

GAHC030004462023



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

Case No. : WP(C)/106/2023

Sh. Lalmuankima Sailo and 7 Ors.
S/o Saihlira Sailo,
R/o Serchhip Venglai,
Serchhip District, Mizoram 2: Christina Lalhmunmawii
D/o Lallura Sailo

R/o Republic Hmar Veng
Aizawl

3: Vanlalruati Sailo
S/o Lalrinliana Sailo

R/o Tuikhuahtlang
Aizawl

4: Lalhmangaihzuai Khawlhling
D/o K. Lalnghakliana

R/o Upper Republic
Aizawl

5: H. Rebecca V.L. Ruatsangi
D/o H.K. Zaliana (L)

R/o Sihhmui
Sairang
Aizawl

6: Nicky Lalchhuanmawia
S/o H.F. Lalrinpuia

R/o Republic Vengthlang

Aizawl

7: Zothankimi
D/o Lalhminga

R/o Mission Veng
Aizawl

8: K. Lalhruaitluanga
S/o K. Laldinthara

R/o Tuikual South
Aizaw

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 post of Lower Division Clerk (LDC) issued by the respondent No. 2. The said post is 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(9) of the Rules of 1995, 90% of the post of LDC is to be filled up by way of direct recruitment from candidates who have passed Higher Secondary School Leaving Certificate Examination (HSSLC) or its equivalent from recognized Board/University and having a minimum speed of 30 words per minute in typing. The remaining 10% is to be filled up from amongst Group 'D' staff of the Secretariat who have rendered at least five (5) years service in the grade and have passed HSSLC Examination or its equivalent from any recognized Board/Institute with a minimum speed of 30 words per minute in typing.

[3.] 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.

[4.] 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 petitioners were then appointed vide Office Order dated 27.06.2023 with effect from 28.06.2023 or from the date of joining the post, whichever is later.

[5.] According to the petitioners, they submitted their joining report on 28.06.2023 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 order has been cancelled with immediate effect by the respondent No. 2. Aggrieved, they are before this Court.

[6.] 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.

[7.] 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.

[8.] 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 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.

[9.] 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.

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

JUDGE

Comparing Assistant