact that there was not stark anomaly in their case as they were compensated by the MACP, 2010 from stagnation promotion. The claim of the petitioners that no other posts under the State Government suffers from

stagnation is absolutely incorrect. He submits that the Finance Department has received as many as 45 number of representations from various service association demanding upgradation of pay and allowance such as Mizoram Ministerial Service (LDC Unit) who submitted a representation demanding upgradation of pay from Pay band - II + 2,800 Grade pay. There are more than 503 numbers of LDCs across various departments who have served for more than 25 years without getting promotion. If the petitioners are given the benefit they claim, it is for sure that similar claim will arise from the other service association. Apart from the claim of JESAM, representations received from as many as 45 other service associations are still kept pending since any policy decision taken in favor of a particular service association will have a severe repercussion on other service associations. The learned Addl. Advocate General further submits that the existing service rules of the MES and the amendment was framed in consultation with the Mizoram Public Service Commission (MPSC) and after obtaining approval of the Council of Ministers. The DP&AR (GSW) follows a definite principle in considering the framing of the method of recruitment for different types of posts. When different methods of recruitment are proposed, the percentage of vacancies to be filled up by each method depends upon certain considerations such as, the nature of duties, qualifications and experience required, the availability of suitable personnel possessing the

required qualifications and experience within a cadre, the need for ensuring that suitable incentive exist for the maintenance of an adequate standard of efficiency in the cadre etc,. The Junior Grade of the MES is an entry Grade for those who have completed their Bachelor Degree in various branches of Engineering, carrying a pay at Level-10 in the pay matrix (Rs. 56,100 - Rs. 1,24,500). One of the major point considered in this context is the availability in the open market of persons who can be appointed to this particular grade as well as the need for providing a certain amount of direct recruitment which would facilitate the introduction of fresh blood. The Department of Personnel & Training is also of the opinion that more and much percentage should be considered when recruitment rules are framed/amended. Likewise, while framing the recruitment rules for the post of Junior Engineer, the Government in the DP&AR (GSW) is also guided by the same principle and is of the opinion that the existing method of recruitment for Junior Grade MES by providing 65% for direct and 35% for promotes from JE/Draftman Grade - I is fair and impartial to all the stakeholders.

[9.] The learned Addl. Advocate General further submits that the petitioners cannot claim similar benefit as given to Teachers and Doctors in view of the fact that Teachers do not have any promotional avenue except to the post of Headmaster. As for Doctors, they are given time bound promotion since their

service rules provide for it. The petitioners in the instant case have been given 35% quota for entry into the MES besides being given the MACPS benefits and therefore, the petitioners cannot be said to have any legitimate grievance. He submits that at any rate, it is a policy decision taken by the State Government and the same may not be interfered with by this Court. In support of his submission, Mr. C. Zoramchhana, learned Addl. Advocate General relies upon the following authorities:

- (1) ***Federation of Railway Officers Association & Others -Vs- Union of India, (2003) 4 SCC 289.***
- (2) ***Parisons Agrotech Private Limited & Another -Vs- Union of India & Others, (2015) 9 SCC 657.***

[10.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[11.] The maintainability of the writ petition filed by JESAM for not being a registered service association has been questioned by the learned Addl. Advocate General by relying upon the case of ***Rangapara Development Circle*** (supra). In the said case, the Division Bench of this Court in the given facts of that case held that the petitioner NGO was admittedly an unregistered association and therefore not a juristic person. It was a settled law that writ

petition filed by an unregistered association is not maintainable. Reference in this regard was made to the decision of this Court in ***Narsingarh Mini Bus Owner's Syndicate & Another -Vs- State of Tripura 1998 (4) GLT162, All Manipur DIC Supervisors' Association -Vs- State of Manipur & Others 2000 (1) GLT 374 and State of Manipur & Others -Vs- State Land Use Board Casual Employees' Association & Another 2007 (1) GLT 409 (D.B.)*** In the present case as well, the petitioner JESAM is admittedly not a registered association and therefore, the writ petition filed by them will not be maintainable. Accordingly, WP(C) No. 116 of 2020 is dismissed as not maintainable.

[12.] However, notwithstanding the dismissal of WP(C) No. 116 of 2020 on maintainability, WP(C) No. 16 of 2022 filed by 4 (four) Junior Engineers working under 3 (three) different Departments have raised similar and identical grievance. Therefore, the grievance will be examined on merit.

[13.] According to the petitioners, they have been stagnating in the post of JE since they have limited scope of being promoted to the higher post of AE/SDO which is a Junior Grade post under the MES. Both the MES Rules, 2013 and MES Amendment Rules, 2017 at Rule 22 (6) provides that 65% of the duty post in Junior Grade of each cadre/wing shall be filled up by direct recruitment

while 35% of the total duty post in the Junior Grade of each cadre/wing of the service shall be filled up by way of promotion from JE or Draftman Grade - I by selection method from amongst person who have completed 5 years of regular service in the grade and who have passed departmental examination in Engineering & Accounts. According to the petitioners, since there is limited scope for consideration for promotion, the State respondents should be directed to create non-functional post so that JEs stagnation in their respective posts upon completion of certain number of years of service will be entitled to advancement in their pay and allowances. In the alternative, the demand of the petitioners is that promotion quota should be increased from 35% to 50% for being promoted to the Junior Grade post of MES. Further, out of the 50% promotional quota, 5% may be earmarked for promotion through LDE.

[14.] The petitioners with their grievance have approached various authorities in the State Government as already reflected in the preceding paragraph but their demand for enhancing the scope of their promotion by creating non-functional post or by increasing the quota from 35% as given in the service rules has been rejected. The impugned rejection as communicated on 11.10.2017 is to the effect that the State Government in the Finance Department do not find stark anomaly in their case and that the petitioners as

JErs have been compensated by the MACP, 2010. Moreover, in view of the 7th Central Pay Commission, which will be sooner or later be implemented, changes in the pay structure was found to be not advisable. Therefore, a suggestion was made that the petitioners should seek for one time relaxation for filling up of the vacant post of AE/SDO. Although the petitioners sought for such relaxation as was suggested but their request was turned down. No appropriate reason has been given as to why the same has been rejected. One important aspect which can be noticed is that the State Government in the DP&AR (GSW) in its wisdom has formed a Sub-Committee to study the feasibility or otherwise of cadre review of time bound promotion/non-functional promotion in respect of AEs/SDOs under the Engineering Department. The Sub-Committee after having an in-depth study recommended non-functional up-gradation as has already stated in the preceding paragraph at paragraph No. 5. The recommendation of the Sub-Committee has also been implemented as can be seen vide Notifications dated 04.08.2015 and 12.08.2015 (Annexure - 25 & 26 respectively).

[15.] The main and primary reason for rejecting the representation of the petitioners is due to the fact that it would invite similar demand from other categories of employees of the State Government. The same in my considered view cannot be a reasonable ground for rejecting the claim of the petitioners.

Likewise, no reason has been assigned on the prayer made for one time relaxation of the relevant service rules to accommodate the Junior Engineers who have been stagnating in their respective posts for a number of years. However, the fact remains that on matters affecting policy and requiring technical expertise, Court would leave the matter for decision by those who are qualified to address the issue. Further, unless the policy or an action is inconsistent with the Constitution and the laws, arbitrary, irrational or abuse of power, Court would not interfere on such matters. In the instant case, it is seen that the State respondents have given the benefit of non-functional promotion to the Junior Grade of MES in terms of the recommendation of the Sub-Committee but on the other has rejected the demand and claim of the petitioners on the ground that the same would invite similar demands from other services. The reasoning given in my considered view cannot be accepted. Though this Court will not embark upon the realm of the executive and the legislature by directing the respondents to amend the service rules in a particular manner or direct creation of non-functional posts but this Court can definitely direct the respondents to reconsider the demand made by the petitioners so as to address their grievance of stagnation in a more meaningful manner.

[16.] In view of the above, the Chief Secretary to the Govt. of Mizoram

(respondent No. 1) shall within a period of 15 days of receipt of a certified copy of this order constitute a Sub-Committee to study the feasibility or otherwise of cadre review for time bound promotion/non-functional promotion of Junior Engineers under the Engineering Departments comprising of an Officer not below the rank of Special Secretary in the DP&AR as its Chairman and other members from all other Engineering Departments including the Finance Department who are not below the rank of Joint Secretary. The Sub-Committee upon having an in-depth study shall submit its report to the Chief Secretary within a period of 4 (four) months from the date of the constitution of the Committee. Upon receipt of the report, the Chief Secretary shall lay the same for consideration of the State Government without delay and within the outer limit of 15 days from the date of receipt of the report.

[17.] With the above observations and directions, WP(C) No. 16 of 2022 is also disposed of.

JUDGE

Comparing Assistant