

GAHC030003392019



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

Case No. : WP(C)/89/2019

Higher Secondary School Lecturers Association of Mizoram
(HISSLAM) R/b Its President
Aizawl, Mizoram

VERSUS

State of Mizoram and 5 Ors.
Aizawl, Mizoram

2:The Secretary to the Govt of Mizoram
School Education Department

3:The Secretary to the Govt. of Mizoram
DP and AR (ARW)

4:The Secretary to the Govt. of Mizoram
Finance Department

5:The Mizoram Public Service Commission R/b Its Chairman

6:Lalnghilhlova Chinzah
Principal
Govt. C.Zakhuma Higher Secondary Schoo

Advocate for the Petitioner : Mr. Anil Rinliana Malhotra

Advocate for the Respondent : Mr C Zoramchhana (Addl. AG, Mizoram) for R1-R4

Linked Case : WP(C)/131/2021

Sh. C. Lalhliapa and 2 Ors.
Lecturer
Govt. Mizo Higher Secondary School
Aizawl
Mizoram

VERSUS

State of Mizoram and 5 Ors
R/b Chief Secretary Govt. of Mizoram

Advocate for the Petitioner : Mr A.R. Malhotra
Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA
Mizoram) for R1-R4

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 13.03.2023
Date of Judgment : 17.03.2023

J U D G M E N T & O R D E R (CAV)

Heard Mr. A.R Malhotra, learned counsel for the petitioners, Ms. Mary L Khiangte, learned Government Advocate for the State respondents and Mr. B. Lalramenga, learned counsel appearing for the respondent No. 6 in WP(C) No. 131/2021. The learned counsel for the MPSC Mr. J.C Lalnunsanga who also appears for the respondent No. 6 in WP(C) No. 89/2019 is not present today. He had earlier submitted that the respondent

MPSC will not be filing affidavit-in-opposition in WP(C) No. 131/2021. The MPSC and the respondent no. 6 has however filed their affidavit-in-opposition in WP(C) No. 89/2019.

[2.] WP(C) No. 89/2019 is filed by the Higher Secondary School Lecturers Association of Mizoram (HISSLAM) represented by its President, while WP(C) No. 131/2021 is filed by 3 (three) petitioners in their individual capacity. Since the issue raised in both the writ petitions are similar and identical, this Court proposes to dispose of both the writ petitions by this common judgment & order. For the purpose of convenience and brevity the facts set out in WP(C) No. 131/2021 will be referred to.

[3.] It is the case of the petitioners that they have all reached the stage of Selection Grade Lecturers as on 25.06.2012 and as per the relevant seniority list, which was published on 18.03.2013, they are the senior-most Lecturers in the Selection Grade and their names appear at Serial Nos. 5, 8 & 9 respectively. Those Lecturers whose names appear above them have either expired or have already been promoted to the post of Principal. The petitioners contend that in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Mizoram has framed the Mizoram School Education Department (Group 'A' Posts) Recruitment Rules, 2017 (Rules of 2017). As per the Rules of 2017, there are 18 sanctioned posts of Principal, Govt. Higher Secondary School and the method of recruitment as provided in Column No. 11 of Annexure-1 appended to the Rules of 2017 provides that 50% of the posts shall be filled up by promotion and the remaining 50% by Limited Departmental Examination (LDE). Column No. 12 of the same annexure further provides that promotion to the post of Principal, Govt. Higher Secondary School can

be made from Lecturer, Govt. Higher Secondary School working on regular basis and who is in the Selection Grade having Bachelor of Education Degree (B.Ed) failing which, from Lecturer, Govt. Higher Secondary School who is in Senior Grade having B.Ed with 5 years of regular service in the grade. Recruitment, through LDE can be made from Lecturer, Govt. Higher Secondary School who have served on regular basis in Selection Grade having B.Ed or from Lecturer, Govt. Higher Secondary School in the Senior Grade, who have B.Ed Degree with 5 years of regular service in the grade. According to the petitioners, these are the only two methods for recruitment to the post of Principal of Govt. Higher Secondary School but however, the State respondents have filled up the post of Principal, Govt. C. Zakhuma Higher Secondary School, Kolasib by way of absorption by absorbing the respondent No. 6 to the said post. The absorption of the respondent No. 6 in such a manner and that too, without considering the case of other eligible Senior Grade or Selection Grade Lecturers, such as the petitioners being wholly arbitrary and illegal, the petitioners have approached this Court through the instant writ petitions.

[4.] Mr. A R Malhotra, learned counsel for the petitioners submits that the Rules of 2017 nowhere provides that the post of Govt. Higher Secondary School Principal can be filled up by way of absorption. He submits that the respondent authorities concerned have not even relaxed the relevant provisions of the Recruitment Rules for absorbing the private respondent No. 6 to the post. By referring to the Notification dated 10.07.2018 (Annexure-5), the learned counsel submits that pursuant to the approval given by the Council of Ministers in their meeting held on 4th & 12th of June, 2018, C. Zakhuma Higher Secondary School, Kolasib was taken over by the Govt. of Mizoram with immediate effect. It was however

provided that post creation, absorption of existing staff, etc, involving financial implications will be done later on and subject to the approval of the DP&AR (ARW) and the Finance Department. He submits that in respect of the creation of the posts concerned i.e., 16 posts in all including one post of Principal was approved by the DP&AR (ARW) and similarly, the approval of the Finance Department was also obtained. The same has clearly been reflected in the Notification dated 27.09.2018 (Annexure-6). However, the learned counsel submits that no approval from the two Departments have been sought and obtained for absorption of the incumbents of the school against posts which are suitable, particularly the post of Principal of the Higher Secondary School concerned. Since there is no approval for absorption of the services of the private respondent No. 6 to the post of Principal of the Higher School concerned, it appears that the School Education Department itself has contradicted itself through the Notification dated 10.07.2018, which provides that post creation and absorption of the existing staff involving financial implication will be done subject to the approval of the DP&AR and the Finance Department. Therefore, the absorption of the private respondent No. 6, vide Notification dated 29.05.2019 being not sustainable should be set aside.

[5.] The learned counsel also submits that the Mizoram Middle School and High Schools (Provincialization) Rules, 1994 (Provincialization Rules of 1994) also provides that the existing incumbents of the provincialised schools shall be absorbed into Government service in suitable ranks or grades with effect from the date of provincialization, subject to suitability or appointment in Government service in consonance with the corresponding and relevant Recruitment Rules framed by the Department concerned. The Recruitment Rules concerned in the present case is the Rules of 2017, which otherwise does not provide recruitment to the post of

Principal, Higher Secondary School by way of absorption. Therefore, the absorption of the private respondent No. 6 being contrary to the Recruitment Rules, his absorption is liable to be interfered with by this Court.

[6.] The learned counsel has also relied upon the Judgment & Order dated 10.07.2018 passed by a Co-ordinate Bench of this Court in *WP(C) No. 29/2016 (Dr. Lalruatpuii Hlawnmual vs. State of Mizoram & Ors.)* and he contends that the absorption of the private respondent in that writ petition was interfered with by this Court on the ground that the relevant Recruitment Rules was relaxed only to accommodate the private respondents. The learned counsel however submits that the decision of this Court has been put to challenge by the private respondents therein by filing a writ appeal in the Principal Seat of this Court and the writ appeal is yet to be decided.

[7.] Ms. Mary L Khiangte, learned counsel appearing for the private respondents, on the other hand, submits that their Rules of 2017 provides for 18 posts of Principal, Govt. Higher Secondary School and that the 1 (one) post of Principal created by the State respondents was pursuant to the provincialization of C. Zakhuma Higher Secondary School as a Govt. Higher Secondary School. Therefore, none of the rights of the petitioners including those claimed under Articles 14 & 16 of the Constitution of India has been affected. In other words, the petitioners are not debarred from being considered for promotion against the 18 posts of Principal, Higher Secondary School sanctioned by the Rules of 2017. She submits that insofar as the provincialization of C. Zakhuma Higher Secondary School is concerned, the respondent authorities have followed all the codal formalities in creation of the post and also absorption of the private

respondent No. 6. She submits that the State Government has taken a policy decision to adopt the Provincialization Rules of 1994 so as to provincialize the services of the incumbents working in C. Zakhuma Higher Secondary School. The petitioners have not challenged the provincialization of the school nor have they challenged the provincialization of the other incumbents except the post of Principal which is filled up by absorbing the services of the private respondent No. 6. He submits that it is therefore clear that the petitioners have chosen to single out the private respondent No. 6 on account of their personal interest only. As such, the action of the State respondents in provincializing the school and in absorbing the services of the incumbents including the private respondent No. 6 should not be interfered with. She further submits that as per Rule 6 of the Provincialization Rules of 1994, it has clearly been provided that on provincialization of the school concerned, all the existing incumbents of the provincialized schools shall be absorbed in Government service in suitable ranks and grades with effect from the date of provincialization. She therefore submits that from the said provision, it is only mandatory that the services of all incumbents of the provincialized school is required to be absorbed into Government service from the date of provincialization.

[8.] Mr. B Lalramenga, learned counsel for the private respondent No. 6, while adopting the arguments advanced by the learned Government Advocate, has drawn the attention of this Court, the counter affidavit filed by the State respondent Nos. 1 to 4 on 05.06.2022, more particularly at page Nos. 39, 40 & 41. The learned counsel submits that in the approval given by the DP&AR (ARW), it has been clearly provided that creation of 16 teaching and non-teaching posts was for establishment of the Govt. Higher Secondary School at Kolasib by provincializing C. Zakhuma Higher Secondary School. The proposal submitted by the Commissioner &

Secretary, School Education Department also clearly reveals that the creation of posts was for accommodating the existing Principal and staff of C. Zakhuma Higher Secondary School, Kolasib. It is therefore clear that the purpose of provincialization was for absorbing the services of the teachers and staff of the said Higher Secondary School including the services of the private respondent No. 6. Similarly, the concurrence given by the Finance Department at page 41 of the counter affidavit clearly provides that the proposal was for provincializing C. Zakhuma Higher Secondary School, Kolasib. Under the circumstance, the State respondents have clearly followed the required formalities for provincialization of the School and for absorption of the teachers and staff of the said School. Insofar as the relaxation of the Rules of 2017 is concerned, the learned counsel submits that the State Government has taken a policy decision to adopt the Provincialization Rules of 1994 to provincialize the school concerned and to absorb the services of the teaching and non-teaching staff of the School and therefore, there is no further requirement for relaxing the Rules of 2017.

[9.] The learned counsel for respondent No. 6 also submits that provincialization and absorption comes under one single package under the Provincialization Rules of 1994. In other words, once the School is provincialized, the absorption of the teaching and non-teaching staff is what follows from such provincialization. Therefore, the Government policy decision being in tune with the Constitutional mandate, the interference of this Court to such a policy decision is not warranted. Accordingly, the writ petition should be dismissed. In support of his submission, the learned counsel has relied upon the following authorities:-

(i) *Federation of Railways Officers Association & Ors. Vs.*

Union of India, (2003) 4 SCC 289.

(ii) Directorate of Film Festivals 7 Anr. vs. (2007) 4 SCC 737.

(iii) Parisons Agrotech (P) Ltd. & Anr. vs. Union of India, (2015) 9 SCC 657.

[10.] Mr. B Lalramenga, learned counsel for the private respondent No. 6 also submits that the educational pattern of 10+2 was introduced in the year 1996 and the same is similar with the pattern of High Schools. Therefore, the application of the Provincialization Rules of 1994 in the present case is justified.

[11.] In reply to the submissions made by the learned counsel for the private respondent No. 6 and the Government Advocate Mr. A R Malhotra, learned counsel submits that provincialization and absorption are two different things and it is only after provincialization that question of absorption will arise and therefore, the submission made by Mr. B Lalramenga that provincialization and absorption are one and the same thing is not correct. He submits that the petitioners indeed have not challenged the provincialization also but they are aggrieved with the absorption of the respondent No. 6 without there being any consideration for other qualified persons, such as the petitioners for the post in question. He submits that one post created in the post of the Principal, Higher Secondary School will only be a part of the already sanctioned 18 posts of Principal, Govt. Higher Secondary School. In other words, there are now 19 sanctioned posts of Principal, Govt. Higher Secondary School and that all eligible candidates should have been considered before absorbing the services of the respondent No. 6 to the post of Principal of the C. Zakhuma Higher Secondary School, Kolasib. The policy decision taken by the State

Government to provincialize the School concerned is not challenged by the petitioners but the decision to absorb the private respondent No. 6 as Principal of the School to the exclusion of the other eligible candidates is being challenged by the petitioners.

[12.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[13.] WP(C) No. 89/2019 is filed by the Service Association, HISSLAM and there is no dispute to the fact that the same is not a registered association. A Division Bench of this Court in *Rangapara Development Circle vs. State of Assam & Ors., 2007 (3) GLR 805* held that an unregistered association is not a juristic person and that a writ petition filed by an unregistered association is therefore not maintainable. In coming to such a conclusion, reliance was placed on the earlier decision of this Court in *Narsingharh Mini Bus Owner's Syndicate vs. State of Tripura, 1998 (4) GLT 162*, *All Manipur DIC Supervisors Association vs. State of Manipur, 2000 (1) GLT 374* and *State of Manipur & Ors. vs. State Land Use Board Casual Employees' Association & Anr., 2007 (1) GLT 409 (DB)*. Therefore, the writ petition filed by HISSLAM i.e., WP(C) No. 89/2019 is found to be not maintainable and the same is dismissed.

[14.] Let us now proceed to examine the case of the petitioners in WP(C) No. 131/2021 as projected by them. As may be noticed, the Rules of 2017 provides that the post of Principal, Govt. Higher Secondary School has to be filled up 50% by way of promotion, amongst those who are eligible as per Column No. 12 of Annexure-1 to the Rules of 2017 and the remaining 50% by way of LDE, amongst those having the requisite qualification as per the same column. The Council of Ministers in their meeting held on 4th &

12th of June, 2018 approved the establishment of Govt. Higher Secondary School in Kolasib District and in terms of the approval, C. Zakhuma Higher Secondary School, Kolasib was taken over by the Government vide Notification dated 10.07.2018 with immediate effect. In other words, the School was provincialized as a Govt. Higher Secondary School w.e.f. 10.07.2018. The notification further provided that post creation, absorption of existing staff, etc., involving financial implication will be done later, subject to the approval of the DP&AR (ARW) and the Finance Department. Vide Notification dated 27.09.2018, after obtaining the approval of the DP&AR (ARW) and the Finance Department, 16 posts, both teaching and non-teaching posts including one post of Principal was created for the provincialized Higher Secondary School concerned and thereafter, on the recommendation of the MPSC, the services of the respondent No. 6 along with 11 Lecturers and one Upper Division Clerk (UDC) were absorbed against the respective posts indicated vide Notification dated 29.05.2019. According to the respondent authorities concerned, absorption was done in terms of the Provincialized Rules of 1994. Rule 6 of Provincialization Rules of 1994 provides for absorption of teaching and non-teaching staff of provincialized schools, the same is abstracted hereunder for ready perusal:-

“6. ABSORPTION OF TEACHING AND NON-TEACHING STAFF OF PROVINCIALISED SCHOOLS:

All existing incumbents of the provincialised school in which they were serving on the effective date shall be absorbed in Government service in suitable ranks or grades with effect from the said date, subject to suitability for appointment in Government service in consonance with the corresponding and relevant Recruitment Rules framed by the Department concerned and in force on the effective date, as may be determined by the competent Departmental Promotion Committees constituted for various categories of Government employees by the Government of Mizoram, and subject to the availability of sanctioned posts for such provincialised

schools.

Provided that 50 percent of the post of Headmaster shall be filled in by absorption of existing incumbents of the post of Headmaster of the provincialised schools, and remaining 50 percent of the post of Headmaster shall be filled in by promotion of the eligible teachers of the Govt. High/Middle Schools as the case may be in accordance with the Recruitment Rules in force on the effective date.

Provided further that the existing headmasters of the provincialised schools shall not be eligible to the so absorbed unless they have already put in at least 5 (five) years teaching experience in any recognized school or schools.

Provided also that the teaching and non-teaching staff of the provincialised Schools so absorbed shall not be subjected to the upper age limit prescribed in the relevant Recruitment Rules."

[15.] From the above abstract, it may be seen that all existing incumbents of the provincialized schools in which they were serving on the effective date are to be absorbed in Government service in suitable ranks or grades with effect from the date of the notification, subject to suitability for appointment in Government service in consonance with the corresponding and relevant Recruitment Rules framed by the Department. It further provides that 50% of the post of the Headmaster shall be filled up by absorption of existing incumbents of the provincialized school and the remaining 50% by promotion from eligible teachers of Government High/Middle Schools as the case may be in accordance with the Recruitment Rules. It is further provided that the existing Headmasters of provincialized Schools shall not be eligible to be absorbed unless they have put in at least 5 years teaching experience in any recognized school or schools. Applying Rule 6 to the present case, it may be seen that there is no question of filling up 50% of the post of Headmaster by absorption and remaining 50% by promotion in view of the fact that only one post was

created vide Notification dated 27.09.2018. However, the fact remains that the post of Headmaster can be filled up by absorption, amongst the existing incumbents in the post of Headmaster subject to suitability for appointment in Government service in consonance with the corresponding and relevant Recruitment Rules. No doubt, the Rules of 2017 does not provide absorption as one of the method for recruitment to the post of Principal, Govt. Higher Secondary School but the Provincialization Rules of 1994 at Rule 6 provides that all existing incumbents of the provincialized school in which they were serving on the effective date shall be absorbed in Government service in suitable ranks or grades with effect from the date, subject to suitability for appointment in Government service in consonance with the corresponding and relevant Recruitment Rules. Prior to absorption of the private respondent 6 as Principal of the school concerned, the matter was referred to the MPSC, who upon examination, recommended the absorption of the respondent No. 6 as Principal of the school along with other 11 Lecturers and one UDC vide its meeting minutes dated 16.04.2019. The meeting minutes provides that the MPSC carefully assessed the suitability of the candidate referred to it for absorption into Government service, on the basis of their service, particulars, academic records and their performance in the interview and it was only on the basis of such assessment that the candidates were recommended for absorption.

[16.] Although, the learned counsel for the petitioner has submitted that for the purpose of absorption of the services of the respondent No. 6, the approval of the DP&AR (ARW) and the Finance Department has not been taken as was stated in Notification dated 10.07.2018 but on a perusal of the notification, it is seen that the requirement of having the approval of the two Departments was mentioned in view of the involvement of financial implication. A perusal of the Notification dated 27.09.2018 (Annexure-6)

goes to show that the approval for creation of the 16 posts including the post of Principal was approved by the DP&AR (ARW) as well as the Finance Department. The approval has been annexed by the respondent Nos. 1 to 4 in their counter affidavit as Annexure –VIII & IX respectively. It has been indicated in the approval that 16 teaching and non-teaching posts for establishment of Govt. Higher Secondary School at Kolasib by way of provincializing C. Zakhuma Higher Secondary School, Kolasib was approved. Therefore, the posts were created for a specific purpose i.e. for provincializing the teaching and non-teaching staff of C. Zakhuma Higher Secondary School. As stated earlier Rule 6 of the Provincialization Rules of 1994 provides that all the existing incumbents of a provincialized school shall be absorbed into Government service subject to suitability in consonance with the corresponding relevant Recruitment Rules. Therefore, in order to effect provincialization of a school and absorption of the teaching and non-teaching staff of the provincialized school, the provisions of the Rules of 2017 and the Provincialization Rules of 1994 has to be harmoniously read. In absorbing the services of the respondent No. 6 as Principal of the School, after due assessment made by the MPSC, the State respondents cannot be said to have deprived the petitioners a chance for being considered for promotion to the post, inasmuch as, the 18 posts sanctioned in terms of the Rules of 2017 is not encroached upon and that one post of Principal, Govt. Higher Secondary School was created specifically for Govt. C. Zakhuma Higher Secondary School as per the approval of the Council of Ministers in the meeting held on 4th & 12th of June, 2018 and notified vide Notification dated 27.09.2018. Therefore, upon due consideration, the petitioners under the facts and circumstances of the case, cannot be said to have a legitimate grievance. Moreover, the petitioners have not challenged the Notification dated 27.09.2018 by which,

it was specifically provided that 16 posts were created for Government C. Zakhuma Higher Secondary School. The said notification is also the offshoot of the proposal approved by the DP&AR (AEW) and the Finance Department wherein, it has also clearly been mentioned that the approval is on account of provincialization of C. Zakhuma Higher Secondary School, Kolasib. Once such approval is given, the relevant provisions of the Provincialization Rules of 1994, more particularly Rule 6 & 7 comes into play.

[17.] In view of above, I do not find any ground to interfere with the decision taken by the State respondents. Having come to such a finding, a reference to the authorities relied upon by the learned counsel for the respondent No. 6 is found to be not necessary. Likewise, the facts involved in WP(C) No. 29/2016 as relied upon by the learned counsel for the petitioner being not similar, the same is found to be not applicable to the present case. In the result, WP(C) No. 131/2021 is also accordingly dismissed. No cost.

JUDGE

Comparing Assistant