

GAHC030002942022



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

Case No. : WP(C)/74/2022

Chandan Kumar and 3 Ors.
S/o Ramekwal Mahto,
R/o Ward No.12, Bhoraha,
P.o. Anhari,
P.S. Riga,
District Sitamarhi,
PIN 843302

VERSUS

State of Mizoram and 4 Ors.
Aizawl, Mizoram.

Advocate for the Petitioner : Vinod Kumar

Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA, Mizoram) for R1-R5

Linked Case : I.A.(Civil)/111/2022

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S/o Ramekwal Mahto

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VERSUS

State of Mizoram and 4 Ors.
Aizawl
Mizoram.

Advocate for the Petitioner : Vinod Kumar
Advocate for the Respondent :

B E F O R E
THE HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 24.01.2023.

Date of Judgment : 24.01.2023.

J U D G M E N T & O R D E R (ORAL)

Heard Mr. Vinod Kumar, learned counsel for the petitioners and Mr. C. Zoramchhana, learned Addl. Advocate General, Mizoram appearing for all the respondents.

2. The four writ petitioners have prayed for setting aside the Order dated 22.04.2022, by which the results of the Language Proficiency Test of Class-VIII Level in Mizo Language conducted for employees of the Mizoram Rural Bank on 18.11.2021 and published vide Notice dated 23.11.2021 has been cancelled and declared null and void. The further prayer of the petitioners is that a writ of mandamus should be issued to the respondents directing them to confirm the

petitioner Nos. 1 to 4 in the post of Officers Scale-I with all consequential service benefits.

3. The petitioners' counsel submits that the petitioner No. 1 was appointed as Officer Scale-I on 17.02.2020, while the petitioner Nos. 2 to 4 were appointed as Officer Scale-I on 02.08.2021. The appointment letters of the petitioners stated that their appointments were on provisional basis and final appointment was subject to acquiring the necessary proficiency in local language within a period of six months from the date of joining. It also stated that the petitioners would be covered by the Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010.

4. The Language Proficiency Test of Class VIII level in Mizo Language was thereafter conducted by the respondent No. 4 on 18.11.2021 and the petitioners were all given Certificates dated 23.11.2021 by the respondents No. 4, certifying the fact that they had passed the proficiency test of Class-VIII Level in Mizo Language.

5. The respondent No. 4 thereafter issued the impugned Notice dated 22.04.2022, cancelling the results of the Language Proficiency Test held on 18.11.2021 and by a letter dated 22.04.2022 issued by the respondent No. 4 to the respondent No. 2, the reasons for cancelling the proficiency test was given in the said letter dated 22.04.2022. It was stated that out of the list of 28 candidates furnished by the respondent No. 2 who underwent the proficiency test, 8 candidates had only two months of service, which was in violation of the Recruitment Rules Note-2(i), thereby implying that those 8 candidates were ineligible to take the Language Proficiency Test.

6. The petitioners' counsel submits that the impugned Notice dated

22.04.2022, cancelling the results of the Language Proficiency Test should be set aside, as no reasons for the same had been given by the respondent No. 4. He further submits that the reasons for cancellation of the language proficiency test, as given in the letter dated 22.04.2022, wherein it had been stated that 8 candidates had only two months of service, which was in violation of Recruitment Rules Note-2(i), was not in conformity with the language and intent of Note-2(i) of the Third Schedule to the Regional Rural Banks (Appointment of Officers and Employees) Rules, 2017, which states that candidates not having proficiency local language at the time of selection, will be given time of six months from the date of joining to acquire proficiency in the language.

7. The counsel for the petitioners thus submits that as the reasons for cancellation of the results of the language proficiency test vide Notice dated 22.04.2022 and the letter dated 22.04.2022 is without any basis, the same has to be set aside.

8. Mr. C. Zoramchhana, learned Addl. Advocate General, Mizoram, appearing for all the respondents submits that as per the affidavit-in-opposition filed by the respondents, the results of the Language Proficiency Test of Class-VIII Level in Mizo Language conducted for employees of the Mizoram Rural Bank on 18.11.2021 were declared null and void, as it was detected that the Head Office of the Mizoram Rural Bank had furnished a list of candidates which included ineligible candidates. He submits that among the list of 28 candidates furnished by the respondent No. 2, vide letter dated 26.10.2021, 11 candidates had already served the Bank for more than 18 months, thereby exceeding the time limit for acquiring proficiency in the local language which was in violation of the Third Schedule Note-2(i)(ii) of the Mizoram Rural Bank(Appointment of Officers and Employees) Rules, 2017, hereinafter referred to as the 2017 Rules. He

submits that 11 out of the 28 candidates had more than 18 months of service prior to taking the language proficiency test on 18.11.2021, which was in violation of the 2017 Rules. He submits that candidates have to take the Language Proficiency Test within 18 months of joining their service/posts. He also submits that the Government of Mizoram has advised the concerned Department to stop conducting examinations for the Mizoram Rural Bank and opined that the Bank has its own internal mechanism to conduct language proficiency test. He accordingly submits that writ petition should be dismissed.

9. I have heard the learned counsels for the parties.

10. As can be seen from the pleadings of the parties and the submissions made by the counsels, the respondent No. 4 had conducted the language proficiency test for Officers of the Mizoram, Rural Bank after 17.02.2020, i.e. only on 18.11.2021, that is subsequent to the appointment of the petitioners in the Bank. The decision to conduct the Language Proficiency Test had been done on the basis of Letter No. B. 11035/22/2020-EDN/12 dated 24.03.2021 issued by the Under Secretary to the Govt. of Mizoram, School Education Department, conveying to the respondent No. 4, the approval of the Government for conducting Class-VIII Level Proficiency Test in Mizo Language for those working in the Mizoram Rural Bank. The petitioners took part in the Language Proficiency Test and they were issued Certificates dated 23.11.2021 by the respondent No. 4, certifying that they had passed the proficiency test of Class-VIII Level in the Mizo language.

11. Notwithstanding the above, the respondent No. 4 has, vide the impugned Notice dated 22.04.2022, cancelled the results of the language proficiency test, without giving any reasons for the same.

12. The Contents of the impugned Notice dated 22.04.2022 is reproduced below as follows:-

“NOTICE

On the direction of competent authority, it is hereby notified to all concerned that results of the Language Proficiency Test of Class VIII Level in Mizo Language conducted for employees of Mizoram Rural Bank on 18th November, 2021 and published vide Notice No. A.33024/87/2021 DTE(SCERT) dated 23 November 2021 is hereby cancelled and declared null and void.”

As it is clear from the contents of the impugned notice, no reasons has been given by the respondent No. 4 for cancelling the results of the language proficiency test. As such, this Court has no other option but to hold the impugned notice to be arbitrary.

13. The letter dated 22.04.2022 issued by the respondent No. 4 to the respondent No. 2, giving reasons for cancelling the results of the Language Proficiency Test, states that out of the list of 28 candidates furnished by the respondent No. 2 for participating in the language proficiency test, 8 candidates had only two months of service, which was in violation of the Recruitment Rules Note-2(i).

14. The contents of the letter dated 22.04.2022 issued by the respondent No. 4 is reproduced below:-

“Subject : Class VIII Level Proficiency Test in Mizo Language regarding...

Sir,

I would like to inform you that a Committee to Review Class VIII Level Proficiency Test in Mizo Language for employees under Mizoram Rural Bank held

on the 18th November, 2021 was constituted to screen the List of Candidates provided by Chairman, Mizoram Rural Bank and to review the Syllabus and Question Paper of the Test and offer comments.

To ascertain the eligibility of the candidates who underwent the Proficiency Test, the Committee studied the Recruitment Rules of Officer Scale I and Office Assistant. It was found that the list of 28 candidates furnished by Chairman, Mizoram Rural Bank vide letter No. CM(Per)/Gen-39/868 dt 26th October, 2021 included 8 candidates having only 2 months of service which was in violation of the Recruitment Rules Note 2(i).

The Report of the Committee was sent to Secretary to the Government of Mizoram, School Education Department who directed SCERT Mizoram to cancel and declare Results of the Class VIII Level Proficiency Test in Mizo Language held on 18th November, 2021 for employees under Mizoram Rural Bank as null and void (copy enclosed) due to inclusion of ineligible candidates which is in violation of the relevant provision under the Regional Rural Bank(Appointment of Officers and Employees) Rules 2017 upon which action is notified as enclosed.

Enclo: As stated."

15. The Recruitment Rules Note-2 (i) which has been referred to in the above letter dated 22.04.2022, pertains to the Third Schedule Note-2(i) of the 2017 Rules, which states as follows:-

“Note 2: (i) Candidate not having proficiency in local language at the time of selection, will be given a time of six months from the date of joining, to acquire the proficiency.”

16. Note: 2(i) of the Third Schedule of the 2017 Rules, which states that candidates not having proficiency in local language at the time of selection will be given time of six months from the date of joining, to acquire the proficiency, clearly shows that there is no bar for a candidate having only two months of service, from participating in a Mizo Language Proficiency Test of Class-VIII level. As such, the reasons given for cancelling the results of the language proficiency test in the letter dated 22.04.2022 is arbitrary, as the reason given in the letter dated 22.04.2022 is in violation of Note-2(i) of the Third Schedule of the 2017 Rules.

17. In the affidavit-in-opposition filed by the respondent Nos. 1 to 5, it has been stated that the results of the language proficiency test was cancelled in view of 11 candidates having participated in the test, despite exceeding the time limit, i.e. being in service for more than 18 months prior to taking part in the language proficiency test, which was in violation of Note-2 (i) and (ii) of the Third Schedule of the 2017 Rules.

18. Note-1 and 2(i) and (ii) of the Third Schedule of the 2017 Rules states as follows:-

“(II) Proficiency in local language.

Note1: Candidates who have studied the language of the State in standard VIII or above in Boards of Education or School recognized by the Government or candidates possessing any certificate to the effect for standard VIII or above will be considered proficient in that local language.

Note 2: (i) Candidate not having proficiency in local language at the time of selection, will be given a time of six months from the date of joining, to acquire the proficiency.

(ii) The period of six months may be extended by the Board for a further period of six months which may be extended by a further period of six months, at a time, by recording the reasons in writing. Provided that no such extension shall be granted beyond the probation period.

Desireable: Working knowledge of Computer."

A perusal of the same goes to show that candidates not having proficiency in the local language at the time of selection, would be given six months time from the date of joining to acquire proficiency in the local language. The period of six months may be extended by the Board for a further period of six months and which may be again extended for a further period of six months. Thus, in terms of the Third Schedule of the 2017 Rules, there can be two extensions of the six months time period, thereby allowing a candidate 18 months time, to acquire proficiency in the local language.

19. In the present case, the petitioner No. 1 was appointed on 17.02.2020, as an Officer in the Bank while the petitioner Nos. 2 to 4 were appointed on 02.08.2021. As the language proficiency test was held on 18.11.2021, the petitioner Nos. 2 to 4 were within the required time limit for acquiring language proficiency in terms of the Third Schedule Note-2(i) and (ii) to the 2017 Rules.

20. This Court would now have to see whether the petitioner No. 1 can be said to be ineligible to participate in the language proficiency test on 18.11.2021, as he had been in service for more than 18 months, prior to taking part in the said test. As the respondents held the language proficiency test subsequent to 17.02.2020 for the first time, only on 18.11.2021, this Court is of the view that the petitioner No. 1 cannot be faulted for the negligence of the respondents in holding the test after the petitioner No. 1 had completed 18

months of service in the Bank. Further, in terms of the Third Schedule to the 2017 Rules, an exercise was required to be done by the respondents to enable the petitioners to be considered for confirmation to their post within prescribed time limits. The inaction of the respondents, which is not attributable to the petitioners, in holding the proficiency test only in the month of November, 2021, cannot be a ground to deny the petitioner No. 1, from taking part in the test and deny him from being considered for confirmation/regulation in his service, subsequent to the results secured during the said test.

21. Besides the above, it would be apposite to refer to the petitioners appointment letters, which states that the petitioner service would be governed by the Mizoram Rural Bank (Officer and Employees) Service Regulation, 2010, hereinafter referred to as the 2010 Regulation. As per Regulation No. 8 of the 2010 Regulation, an Officer directly appointed in a Group 'A' post shall be on probation for a period of two years, which may be extended by the appointing authority for a period not exceeding one year. As such, the ground taken by the respondents in their affidavit that a person who has completed 18 months of service and who does not have proficiency in the local language cannot be allowed to participate in a language proficiency test after 18 months of service is not reasonable, especially when no examination had been conducted by the respondents during the first 18 months of service of the petitioner No. 1. As stated above, the petitioner No. 1 cannot be barred from taking part in the language proficiency test, after serving for more than 18 months in the Bank, as the Bank had conducted the test for the first time on 18.11.2021, after his appointment on 17.02.2020.

22. The Apex Court has held that when a statutory functionary makes an order, its validity must be judged by reasons mentioned in the order and the

same cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. The impugned Notice dated 22.04.2022 being devoid of reasons, is not in conformity with the law laid down by the Apex Court in the case of *Rashmi Metaliks Limited & Anr. Vs. Kolkata Metropolitan Development Authority & Ors.*, reported in (2013) 10 SCC 95, wherein the Apex Court had set aside the impugned judgment as reasons were not contained in the said impugned judgment itself. It also held that a party cannot be permitted to travel beyond the stand adopted and expressed by it in its earlier decision. While coming to the said decision, the Apex Court had relied upon the earlier decisions of the Supreme Court in *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*, reported in AIR 1978 SC 851 and the *Commissioner of Police Vs. Gordhandas Bhanji*, reported in AIR 1952 SC 16.

The Apex Court in para 16 of *Rashmi Metaliks Limited & Anr. Vs. Kolkata Metropolitan Development Authority & Ors.* (*Supra*) held as follows:-

“The following observations found in the celebrated decision in *Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi*, AIR 1978 SC 851 are relevant to this question :

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p.18):

“Public orders publicly made, in exercise of a statutory authority cannot be

construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow order."

23. In view of the decisions of the Apex Court mentioned above, the subsequent explanation given by the respondents for cancelling the language proficiency test in the letter dated 22.04.2022 issued by the respondent No. 4 and the subsequent reasons given in the affidavit-in-opposition filed by the respondent Nos. 1 to 5 cannot be accepted, besides the same being unreasonable.

In that view of the matter, the impugned Notice dated 22.04.2022 issued by the respondent No. 4 being arbitrary is hereby set aside. The subsequent reasons given by the respondents for cancelling the language proficiency test in the letter dated 22.04.2022 and affidavit-in-opposition being unsustainable, are also set aside. The respondents are directed to issue consequential confirmation orders to the petitioners with all consequential benefits, in pursuance to the Certificates dated 23.11.2021 issued to the petitioners by the respondent No. 4, showing that they have passed proficiency test of Class VIII level in Mizo language, conducted by the SCERT on 18.11.2021.

The writ petition is accordingly allowed.

JUDGE

Comparing Assistant