

GAHC030003122022



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

Case No. : WA/9/2022

State of Mizoram r/b Chief Secretary
Govt. of Mizoram, Aizawl 2: Secretary to the Govt. of Mizoram

3: Secretary to the Govt. of Mizoram

4: Secretary to the Govt. of Mizoram

5: Secretary to the Govt. of Mizora

VERSUS

Lalhnehliana Sailo and 25 Ors.
S/o Lalbepara Sailo, Govt. Complex, Luangmual, Aizawl 2: Carolyn M
S.Bunghai

3:F.Malsawmtluanga

4:Lalnunthari

5:Lalnunmawii Rokhu

Advocate for the Petitioner : Ms. Mary Lalruatkimi Kiangte (Addl.AG/GA, Mizoram)

Advocate for the Respondent : Ms Dinari T Azyu for R1 to R25

Linked Case : I.A.(Civil)/117/2022

State of Mizoram and 12 Ors.
r/b Chief Secretary to the Govt. of Mizoram

2: Secretary to the Govt. of Mizoram
Rural Development Department

3: Secretary to the Govt. of Mizoram
Dept. of Personnel and Administrative Reforms

4: Secretary to the Govt. of Mizoram
Finance Department

5: Secretary to the Govt. of Mizoram
Planning Department
VERSUS

Lalhnehliana Sailo and 25 Ors.
S/o Lalbepara Sailo
Govt. Complex
Luangmual
Aizawl

2:Carolyn M.S.Bunghai
D/o B.Hmunchungnunga
College Veng
Lawngtlai

3:F.Malsawmtluanga
S/o F.Zirliana
Venglai
Champhai

4:Lalnunthari
D/o K.Vanlalsiama
Chhinga Veng
Aizawl

5:Lalnunmawii Rokhum
D/o T.L.Khama (L)
New Diakkawn
Kolasib

Advocate for the Petitioner : Ms. Mary Lalruatkimi Khiangte (Addl.AG/GA
Mizoram)

Advocate for the Respondent :

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State of Mizoram and 12 Ors.
r/b Chief Secretary to the Govt. of Mizoram
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New Diakkawn
Kolasib

Mizoram

Advocate for the Petitioner : Ms. Mary Lalruatkimi Khiangte (Addl.AG/GA
Mizoram)

Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER (CAV)

Date : 22-09-2023
(*Marli Vankung, J*)

Heard Ms. Mary L. Khiangte, learned Government Advocate for the State/appellants along with Mr. Victor L. Ralte, learned counsel for the respondents and Ms. Zairemsangpuii, learned CGC for respondent No. 26.

[2.] This is an appeal filed against the Judgment and order passed by the learned Single Judge in Judgment and Order dated 17.03.2022 passed in W.P.(C) No. 13/2021 (Aizawl Bench).

[3.] Facts of the case in a nutshell is that, the Ministry of Rural Development, Government of India had formulated guidelines on DRDA Administration starting from the year 1999, wherein DRDA is entrusted as the principal organ at the District level to oversee the implementation of different Anti- poverty Programme with a funding pattern between the Centre and the States in the ratio of 75:25 initially and later on in the ratio of 90:10 w.e.f. the financial year 2008-2009. Recruitment of employees was

conducted from time to time by the authority concerned. Thereafter, in the years 2002, 2008 and 2018 certain modifications were made to the provisions/guidelines, however, 4.2 and 4.3 of the guidelines have not been modified and they remained the same. As per para 4.2 of the guidelines, the State respondents are required to draw up the 3 to 5 year plan for their absorption. The employees who were recruited before or during the year 1999 then approached the court in WP(C) No. 73 of 2006 (*Laldinpuii & 49 Ors. Vs. State of Mizoram & 9 Ors.*) for their absorption and regularisation as per 4.2 of the guidelines and as per the report submitted by a study team constituted by the state respondent which was decided in their favour. Thereafter in Judgment & Order dated 22.11.2017 passed in WP(C) No. 175/2016 (*PC. Lallawmkima & 91 Ors. Vs. State of Mizoram & 13 Ors.*), this court directed the state respondents for absorption of those persons appointed to different posts in the DRDAs of different districts between the years 2000 to 2008 holding that the case of the petitioners were similar to those petitioners in WP(C) No. 73 of 2006.

[4.] In the instant case, the petitioners were appointed under District Rural Development Agency/DRDA, either as Assistant Engineer, Assistant Project Officer, Accounts Officer, UDC, LDC, Driver or IV Grade between 30.11.2009 to 03.02.2017 on contract basis on being recommended by the duly constituted Departmental Screening Committee/Selection Committee. They then submitted a representation for absorption of their services in the line department which was rejected by the state respondents vide Communication dated 15.04.2021 and hence the petitioners had approach the

High Court (Aizawl Bench) in WP (C) No.123/2021 for redressal of their grievances.

[5.] The case of the petitioners (respondents in the instant Writ Appeal) before the learned Single Judge in WP(C) No.123/2021 was that their case is a covered case wherein, similarly situated persons were given the benefit of absorption in service in the Line Departments the Judgment & Order dated 22.07.2008 passed by a Coordinate Bench in WP(C) No. 72/2006 (*Laldinpuii & 49 Ors. Vs. State of Mizoram & 9 Ors.*) and the Judgment & Order dated 22.11.2017 passed in WP(C) No. 175/2016 (*PC. Lallawmkima & 91 Ors. Vs. State of Mizoram & 13 Ors.*). It was submitted that in view of the provisions provided in para 4.2 of the guidelines of DRDA Administration and keeping in view that the fund provided by the Central Government in the ratio of 75:25 and later to the ratio of 90:10, where the Central Government was to contribute 75% and later 90% and pursuant to introduction of DRDA, the instant petitioners are no different from the previous petitioners since they are covered by para 4.2 and 4.3 of the guidelines and therefore, similar benefits have to be extended to them as well. That the appointment of the petitioners were done by the Selection Committee or Selection Board with proper screening process. That though the guidelines are DRDA guidelines have been amended, there is no modification of para 4.2 & 4.3 in the recent modification in the year, 2018. Further, as recent as 17.01.2022, the Ministry of Rural Development, Government of India had asked the State respondents to draw a 3 to 4 year plan for absorption of staff working under the said Rural Development Department into the Line Departments and therefore, the

petitioners/respondents should be absorbed in their service in the Line Departments in terms of the DRDA guidelines.

[6.] The stand of the State respondents was that the Notification dated 02.02.2018 clearly states that the employees under DRDA appointed after 2008 being against the provisions of DRDA guidelines, their absorption cannot be considered. That the said notification was not put to challenge by the petitioners.

[7.] The learned Single Judge vide Order dated 17.03.2022 passed in WP(C) No. 123/2021, allowed the writ petition on the ground that the distinction sought to be drawn by the Government Advocate with the cut of year of 2008 as referred to in the Notification dated 02.02.2018 cannot be the ground to deny the petitioners from being considered for absorption as per para 4.2 and 4.3 of the guidelines. The State Government continued to receive 90% of the funds towards the expenditure of salary of employees, the matching share of the State Government on the other hand is only to the extent of 10%. The learned Single Judge noted that the Communication dated 17.01.2022 made by the Ministry of Rural Development, Govt. of India to the respondent No. 2 with reference to the present case filed by the petitioners is that the State Government is required to follow guidelines of the DRDA Administration Scheme, more particularly, at paragraph 4.2 requiring the State Rural Development Department to draw up 3 to 5 Year Plan for absorption of the staff in the line department. It also states that the Ministry has been repeatedly writing to the State to initiate appropriate measures in conformity with the Guidelines of DRDA

Administration Scheme. Further, a perusal of the modifications made as recent as in the year 2018 goes to show that there is no modification in respect of paragraph 4.2 & paragraph 4.3 of the Guidelines. The learned Single Judge held that the programmes cannot be implemented without the employees concerned and the employees cannot be continued to be engaged without any consideration for their absorption more particularly, when there is a scheme in this regard under the DRDA Guidelines. The Notification dated 02.02.2018 cannot come in the way for considering the petitioners for their absorption since they were duly recommended and appointed by due process and not de hors the DRDA Guidelines. The learned Single Judge held that the case of the petitioner's was covered by the earlier decisions of this Court and the State respondents were directed to take necessary steps to absorb the petitioners into the line department in terms of the guidelines of DRDA administration within a period of 2 (two) months from the date of receipt of the certified true copy.

[8.] Being highly aggrieved by the aforesaid Judgment and Order dated 17.03.2022 passed in W.P.(C) No. 123/2021 (Aizawl Bench) the state authorities as appellants have preferred the instant appeal seeking appropriate relief.

[9.] Ms. Mary L. Khiangte, learned Government Advocate submits that the Judgment & Order dated 17.03.2022 passed in WP(C) No. 123/2021 (Aizawl Bench) is liable to be interfered and set aside. The learned Government Advocate submits that the learned Single Judge failed to appreciate the fact that the earlier recruitments were made on contract basis to meet the immediate exigencies in service that

occurred prior to the notification of DRDA guidelines of 2008. Thereafter, the State Appellant Government issued a notification No. C.17011/2/2016-RD (DRDA) dated 02.02.2018 that no steps will be taken for appointment after 2008. Consequently, in pursuant to the Hon'ble Court Order, as many as 31 various categories of new posts was created under Rural Development Department to absorb those who cannot be absorbed in the existing post vide Notification dt. 14.02.2020. Moreover, a new recruitment Rules for various post under Group A and B was also notified vide Notification No. A- 12018/33/2003-PAR(GSW) dt. 09.07.2020 and the employees then were absorbed in the service on various dates. The Government by complying with the guidelines had regularized the services of employees of such contractual DRDA employees in larger public interest. However, the Government had also issued the notification dated 02.02.2018 to regulate the recruitment process and the same is not put to challenge till date. In view of the notification dated 02.02.2018, the writ petitioners are not entitled for regularization of their services merely because some other contractual employees having a different fact situation have been regularized.

[10.] The learned Government advocate submits that the DRDA guidelines of 2008 in para 4.3 stipulates that ministerial and lower rank, the selection should be by an appropriate selection committee to be headed by the Secretary Rural Development and also the State Government may fill up the sanctioned posts in Group 'A', 'B' & 'C' as per their recruitment rules by hiring technically qualified and experienced personnel on contract basis. The claim of the petitioners for regularization of their

services is wholly misplaced and cannot be legally sustained. Merely because the writ petitioners had put in some number of years in contractual services does not give them any right to claim for regularization.

[11.] Miss Mary L/Khiangte, learned Government Advocate also submits that the learned Single Judge acted beyond his jurisdiction in issuing the direction for regularization of services of the writ petitioners. That merely because the respondents/writ petitioners are enjoying the 7th Revision of Pay by the appellants for contractual employees would not by itself confer upon the respondents/writ petitioners any substantial right to claim for regularization. That for obtaining absorption stipulated in the said guidelines, one has to be currently borne on the DRDA and only to the employees recruited prior to 2008, approval is accorded and question of absorption then arise. That the cases projected in WP(C) No. 72/2006 and WP(C) No. 175/2016 are not identical to that of the respondents/writ petitioners, as much as the employees were borne into services prior to the 2008 guidelines. That the present respondents/writ petitioners on their own will have entered into an agreement with the State authorities that their appointment may be terminated without assigning reasons thereof. The guidelines also mentioned that they should not have any permanent staff. The notification dated 02.02.2018 was issued being aware with the requirement of having any plan as per the guidelines 4.2. The learned Government Advocate further mentions that as of today, there is no funding from the Central Government and the respondents were recruited between 2009 to 2017.

[12.] Mr. Victor L. Ralte, learned counsel for the respondents, on the other hand submits that the rules dated 09.07.2020 is silent about the instant case and the guidelines amended in 2018 again mentions about the absorption of the incumbents in para 4.2 of the guidelines. The present respondents are appointed on contract basis and their appointment is as per the required norms by the duly constituted selection committee as per para 4.3 of the guidelines. The notification dated 02.02.2018 refers to appointment made for MR employees and not the instant petitioners, which is clear from para 4.3 of the guidelines. The said 25 petitioners are the last batch under DRDA and does not include the MR employees which were appointed after 2008. The list of MR employees is as per the list enclosed in the affidavit dated 16.06.2020, while the appointment of the instant respondents is as per the guidelines. The case of the instant respondents is similar to those in WP(C) No. 72/2006 and WP(C) No. 123/2021, there is no reason to interfere with the judgment and order of the learned Single Judge.

[13.] Ms. Mary L. Khiangte, learned Government Advocate in rebuttal submits that the funding pattern in WP(C) No. 72/2006 is different and also the services of the respondents at present is no longer required since the scheme itself has stopped. She further submits that para 4.2 of the guidelines does not differentiate between MR employees or employees under contract basis and the appointment of the respondents is purely on temporary basis. The notification dated 02.02.2018 does not over-ride the rules. The 2008 amended guidelines are only guidelines and cannot

have a binding effect. They do not have the statutory force and the State Government is empowered to fill up the gaps in the guidelines. The State notification dated 02.02.2018 was not challenged and therefore, any appointment made after 2008 cannot be regularized and the employees are not to be absorbed in view of the notification.

[14.] We have considered the submissions made by the learned counsels for both the parties and we have also perused the documents on record.

[15.] From the submissions made by the parties, we find that it is an admitted fact that the DRDA Guidelines which was made in 1999 was amended in the years 2002, 2008 and 2018. However, there was no change of the DRDA Guidelines from the year 1999 till 2018 with regards to Para 4.2 and Para 4.3 provides as under :

“4.2. As a matter of policy, the DRDA should not have any permanent staff. Taking employees on deputation to the DRDA for specific periods has the advantage of better choice staff, flexibility in staffing pattern and motivating the staff. The objective of strengthening of DRDA's is to provide them with certain professional capacity and have a flexible- pattern. To start with, DRDA's shall no longer be allowed to make any direct recruitment. In respect of the Staff that is currently borne in the DRDA, the State Rural Development Department should immediately draw up a 3-5 year plan for absorption of the staff into the line department.”

“4.3 The Project Directors, Project Officers, APOS and all technical posts are to be manned by officer with proven capability and motivation and are selected in an

objective manner by specific Selection Committees. The Project Directors should be selected by a Committee headed by the Chief Secretary/ Development Commissioner/Addl.Chief Secretary of the State and with the Secretary (RD) being the member convenor. Similarly, for officers at the level of APOs and other technical officers, there should be a selection Committee headed by Secretary (RD). For other staff, too, other than, ministerial and lower rank, the selection should be by an appropriate selection Committee. State Governments may fill up vacant sanctioned posts in Group 'A' 'B' &'C' as per their recruitment rules by hiring technically qualified and experienced personnel on contract basis. However, sanctioned posts should not exceed the suggested staffing pattern for DRDAS as prescribed in the guidelines."

[16.] It is seen that the petitioners were appointed between 30.11.2009 to 03.02.2017 by the selection committee as per the Guidelines 2008. It is not also disputed that the state respondents have not drawn up a 3-5 year plan for absorption of the staff into the line department in respect of the Staff that is currently borne in the DRDA as per para 4.2 of the Guidelines. In fact, the Ministry of Rural Development, Government of India vide communication dated 17.01.2022, informed that the State Government is required to follow guidelines of the DRDA Administration Scheme, more particularly, at paragraph 4.2 requiring the State Rural Development Department to draw up 3 to 5 Year Plan for absorption of the staff in the line department. The communication also stated that the Ministry has been repeatedly writing to the State to initiate appropriate measures in conformity with the

Guidelines of DRDA Administration Scheme.

[17.] Meanwhile, the State Government had issued the notification dated 02.02.2018 reads as follows:-

"No.C. 17011/2/2016 - RD(DRDA) : It has been observed that in spite of a clear provision under Para 4.2 of Part IV of DRDA Guidelines that DRDA shall not resort to any direct recruitment, some DRDAS are still resorting to direct recruitment in violation of the existing guidelines. This irresponsible practice has caused undue hardship and unnecessary burden on the Government which can be avoided in the first place.

It is hereby notified for information and strict compliance of all concerned authorities that direct recruitment or engagement on MR basis should not be resorted to under DRDA Administration for any category of employees henceforth.

Any violation of this Notification shall be viewed seriously by the Government and responsibility shall be fixed on the official who violates these instructions.

As for the employees under DRDA who were appointed after 2008, since their recruitment is strictly against the provision aforementioned in the said Guidelines on DRDA, no steps can be taken by Rural Development Department, Government of Mizoram for their absorption to the State Government service."

[18.] On perusal of the above notification, we find that such a notification is not in conformity with the 2008 or 2018 Guidelines on DRDA which provides that the State Rural Department is to draw a 3-5 year plan for absorption of the staff into the

line department in respect of the Staff that is currently borne in the DRDA as per para 4.2 of the Guidelines.

It is an admitted fact that the State Government continued to receive 90% of the fund towards the expenditure on the salary of employees and contingency to oversee the implementation of different anti-poverty programmes of the Ministry of Rural Development and the matching share of the State Government is only to the extent of 10%. Though the learned Government Advocate has stated that as of today, there is no funding from the Central Government, we find that the respondents were recruited between 2009 to 2017 and no such statement was made by the state respondents before the learned Single Judge in WA (C) 139 of 2021. The mentioned new recruitment Rules for various post under Group 'A' and 'B' said to be notified vide Notification No. A- 12018/33/2003-PAR(GSW) dt. 09.07.2020 is also silent on the issue regarding the instant case.

[19.] For the above reasons, we are of the considered view that the Notification dated 02.02.2018 cannot come in the way for considering the petitioners for their absorption, since they were duly recommended and appointed by due process as per the DRDA Guidelines and thus, borne in the service as per para 4.2 of the applicable guidelines. Thus, we find that the case of the instant respondents is similar to those in WP(C) No. 72/2006 and WP(C) No. 175/2021, and find that there is no reason to interfere with the judgment and order of the learned Single Judge.

[20.] WA No. 9/2022 accordingly stands dismissed and disposed of.

JUDGE

JUDGE

Comparing Assistant