

GAHC030002662022



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

Case No. : WP(C)/72/2022

P. Lalrotluangi @ Lalrotluangi
LDC (MR), Lunglei Division,
Irrigation and Water Resources Department, Govt. of Mizoram.

VERSUS

State of Mizoram and 8 Ors.
r/b the Chief Secretary to the Govt. of Mizoram,
Aizawl, Mizoram. 2:The Secretary
DP and AR

3:The Secretary
Irrigation and Water Resources Department

4:The Chief Engineer
Irrigation and Water Resources Department

5:The Executive Engineer
Lunglei Division
Irrigation and Water Resources Department

6:Lalrinpari

7:Lalrinsangi

8:Lalbiakremi

9:Roseparmawi

Advocate for the Petitioner : Mr. A.R. Malhotra

Advocate for the Respondent : Mrs. H Lalmalsawmi (Addl.AG/GA, Mizoram) for R1-R5

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 18.05.2023.

Date of Judgment : 18.05.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Mrs. H. Lalmalsawmi, learned Government Advocate for the respondent Nos. 1 to 5. None appears for the respondent Nos. 6 to 9 despite notice. Vide Order dated 10.05.2023, notice was declared to be complete upon all the private respondents. Having regard to the nature of the case projected by the petitioner, the writ petition is taken up for disposal at this stage.

[2.] The case of the petitioner is that she was initially engaged as Muster Roll (MR) Lower Division Clerk (LDC) on 10.01.1996 without the approval of the Government. She continued to work as such under the respondent No. 5 until she came to be engaged with the approval of the Government in the DP&AR and in the Finance Department through Engagement Card dated 23.04.2012. She was first engaged for the period w.e.f. 01.03.2012 to 28.02.2013 and thereafter, her engagement was extended from time to time and till date. According to the petitioner, the State respondents, vide Office Memorandum dated 29.05.2018 provisionally fixed the inter se seniority of MR LDC employees, wherein the petitioner was placed at Serial No. 3 while the private respondent Nos. 6, 7, 8 and 9 were placed at Serial Nos. 4, 5, 6 and 7.

[3.] It is the case of the petitioner that the Government of Mizoram framed the Scheme on Regularization of Muster Roll Employees in the year 2000, vide Notification dated 23.03.2000. The regularization of MR Employees Scheme was thereafter amended from time to time and the scheme in vogue currently is the Government of Mizoram Regularization of Muster Roll Employees Scheme, 2018 (MR Regularization Scheme). As per Clause 4 of the MR Regularization Scheme, any person who has been continuously engaged on Muster Roll capacity for not less than 7 years as per paragraph No. 3 of the Scheme shall be eligible for regularization to the corresponding post subject to having requisite educational

and other qualifications and having the appropriate benchmark in their performance reports for 5 preceding years and having the appropriate seniority. It is further provided that the regularization shall be made against 35% of the direct recruitment quota in the corresponding post. Clause 6 of the MR Regularization Scheme provides that the upper age limit of a Muster Roll employee being considered for regularization can be condoned subject to the employee not being already over-aged at the time of initial engagement.

[4.] The respondent authorities undertook the process for filling up of 4 posts of LDC by way of regularizing the eligible MR employees in the Department and the name of the petitioner alongwith the private respondents were considered. However, it was held that as the petitioner was already over-aged at the time of her initial engagement on 01.03.2012, she was found ineligible to be considered for regularization. As for the private respondents, who are junior to the petitioner, they are found fit to be regularized and accordingly regularized. The petitioner being aggrieved is before this Court.

[5.] Mr. A.R. Malhotra, learned counsel submits that the petitioner was initially engaged as Muster Roll LDC on 10.01.1996 without the Government's approval and later on with the approval of the Government w.e.f. 01.03.2012, vide Engagement Card dated 23.04.2012. The learned counsel submits that the

State respondents in the DP&AR (ARW) vide Office Memorandum dated 27.08.2018 pursuant to the decision taken by the Council of Ministers in their Meetings held on 04.06.2018 and 12.06.2018 approved the proposal for ex-post facto approval of the engagement of MR employees under the four works Department, namely, Power & Electricity Department, Public Health Engineering Department and Public Works Department, who were engaged on or before 19.02.2014. He submits that the petitioner is also engaged under one of the works Department i.e. Irrigation & Water Resources Department and therefore, she should be given a similar benefit. He submits that the Department in which the petitioner was engaged initially was the Minor & Irrigation Department and later on the same has been changed into Irrigation & Water Resources Department. He submits that the Irrigation & Water Resources Department is one of the 4 works Department as mentioned in the Mizoram Engineering Service Rules, 2013 and the Mizoram Engineering Service (Amendment) Rules, 2017. He therefore submits that if the benefit of ex-post facto approval can be given for the MR employees under the other 3 works Department, who were engaged without Government's approval, similar benefit should be given to the petitioner, who was engaged w.e.f. 10.01.1996 without Government's approval.

[6.] Mr. A.R. Malhotra, learned counsel further submits that as per the stand of the State respondents, the other 3 works Department were not

debarred from engaging MR workers in terms of the Office Memorandum dated 12.02.1999 issued by the Finance Department. But the same is not the correct position which can be clearly seen from Office Memorandum dated 27.08.2018 issued by the DP&AR(ARW), wherein in view of the engagement of a large number of MR employees in violation of Government instructions, the 3 works Department having engaged MR employees, ex-post facto approval for engagement of MR employees without the approval of the Government had to be granted. He therefore submits that question of issuing the Office Memorandum dated 27.08.2018 would not have arisen if the Office Memorandum dated 12.02.1999 had empowered the works Department to engage MR employees without Government approval. He therefore, submits that since the petitioner is also a part of the works Department, a similar benefit should be given and her age may be condoned by the Department for being regularized under the MR Regularization Scheme.

[7.] Mrs. H. Lalmalsawmi, learned Government Advocate on the other hand submits that the Mizoram Engineering Service Rules, 2013 and the Mizoram Engineering Service (Amendment) Rules, 2017 is meant for Group 'A' Engineer recruited in the Department mentioned in the Rules while the LDC has a separate recruitment rules. Even though the petitioner is working under the Irrigation & Water Resources Department, being a clerical staff she is governed

by the Mizoram Ministerial Service Rules, 2011, which is a common service rules in respect of clerical staff under the Government of Mizoram. She further submits that the Finance Department vide OM dated 12.02.1999 instructed all Departments except the Public Works Department, Public Health Engineering Department and Power & Electricity Department not to engage MR employees without approval of the DP&AR (ARW) and Finance Department. Based on the Office Memorandum, the 3 works Department continued to engage Casual Labourers on need basis. With the passage of time, it was felt inappropriate to keep on engaging Casual Labourers on need basis and due to the fact that they were being engaged for a long period of time. As such, the Government of Mizoram decided to give ex-post facto approval to those engaged on or before 19.02.2014 and to stop the practice of engagement of Casual Labourers under the 3 works Department. As for the petitioner, she does not belong to the 3 works Department concerned and therefore, she cannot claim similar benefit. She therefore submits that the petitioner cannot have any legitimate grievance and the writ petition should be dismissed.

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

[9.] The facts broadly are not disputed. The petitioner was engaged

without approval of the Government on 10.01.1996 and her engagement was extended from time to time. Subsequently, vide Engagement Card dated 23.04.2012, with the approval of the State Government in the DP&AR and in the Finance Department, she came to be engaged in a similar capacity w.e.f. 01.03.2012, initially for a period of one year and later on extended from time to time. Under the MR Regularization Scheme, person having engaged for 7 years continuously on MR basis can be considered for regularization subject to fulfillment of the required criteria and availability of vacancy as prescribed. One of such criteria amongst others is that the person concerned should not be over-aged at the time of initial engagement. Taking the date of initial engagement of the petitioner as 01.03.2012, she was found to be over-age by the DPC which held its meeting on 20.11.2019. The claim of the petitioner is that as ex-post facto approval was given to those engaged in the P&E Department, PHE Department and PWD, who were engaged without approval of the Government and prior to 19.02.2014, the petitioner having been engaged on 10.01.1996 should be given a similar benefit of ex-post facto approval of her engagement. The claim is being resisted by the State respondents on the ground that the petitioner cannot claim parity by relying upon the Mizoram Engineering Service Rules, 2013 and the Mizoram Engineering Service (Amendment) Rules, 2017 since the same is meant for Group 'A' Engineers only while the petitioner is

governed by the Mizoram Ministerial Service Rules, 2011.

[10.] A perusal of the Office Memorandum dated 27.08.2018 on the other hand goes to show that the MR employees working under the 3 works Department, namely, P&E Department, PHE Department and PWD were neither shown as Engineers nor Group 'A' Officers. What has been provided is that despite the various Government instructions issued from time to time prohibiting engagement of MR employees without the approval of the DP&AR and the concurrence of the Finance Department, the 3 works Department had been engaging large number of MR employees and therefore, in order to settle the matter for once, the Council of Ministers in its meeting held on 04.06.2018 and 12.06.2018 approved the proposal for granting ex-post facto approval to those MR employees who were engaged without prior approval of the department concerned and only to the extent that the same was not in conflict with the Office Memorandum dated 19.02.2013. It may be seen here that the petitioner was engaged on 10.01.1996, much prior to 19.02.2014. The State Government has decided to give a cut-off date of 19.02.2013 as per the Office Memorandum dated 27.08.2018 and the petitioner having been clearly appointed much prior to the cut-off date and at the same time, having been engaged in one of the works Department as shown in the Mizoram Engineering Service Rules, 2013 and its Amendment in 2017, the claim of the petitioner is only legitimate.

[11.] A perusal of the Office Memorandum dated 12.02.1999 issued by the Finance Department on the subject "Engagement of Casual Employees on Muster Roll basis and appointment on Officiating basis" would go to show that there was indeed a prohibition or ban to appoint Casual Employees without the prior concurrence of DP&AR and the Finance Department. However, such ban is not there in respect of Daily Labourers engaged under the 3 works Department. Despite such banned, the 3 works Department apparently continued to engage MR employees from time to time and which necessitated the issuance of Office Memorandum dated 27.08.2018. It is noticed that the State respondents in paragraph No. 15 of the counter affidavit have not made any distinction between Casual Labourers and Muster Roll employees. According to them to do away with the engagement of Casual Labourers for a long period of time, ex-post facto approval to those appointed on or before 19.02.2014 as Muster Roll was given. Be that as it may, if the benefit of ex-post facto approval can be given to the Muster Roll employees under the 3 works Department, similar benefit cannot be denied to the petitioner in the considered view of this Court. There is also nothing on record to show why only the three (3) works Department have been given the benefit of ex-post facto approval for the Muster Roll workers appointed without prior approval of the Government and for what specific or special reason.

[12.] In view of above, the petitioner is also found to be entitled to be given the benefit of age relaxation by granting ex-post facto approval of her initial engagement on 10.01.1996, which is solely for the purpose of enabling her to qualify for being considered for regularization. Accordingly, the impugned Meeting Minutes dated 20.11.2019 is hereby set aside and the consequential order dated 04.02.2020 regularizing the services of the private respondents is also set aside.

[13.] The State respondents are now directed to convene a fresh Departmental Promotion Committee (DPC) to fill up the 4 posts of LDC after condoning the age of the petitioner as per the ex-post facto approval directed to be granted. The entire process shall be carried out as expeditiously as possible and preferable within a period of two months from the date of receipt of a certified copy of this order. The DPC will be at liberty to accommodate the petitioner and all the private respondents if there are sufficient posts and if not, the principle of 'last come first go' shall be followed.

[14.] With the above observation and direction, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant