

GAHC030004622022



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

Case No. : WP(C)/112/2022

Zohmingthangi and 5 Ors.
Inspector (M),
Aizawl DEF,
C/o SP Office, Aizawl. 2: Chawngghmingliani

3: N.T. Hlondo

4: R. Laldinliani

5: Lalremlian

VERSUS

The State of Mizoram and 4 Ors.
r/b Chief Secy. to the GOM,
Aizawl. 2: The Secretary
Home Department
GOM

3: The Secretary
DP and AR
GOM

4: The Director General of Police
GOM
PHQ

5: The Mizoram Service Public Service Commission r/b the Chairma

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mrs. H Lalmalsawmi, (Addl.AG/GA Mizoram) for R1-R4

::: B E F O R E :::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing & Judgment : 28.07.2023

JUDGMENT & ORDER (ORAL)

Heard A.R. Malhotra, learned counsel for the petitioners, Mrs. Linda L. Fambawl, learned Govt. Advocate for the respondent Nos. 1 to 4 and Mr. J.C. Lalnunsanga, learned Standing Counsel for Mizoram Public Service Commission (MPSC) for the respondent No. 5.

[2.] Brief facts of the case essential for disposal of the instant Writ Petition is that the six (6) petitioners are currently working as Inspector of Police (Ministerial) on being promoted on the same date i.e., 19.02.2016. As per the Mizoram Home (Police) Department (Group 'A' Post) Recruitment Rules, 2013 (Rules of 2013) which came into force with effect from 09.05.2014 i.e., the date of its publication in the Mizoram Gazette, there are in all six (6) sanctioned posts of Deputy Superintendent of Police (Ministerial) [DySP(M)]. The method of recruitment provided in Column 11 of the Schedule appended to the Rules of

2013 is 2/3 by promotion and 1/3 by Limited Departmental Examination (LDE). As per Column 12 in both cases, Inspector of Police (Ministerial) (Group 'B' Post), who have completed five (5) years of service in the grade are eligible to be considered or participate for promotion under the two (2) methods.

[3.] The State respondents in the Police Department vide Communication dated 12.11.2021 in view of the four (4) anticipated vacancies in the post of DySP(M) wrote to the State Government in the Home Department seeking approval for filling up the four (4) posts i.e., by way of LDE and two (2) posts by way of promotion. The proposal was approved by the State Government in the Home Department after obtaining the concurrence and approval of the Finance Department and Personnel & Administrative Reforms (DP&AR) (ARW) respectively. Thereafter, the same was conveyed to the MPSC vide letter dated 28.01.2022. As per the said Communication, two (2) posts were sought to be filled up by way of LDE. The petitioners aggrieved with the proposal for filling up two (2) posts of DSPM by way of LDE filed their representations through proper channel. In view of the representations, the scheduled date for conducting LDE was postponed. Subsequently, the representations of the petitioners came to be rejected by the DP&AR (ARW) and accordingly communicated to the Director General of Police. Consequently, the respondents have gone ahead with the process to fill up the two (2) posts of DySP(M) by way of LDE through the

MPSC. Aggrieved with the same, the petitioners are before this Court.

[4.] This Court vide Order dated 14.11.2022 allowed the MPSC to conduct the examination for filling up the two (2) posts of DySP(M) by way of LDE but directed that the results of the examination should not be declared without the leave of this Court. The interim order continues as on date.

[5.] Mr. A.R. Malhotra, learned counsel for the petitioners submits that the Rules of 2013 clearly provides the percentage of post to be filled up i.e., 2/3 by way of promotion and 1/3 by way of LDE and that presently, out of the six (6) sanction posts, two (2) posts have been filled up by way of LDE by promoting one Smt. Rotluangpuii Pachuau and Sh. C. Lalthlamuana as DySP(M) vide Notification dated 19.02.2021. Therefore, the four (4) posts remaining in terms of the Rules of 2013 are to be only filled up by way of promotion as per seniority. The learned counsel submits that the State respondents have taken the stand that vacancy based roster is to be maintained as per the Office Memorandum dated 09.08.2021 and therefore, as per the roster prepared, out of the four (4) vacancies, two (2) vacancies are to be filled up by LDE. He however submits that the Office Memorandum cannot overwrite the recruitment rules which have been framed under Article 309 of the Constitution of India and therefore, Court should interfere with the impugned actions of the State

respondents in attempting to fill up the post of DySP(M) in excess of what has otherwise been provided by the Rules of 2013. In support of his submission, the learned counsel has relied upon the following authorities:-

(1) Ajay Kumar Das -Vs- State of Orissa & Ors. (2011) 11 SCC 136.

(2) Pune Municipal Corporation & Anr. -Vs- Harkchand Misirimal Solanki & Ors. (2014) 3 SCC 183.

[6.] Mrs. Linda L. Fambawl, learned Govt. Advocate on the other hand submits that the Office Memorandum dated 09.08.2021 provides for vacancy based roster to be maintained for filling up of vacancies in case of different methods of recruitment as prescribed by the Service Rules or Recruitment Rules. Therefore, keeping in view the requirement prescribed by the Office Memorandum dated 09.08.2021, the Department concerned prepared vacancy based roster and according to the said roster, out of the four (4) anticipated vacancies, two (2) vacancies are to be filled up by LDE. She further submits that prior to the Office Memorandum dated 09.08.2021, Office Memorandum dated 07.01.2020 was holding the field wherein, the requirement of having a vacancy based roster was clearly stipulated. It is in terms of the said Office Memorandum that the vacancy based roster has been applied with effect from 07.01.2020. She further submits that the issue regarding the application of the Office Memorandum dated

07.01.2020 also cropped up in WP(C) No. 50/2021 (Sh. Vanlalrema -Vs- State of Mizoram & 3 Ors.) but this Court vide Order dated 29.03.2022 in the given facts and circumstances of the case held that the Office Memorandum dated 07.01.2020 would not apply to the case of the petitioner in that case. The order has been challenged by the State Government in Writ Appeal No. 17/2022, which is yet to be decided. Therefore, the outcome of the Writ Appeal may be awaited since there is similarity in the issue involved.

[7.] Mr. J.C. Lalnunsanga, learned Standing Counsel for the respondent No. 5 submits that the respondent No. 5 has nothing much to say in the matter since they are only concerned with the conduct of the selection as requisitioned by the State Government.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The question which arises for consideration as may be noticed is as to whether out of the four (4) anticipated vacancies in the post of DySP(M), two (2) posts can be filled up by way of LDE in terms of the roster maintained by the Department concerned. Facts not disputed is that there are six (6) sanction post of DySP(M) as per the Rules of 2013 and out of which, two (2) posts of DySP(M) has been filled up vide Notification dated 19.02.2021 through LDE. Therefore, out of the six (6)

sanctioned posts, what remains are four (4) posts of DySP(M). As per column 11 of the Schedule appended to the Rules of 2013, the percentage of post to be filled up by the two (2) methods has been determined as 2/3 by way of promotion and 1/3 by way of LDE. There is also no dispute regarding framing of the Rules of 2013 by the State authority in exercise of the powers conferred by Article 309 of the Constitution of India. Therefore, the administrative instructions or guidelines issued by the State Government in the form of Office Memorandums cannot overwrite the provisions of the Recruitment Rules. The same is a settled position as can be seen from the case of *Ajay Kumar Das* (supra) as relied upon by the learned counsel for the petitioners. Further, in *Pune Municipal Corporation & Anr.* (supra), the Apex Court also had referred to the well settled principle propounded from the classic statement of Lord Roche in *Nazir Ahmad -Vs- King Emperor, (1935-36) 63 IA 372*, which is to the effect that when power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Therefore, the actions of the State respondents impugned by the petitioners is found to be contrary to the requirements provided by the Rules of 2013 framed in exercise of the powers conferred by the proviso to 309 of the Constitution of India. The submission made by the learned Govt. Advocate regarding the issue raised in earlier round of litigation before this Court in WP(C) No. 50/2021 has also been considered.

By the Order dated 29.03.2021, this Court while disposing of the case found the Office Memorandum dated 07.01.2020 not to be applicable to the petitioner of that case. The Office Memorandum dated 07.01.2020 as may be noticed has already been superseded by the Office Memorandum dated 09.08.2021 and therefore, this Court finds that there is no impediment in considering the present case independent of what has been decided in the earlier round of litigation by a separate Writ Petitioner.

[9.] Thus, upon due consideration of the case in its entirety, this Court finds the process of filling up of the two (2) posts of DSPM by way of LDE to be not sustainable and accordingly, the impugned decision conveyed vide ID No. ARW/PAD-19B/2021-2022/B-192 dated 20.12.2021 and ID No. ARW/HMP-19B/2022-2023/B-268 dated 16.09.2022 approving the filling up the two (2) posts of DSPM by way of LDE is hereby interfered with and as for the Office Memorandum dated 09.08.2021, the same is held to be inapplicable to the facts and circumstances of the present case. In the result, the interim order dated 14.11.2022 directing the MPSC not to declare the results is made absolute.

[10.] The Writ petition is accordingly disposed of. No cost.

JUDGE