

GAHC030004452023



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

Case No. : WP(C)/105/2023

Smt. Lalramliani Sailo and 2 Ors.
D/o Ngurthanzuala Sailo,
R/o Bethlehem Veng, Aizawl 2: Melissa Lalremruati
D/o Vanlalruata

R/o Kulikawn
Aizawl

3: Samuel Lalremruata Zote
S/o Lalmahruaia Zote

R/o Chanmari
Aizawl

VERSUS

State of Mizoram and 2 Ors.
R/b the Chief Secretary
Aizawl, Mizoram 2: The Commissioner and Secretary
The Mizoram Legislative Assembly Secretariat
Govt. of Mizoram
Aizawl
Mizoram

3: The Additional Secretary
The Mizoram Legislative Assembly Secretariat
Govt. of Mizoram
Aizawl
Mizora

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1

ORDER
BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

27.09.2023

Heard Mr. Lalfakawma, learned counsel for the petitioners, Mrs. H. Lalmalsawmi, learned Govt. Advocate for the respondent No. 1 and Mr. Vanlalnghaka, learned counsel for the respondent Nos. 2 & 3. Having regard to the nature of controversy raised in the instant writ petition, the case is taken up for disposal at the admission stage.

[2.] The facts projected by the petitioners is that they responded to Advertisement No. 1 of 2023 dated 24.01.2023 (Annexure - 1) for the posts of Assistant, Translator and Upper Division Clerk (UDC) issued by the respondent No. 2. The said posts are to be filled up by way of direct recruitment and the recruitment is governed by the Mizoram Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1995 (Rules of 1995). As per Rule 13(7) of the Rules of 1995, 50% of the post of Assistant is to be filled up by way of promotion from amongst UDC who have rendered five (5) years service in the post and 25% by Limited Departmental Examination (LDE) from amongst the UDC who possess Bachelor's Degree of a recognized University and have rendered three (3) years in the post and for non-graduate who have rendered at least five (5) years service in

the post. The remaining 25% of the post of Assistant is to be filled up by way of direct recruitment from candidates having Bachelor's Degree of a recognized University.

[3.] Rule 13(15) of the Rules of 1995 provides that the 30% of the post of Translator is to be filled up by way of promotion through LDE from amongst graduate UDC possessing Bachelor's Degree of a recognized University with five (5) years regular service in the post and 70% by direct recruitment from candidates possessing Bachelor's Degree of a recognized University. As for the post of UDC, Rule 13(8) of the Rules of 1995 provides that 60% of the post of UDC is to be filled up by way of promotion from LDC who have rendered at least five (5) years regular service in the grade and 20% by LDE from amongst LDCs possessing Bachelor's Degree from a recognized University with a minimum length of service of three (3) years in the grade and for non-graduate who have rendered at least five (5) years for service in the grade. The remaining 20% of the post is to be filled up by way of direct recruitment from candidates possessing Bachelor's Degree from a recognized University.

[4.] Rule 15 of the Rules of 1995 provides for the Constitution of Selection/Committee. Rule 15(a) provides that the Speaker may, by order, from time to time, constitute Selection Board for the purpose of preparing select list for appointment to Group 'A' and Group 'B' Gazetted posts in the Secretariat. Rule

15(b) provides that the Speaker may, by order, from time to time, constitute Selection Committee to recommend suitable candidates for appointment and promotion to Non-Gazetted posts in the Secretariat. Rule 17 of the Rules of 1995 provides for the Syllabi for competitive examinations for filling up of vacancies and the details of Syllabi has been specified in Schedule I to the Rules.

[5.] According to the petitioners, upon responding to the Advertisement, they underwent the selection process by sitting for the written examination and thereafter appeared for the interview. After undergoing such process, they were recommended by the constituted selection committee for appointment to their respective posts. The petitioner No. 1 was appointed vide Office Order dated 26.06.2023 with effect from 01.07.2023 or from the date of joining the post, whichever is later. Thereafter, another order was issued on 27.06.2023 appointing the petitioner No. 1 by which the effective date of the appointment was given as 28.06.2023 or from the date of joining the post, whichever is later. The same was in supersession of the earlier order dated 26.06.2028.

[6.] The petitioner No. 2 similarly was initially appointed vide order dated 26.06.2023 to the post of Assistant, Mizoram Legislative Assembly and later on, the order was superseded by order dated 27.06.2023 showing the effective date as 28.06.2023 or from the date of joining the post, whichever is later. Likewise, the petitioner No. 3 was also appointed to the post of UDC, Mizoram Legislative

Assembly with effect from 01.07.2023 or from the date of joining the post, whichever is later vide office order dated 26.06.2023, which was superseded by office order dated 27.06.2023 providing that the effective date would be 28.06.2023 or from the date of joining the post, whichever was later.

[7.] According to the petitioners, they submitted their joining report and joined their respective posts but however as per the impugned office order dated 08.07.2023, passed separately for each of the petitioners, their appointment orders have been cancelled with immediate effect by the respondent No. 2. Aggrieved, they are before this Court.

[8.] Mr. Lalfakawma, learned counsel for the petitioners submits that the petitioners responded to the Advertisement and went through the process of selection as per the Rules of 1995 and they were duly considered and recommended by the constituted Selection Committee. However, without any reason and without giving any opportunity to the petitioners, their appointment orders were abruptly cancelled by the impugned orders dated 08.07.2023. The learned counsel for the petitioners submits that there is gross violation of the principles of natural justice and that the impugned order merely states that as per the instructions of the higher authorities, their appointment orders have been cancelled. He submits that no departmental proceeding has been contemplated or any third party claim has been made against the posts to which the petitioners

were appointed and therefore, the impugned orders cancelling the appointments of the petitioners cannot be sustained in law and the same should be set aside.

[9.] Mrs. H. Lalmalsawmi, learned Govt. Advocate appearing for the respondent No. 1 submits that since the matter relates to the Mizoram Legislative Assembly, the respondent No. 1 is basically a proforma respondent and has nothing much to say in the matter.

[10.] Mr. Vanlalnghaka, learned counsel for the respondent Nos. 2 & 3 referring to the counter affidavit of respondent Nos. 2 & 3 filed on 13.09.2023 submits that the petitioners were recruited as per the Rules of 1995 and it was due to paucity of man power/staffs, recruitment to the posts concerned were made. However, their appointment orders had to be cancelled due to objections raised by certain pressure groups and sections of the society claiming nepotism in the appointment of the petitioners. He submits that the respondents otherwise strongly deny that nepotism was involved in the process of the selection and appointment of the petitioners.

[11.] I have considered the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. From the documents annexed by the petitioners in the writ petition, it is seen that there was an Advertisement floated by the respondent authorities concerned and the same

was followed by a selection process in terms of the Rules of 1995. The duly constituted Selection Committee thereafter recommended the petitioners for appointment to their respective posts and subsequently, they were appointed as such. However, vide the impugned orders dated 08.07.2023, the appointment orders of the petitioners were cancelled with immediate effect. The only reason given in the cancellation order is that it was as per the instructions from the higher authorities. It is seen that the cancellation order is not preceded by any show cause notice as well. Further, it is also not a case that candidates who had participated but failed to secure appointment had made the complaint about the alleged nepotism or irregularity in the selection process. Therefore, the impugned cancellation orders in the considered view of this Court cannot be sustained and accordingly, they are set aside.

[12.] Writ Petition accordingly stands disposed of. No cost.

JUDGE

Comparing Assistant