

GAHC030003452021



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

Case No. : WP(C)/103/2021

Dr. Samuel Lalmuanawma and 65 Ors.
Zemabawk North, Aizawl, Mizoram

2: Lalremsiami Hrahsel

3: R.Lalmangaihi

4: K.Lalhmningsangi

5: Lalsaimawia Sail

VERSUS

State of Mizoram and 7 Ors.
R/b Chief Secretary to the Govt. of Mizoram, Aizawl

2:Commissioner/Secretary to the Govt. of Mizoram

3:Secretary to the Govt. of Mizoram

4:Secretary to the Govt. of Mizoram

5:Director
Higher and Technical Education Dept.

6:Joint Secretary cum National Mission Director (RUSA)
Ministry Of Human Resource Development

7:Project Approval Board
RUSA
r/b its Chairman cum Secretar

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mrs. Linda L Fambawl (GA, Mizoram) for R1-R5

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

09.05.2023

Heard Mr. A.R Malhotra, learned counsel for the petitioners, Mrs. Linda L Fambawl, learned Government Advocate for the respondent Nos. 1 to 5 and Ms. Zairemsangpuii, learned CGC for respondent Nos. 6 to 8.

[2.] By filing this writ petition, the petitioners have challenged their offer of appointment dated 09.10.2019 given to them and the order of appointment vide Notification dated 31.10.2019 in so far as their appointment as Assistant Professor on temporary basis under the Rashtriya Uchchatar Shiksha Abhiyan (RUSA) on a fixed monthly remuneration of Rs. 70,000/- for a period of 2 years is concerned. According to them, they were supposed to be appointed on regular basis with a monthly scale of pay as per the RUSA Scheme and as adopted and accepted by the State Government.

[3.] Mr. A R Malhotra, learned counsel for the petitioner has drawn the attention of this Court to the various documents attached to the writ petition. Referring to the meeting minutes of the Council of Ministers held on 23.09.2014 (Annexure-1), he submits that the meeting approved the implementation of National Higher Education Mission, known as Rashtriya Uchahatar Shiksha Abhiyan (RUSA) in Mizoram with an

observation that the financial implication of RUSA on the State Government be examined by the Department concerned. Thereafter, in the 11th Meeting Minutes of the Project Approval Board (PAB) of RUSA held on 06.02.2017 (Annexure-2), against the proposal submitted by the State Government, the PAB accorded approval for creation of 72 additional permanent posts under Faculty Recruitment Support in 24 Colleges for the period 2016-17 to 2019-20 @ 5.8 lakh per annum for each posts subject to (i) the State creating 72 permanent posts, in addition to the existing 740 sanctioned posts as per the UGC pay scales and (ii) the agreement to take over the entire liabilities created by the posts even after the funding period is over and that no liability will be borne by the Govt. of India beyond the funding period. Accordingly, the PAB approved a total of Rs. 12.528 crores for faculty recruitment in 24 colleges for 72 posts subject to the above conditions.

[4.] The learned counsel submits that pursuant to the above, a memorandum was prepared for consideration of the Council of Ministers for creation of 72 posts of Assistant Professor for implementation of Faculty Recruitment Support under RUSA by including the financial memorandum and approval from the Finance Department and the DP&AR. The memorandum was approved by the Council of Ministers and the same was conveyed by the Chief Secretary to the Government of Mizoram on 07.09.2018 for information to all concerned. A notification according sanction of the creation of filling up of 72 posts of Assistant Professor (Stage-1) in a pay band of Rs. 15600-39100+AGP Rs. 6000/- for implementation of Faculty Recruitment Support under RUSA was notified on 10.09.2018. The same was modified vide Notification dated 14.09.2018 by incorporating the head of account under which the expenditure will be debitable. Thereafter, the Mizoram Public Service Commission (MPSC) was informed vide Communication dated 10.09.2018 to take an early action for filling up of the 72 vacant posts of Assistant Professor by floating an open advertisement. The MPSC accordingly floated the advertisement vide Advertisement No. 25 of 2018-2019 dated 29.01.2019 for 3 posts and vide Advertisement No. 26 of 2018-2019 dated 29.01.2019

for 69 posts. The petitioners responded to the advertisement and were found to be qualified and selected for the post but to their surprise, they were each given an offer of appointment dated 09.10.2019 stating that the appointment will be purely co-terminus with the scheme under RUSA and will be liable to be discontinued unless extended. It was further stated that on account of limited resources, instead of the pay scale mentioned in the advertisement, they would be paid a fixed monthly salary of Rs. 70,000/-. That on acceptance of the scale, an agreement will have to be executed between the candidates concerned and the Government. The letter of acceptance should be submitted within a period of 10 days from the date of issuance of the offer of appointment, failing which the offer will be treated as to have been declined. The learned counsel submits that the petitioners having no choice or option accepted to offer of appointment and they were appointed vide Notification dated 31.10.2019.

[5.] Mr. A R Malhotra, learned counsel submits that it was the respondent Nos. 1 to 5 who had furnished the proposal for creation of 72 additional permanent posts to the respondent Nos. 6 & 7 which was approved by the latter in the meeting held on 06.02.2017 on the condition that the entire liabilities created by the posts after the funding period will be taken over by the respondent Nos. 1 to 5. Thereafter, the Council of Ministers in its meeting held on 07.09.2018 approved the proposal vide Notification dated 14.09.2018 and the respondent Nos. 1 to 5 accorded sanction for creation and filling up of 72 posts of Assistant Professor in the pay band of Rs. 15600-39100+AGP Rs. 6000/- for implementation of Faculty Recruitment Support under RUSA. Accordingly, the MPSC conducted selection for appointment to the 72 posts of Assistant Professor by issuing necessary advertisement and thereafter, making appropriated recommendation in favour of the petitioners. Therefore, the respondents are liable to be directed to grant the petitioners the benefit of regular appointment and in a regular pay of scale from the date of their initial appointment. The learned counsel further submits that even after the expiry of the initial 2 (two) years, the

petitioners continue to be engaged in their respective posts on a fixed salary but for the last 2 months, the petitioners have not been receiving their salary. As such, appropriate direction may be issued to the respondents. The learned counsel also submits that the petitioners had submitted a representation before the respondent authorities through the respondent No. 2 on 16.08.2021 but the same has neither been considered nor disposed of till date.

[6.] Mrs. Linda L Fambawl, learned Government Advocate, on the other hand, submits that the 72 permanent posts of Assistant Professor were created in accordance with operational guidelines of RUSA 2.0 under component 12 of the Faculty Recruitment Support as per the conditions laid down by the PAB. This, however, does not mean that the posts are to be filled up on permanent basis. Even under the State Government, several permanent posts are filled up on provisional basis including contract and muster roll basis, as per the requirements of the Department. She submits that a regular Government employee may be recruited/posted against any posts, whether temporary or permanent post. The post being a permanent post does not mean that it is mandatory to fill it up on permanent/regular basis only. The learned Government Advocate further submits that the advertisement issued by the MPSC never mentioned anything about the absorption or regular appointment in the State Government and that the petitioners knew this fact from the advertisement that the posts they applied were under RUSA unlike a regular employment under the State Government. She therefore submits that the petitioners cannot have any legitimate grievance against the respondents. She also submits that according to the instructions received by her, there is sufficient budgetary provision towards the salary payable to the petitioners up to the month of August 2023.

[7.] Ms. Zairemsangpuui, learned CGC appearing for the respondent Nos. 6, 7 & 8 submits that as proposed by the State Government, the PAB in its meeting held on

06.02.2017 under the Chairmanship of Secretary, Higher Education, Ministry of Education approved creation of 72 additional permanent posts under Faculty Recruitment Support in 23 colleges in Mizoram for the period from 2016-2017 to 2019-2020 @ Rs. 5.8 lakhs per annum for each year subject to the posts being created as per UGC pay scales and importantly, the acceptance to take over the liabilities after the funding period is over. Therefore, the State Government having made such commitment, they should honour the same. Therefore, as agreed upon, the centre has played and fulfilled its role and it is now for the State Government to fulfill theirs.

[8.] I have heard the submissions made by the learned counsels for the rival parties.

[9.] It is noticed that the petitioners have submitted a precise and concise representation requesting for their absorption as Assistant Professor, RUSA on 16.08.2021 which admittedly has not been considered and disposed of till date. The State respondents in their counter affidavit in paragraph No. 15 have stated that insofar as the jurisdiction of the Department of Higher & Technical Education is concerned, they have appropriately and promptly addressed the representation submitted by the 66 writ petitioners under the RUSA Scheme. However, the settlement of service condition under the State Government involves not only the Department of Higher & Technical Education but also the Department of Personnel & Administrative Service, which is the Nodal Department in service matters and also the Finance Department, whose concurrence on financial matters is necessary. It is further contended that the proposal for absorption of the petitioners under the RUSA Scheme is being moved in the DP&AR, Govt. of Mizoram and a final decision can be made only after inter-departmental consultations. Therefore, the writ petition pending such final decision is only pre-mature and not maintainable.

[10.] In respect of the above contention, the learned Government Advocate upon being asked, submits that in view of the pendency of the present writ petition,

the State respondents have not taken further steps. From a perusal of the materials available on record, it can be seen that the respondents are not oblivious about the grievances projected by the petitioners. The documents on record go to show that the State Government had agreed to create the posts concerned with a further commitment to bear the expenses after the funding period is over. As already noticed, the State respondents in the Department of Higher & Technical Education, DP&AR and Finance Department are considering the matter as highlighted in their affidavit-in-opposition. Moreover, the representation submitted by the petitioners admittedly have not been considered and disposed of by the respondents. Therefore, without expressing anything further, on the merit or otherwise, Court is of the considered view that the State respondents should proceed to consider the grievances of the petitioner and take a decision in the matter.

[11.] In view of above, the Writ Petition is disposed of with a direction to the State respondents to consider the grievances projected by the petitioners both in the writ petition as well as in their representation dated 16.08.2021 and to pass a speaking order as expeditiously as possible and preferably within a period of 3 months from the date of receipt of a certified copy of this order. The State respondents shall also look into the claim of the petitioners about non-payment of salary to them for the last two months. If the same has not been paid, the State respondents shall ensure payment of the same. It is further provided herein that pending consideration and disposal of the grievances projected by the petitioners, the respondents shall not vary their service conditions to their disadvantage.

JUDGE

Comparing Assistant