

GAHC030000032024



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

Case No. : WA/1/2024

Lalrinpari and 3 Ors.

LDC, Chief Engineer Office, Irrigation and Water Resources Department, Govt. of Mizoram, NINECO, Aizawl 2: Lalrinsangi

3: Lalbiakremi

4: Roseparmawi

VERSUS

State of Mizoram and 5 Ors.

Represented by the Chief Secretary to the Govt. of Mizoram, Aizawl 2:Secretary

3:Secretary

4:Chief Engineer

5:Executive Engineer

6:Smt P.Lalrotluangi @ Lalrotluang

Advocate for the Appellants : Mr. Victor L. Ralte, Advocate

Advocate for the Respondents : Mr. A. R. Malhotra, Advocate
Mrs. H. Lalmalsawmi, Advocate

Linked Case : WA/5/2024

State of Mizoram and 3 Ors.
R/by the Chief Secretary to the govt. of Mizoram
Aizawl
Mizoram

2: The Secretary
Irrigation and Water Resources Department

3: The Chief Engineer
Irrigation and Water Resources Department

4: The Executive Engineer

Lunglei Division
Irrigation and Water Resources Department
VERSUS

Smt P.Lalrotluangi @ Lalrotluangi and 4 Ors.
LDC
(MR) Lunglei Division
Irrigation and Water Resources Department
Govt. of Mizoram

2:Smt Lalrinpari
LDC
Chief Engineer Office
Irrigation and Water Resources Department
Govt. of Mizoram
MINECO
Aizawl

3:Smt Lalrinsangi
LDC
Aizawl Sub-Division
Irrigation and Water Resources Department
Govt. of Mizoram

4:Smt Lalbiakremi
LDC
Champhai Sub-Division
Irrigation and Water Resources Department
Govt. of Mizoram

5:Smt Roseparmawii

LDC
Champhai Division
Irrigation and Water Resources Department
Govt. of Mizoram

Advocate for the Appellants : Mrs. H. Lalmalsawmi, Advocate

Advocate for the Respondents : Mr. Victor L. Ralte, Advocate
Ms. Linda L. Fambawl,
Addl. AG, Mizoram

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of Hearing : 25.10.2024

Date of Judgment : 25.10.2024

JUDGMENT AND ORDER (ORAL)

(D. Baruah, J.)

Heard Mr. Victor L. Ralte, the learned counsel appearing on behalf of the Appellants in WA No.1/2024 and Mrs. H. Lalmalsawmi, the learned counsel appearing on behalf of the Appellants in WA No.5/2024 as well as Mr. A. R. Malhotra, the learned counsel appearing on behalf of the private Respondents.

2. Both the Appeals arise out of the judgment and order dated 18.05.2023 passed in WP(C) No.72/2022 by the learned Single Judge whereby the learned Single Judge had set aside the Minutes of the Meeting dated 20.11.2019 and the consequential order dated 04.02.2020 regularizing the Appellants in WA No.1/2024 who were the

private Respondent Nos.6 to 9 in WP(C) No.72/2022. The learned Single Judge further directed that the fresh Departmental Promotion Committee (DPC) be conveyed to fill up four posts of Lower Division Clerks (LDC) after condoning the age of the Petitioner as per the ex-post facto approval directed to be granted. It was further directed that the DPC would be at liberty to accommodate the Petitioner and all the private Respondents in the writ petition if there are sufficient posts and if not, the principle of 'last come first go' shall apply.

3. For deciding as to whether there is any infirmity in the judgment and order dated 18.05.2023 passed in WP(C) No.72/2022, we find it relevant to take note of the certain factual aspects which are narrated infra.

4. The case of the Petitioner in WP(C) No.72/2022 was that she was initially engaged as a Muster Roll (MR) Lower Division Clerk (LDC) on 10.01.1996 without the approval of the Government. She continued to work as such under in the Office of the Executive Engineer, Lunglei Division, Irrigation & Water Resources Department who was the Respondent No.5 in the writ petition until she was engaged with the approval of the Government in the DP&AR and in the Finance Department through Engagement Card dated 23.04.2012. The petitioner therein was first engaged for the period w.e.f. 01.03.2012 to 28.02.2013 and thereafter, her engagement was extended from time to time and continued till the time of filing of the writ petition. It is also relevant to

take note of that the State Respondents had vide the Office Memorandum dated 29.05.2018 provisionally fixed the inter-se seniority of Muster Roll LDC employees. In the said Office Memorandum, the petitioner was placed at Serial No.3 whereas the private Respondent Nos. 6, 7, 8 & 9 who were the Appellants in WA No.1/2024 were placed at Serial Nos.4, 5, 6 & 7.

5. At this stage, it is pertinent to mention that the Government of Mizoram had in exercise of the power under the proviso to Article 309 of the Constitution formulated a Scheme called the Government of Mizoram Regularization of Muster Roll Employees Scheme, 2018 (for short, 'the Scheme'). This Scheme was made for giving scope for regularization of Muster Roll Employees to regular posts under the Government of Mizoram. It applies to Muster Roll Employees in Group-C and Group-D categories under the Department of the Government of Mizoram who were duly employed by means of Engagement Cards issued by the Competent Authority with the prior approval of the Department of Personnel & Administrative Reforms and Finance Department under the Revenue Expenditure Heads of Accounts of the State and upon the recommendation of the Departmental Promotion Committee duly constituted by the Government in respect of Muster Roll Employees engaged on or after 19.02.2014. It was also mandated that the said Scheme was not applicable to Muster Roll Employees engaged on co-terminus basis under the State Government, Centrally Sponsored

Scheme and any other Scheme borne employees. Clause 4 of the said Scheme, being relevant, is reproduced herein under:-

“4. Regularization: *Any person who has been continuously engaged on Muster Roll capacity for not less than 7 (seven) years as at Para 3 above shall be eligible for regularization to the corresponding post on the condition that-*

i) such Muster Roll employee should possess the educational and other qualifications prescribed by the relevant Recruitment Rules for the corresponding post;

ii) the performance reports of such Muster Roll employee prepared by the Controlling Officer(s) for the preceding 5 (five) years shall not be below the prescribed benchmark;

iii) such regularization shall be made in order of the length of service on Muster Roll capacity as given in the Order of fixation of final inter-se seniority issued by competent authority subject to clause (ii) above;

iv) such regularization shall be made against 35% of the direct recruitment quota in the corresponding post.”

6. From a perusal of the said Clause-4, it would be seen that the eligibility conditions for regularization were duly mentioned. For a person to be considered eligible for regularization, the person must have been

continuously engaged in the Muster Roll capacity for not less than 7 years. In addition to that, the said person should possess (i) such educational and other qualifications prescribed by the relevant Requirement Rules for the corresponding post; (ii) the performance report of such Muster Roll Employees prepared by the Controlling Officer(s) for the preceding 5 (five) years shall not be below the prescribed benchmark; (iii) the regularization shall be made in order of the length of service on Muster Roll capacity as given in the order of fixation of final inter-se seniority issued by the Competent Authority subject to Clause (ii), i.e. the performance report of such Muster Roll Employees and (iv) such regularization shall be made against 35% of the direct recruitment quota in the corresponding post. It is further relevant to take note of the Clause 6 of the said Scheme and the same is reproduced herein below:-

“6. Condonation : Upper age limit of a Muster Roll employee may, while being considered for regularization under this scheme, be condoned by the Government for such regularization unless such an employee was already over-aged at the time of initial engagement.”

7. From a perusal of the above quoted Clause, it would be seen that the upper age limit of a Muster Roll Employee may, while being considered for regularization under the Scheme, be condoned by the Government for such regularization. However, there was complete bar in exercising the powers under Clause 6 of the Scheme if the employee

was already over aged at the time of initial engagement.

8. Circling back to the facts involved, it would be seen that the Departmental Promotion Committee has taken into consideration the candidature of the Petitioner as well as the private Respondents in its meeting held on 20.11.2019 against the filling up of four posts of LDC in the level 4 of Pay Matrix under the Irrigation & Water Resources Department. There were seven candidates whose candidatures were taken up consideration. However, the persons at Sl. Nos.1, 2 & 3 as per the inter-se seniority were rejected and the private Respondents in the writ petition were recommended for regularization. It is relevant to mention that as per the Minutes of the Meeting, the persons at Sl. Nos.1 & 3 which included the Petitioner at Sl. No.3 were rejected on the ground that at the time of their initial engagement, they were over aged.

9. Pursuant thereto, an Office Order was passed on 04.02.2020 whereby the private Respondents who are the Appellants in WA No.1/2024 were regularized to the post of LDC in the level 4 of the Pay Matrix (25,500 to 56,800) plus other allowances.

10. Being aggrieved, the petitioner approached this Court by filing the writ petition which was registered and numbered as WP(C) No.72/2022. The learned Single Judge vide the impugned judgment and order dated 18.05.2023 allowed the writ petition thereby setting aside the Minutes of the Meeting held on 20.11.2019 as well as the Office Order dated

04.02.2020 and thereby directed the DPC to re-convey and to make recommendation to fill up the four posts of LDC after condoning the age of the petitioner. Being aggrieved, the present Appeals have been filed by the private Respondents in WP(C) No.72/2022 which is WA No.1/2024 and by the State of Mizoram which is WA No.5/2024.

11. We have heard the learned counsel appearing on behalf of the Appellants in WA No.1/2024. The learned counsel for the Appellants submitted that the learned Single Judge erred in law in not taking into consideration that the Clause 6 of the Scheme categorically mandated that the Government could condone the age limit only if the employee was not over aged at the time of initial engagement. The learned counsel for the Appellants further submitted that as this Scheme was made in exercise of the powers under the proviso to Article 309 of the Constitution, unless there was any amendment to Clause 6 of the Scheme, no executive instructions or Office Memorandum can override the mandate of Clause 6 of the Scheme. The learned counsel for the Appellants further submitted that the Office Memorandum to which the learned Single Judge relied upon was in respect to some other Department which has nothing to do in respect to the Irrigation & Water Resources Department. It was further submitted that the learned Single Judge failed to take note of the well settled principle that there cannot be a negative equality in as much as the same would perpetuate illegalities. Mrs. H. Lalmalsawmi, the learned Additional Government

Advocate also made similar submission and for the sake of avoiding repetition, we are no reiterating the same.

12. Per contra, Mr. A. R. Malhotra, the learned counsel appearing on behalf of the private Respondent in the Writ Appeals who was the original petitioner submitted that the various Office Memorandums which have been issued by the Department of Personnel Affairs of the Government of Mizoram would show that the State Government has condoned the age limit, and as such, the Petitioner is also entitled to be considered for regularization upon condonation of her age limit. He, therefore, submitted that the learned Single Judge taking into account the principle of equality enshrined in the Constitution had set aside the impugned Minutes of the Meeting dated 20.11.2019 as well as the order dated 04.02.2020 and directed fresh DPC for filling up of four vacant posts. He further submitted that as of now, there is another post which had arisen as would be seen from the latest affidavit filed by the Government of Mizoram, and as such, the Petitioner can very well be accommodated. He further submitted that in terms with Rule 10 (2) of the Mizoram Ministerial Service Rules, 2011, the age limit can be relaxed by 5 years in respect to Scheduled Castes and Scheduled Tribes, and as such, the Petitioner who was 40 years as on the date of the petitioner's initial engagement ought to have been taken into consideration by applying the said Rules.

13. We have heard the learned counsels appearing on behalf of the

parties and given our anxious consideration. In the foregoing paragraphs of the instant judgment, we have duly taken note of the Scheme pertaining to the regularization of the Muster Roll Employees. The Clause 6 of the said Scheme makes it very apparently clear that the Government has been given a power to condone the upper age limit of the Muster Roll Employees. However, in doing so, the Government cannot condone the age limit in respect of an employee who was already over aged at the time of initial engagement.

14. A perusal of the Minutes of the Meeting dated 20.11.2019 would show that the seven persons who were within the zone of consideration were all initially engaged on 01.03.2012. In respect to the Appellants in WA No.1/2024 who were at Sl. Nos.4, 5, 6 & 7, their age at their initial date of engagement, i.e. on 01.03.2012 were 35 years or below. On the other hand, the Muster Roll Employees who were at Sl. Nos.1, 2 & 3 as per their initial date of engagement were 40 years or above.

15. We have also taken note of that the Scheme for regularization of the Muster Roll Employees were made in exercise of the powers conferred under the proviso to Article 309 of the Constitution, and as such, would come within the ambit of Statutory Rules. Therefore, when the Clause 6 of the Scheme categorically mandated that the Government has the power to consider condoning the age limit, but cannot condone if the candidates were over aged as on the date of their initial engagement unless and until there is an amendment to the

Scheme, no executive instructions in the form of an Office Memorandum can permit the Government to condone the age limit if the candidate was over aged as on the date of his/her initial engagement. The said being a well settled proposition of law, we are of the opinion that the learned Single Judge had committed an error in applying the Office Memorandum in spite of the clear stipulation contained in Clause 6 of the Scheme and thereby interfering with the Minutes of the Meeting dated 20.11.2019 as well as the Office Order dated 04.02.2020. In that view of the matter, we interfere with the impugned judgment and order dated 18.05.2023 passed in WP(C) No.72/2022.

16. Accordingly, both the Writ Appeals stand allowed.

17. Before parting with the records, we find it however apposite to observe taking into consideration the submission made by Mr. A. R. Malhotra, the learned counsel appearing on behalf of the petitioner in WP(C) No.72/2022. He submitted that in terms with the Mizoram Ministerial Service Rules, 2011 and more particularly Rule 10 (2) of the said Rules, the upper age limit in the case of direct recruit to Assistant Grade, UDC Grade and LDC Grade may be relaxed by 5 years in the case of Scheduled Castes/Scheduled Tribes, and therefore, taking into account that the age limit is from 18 years to 35 years, the learned counsel for the petitioner submitted that the petitioner in WP(C) No.72/2022 would have been 40 years as could be seen even from the impugned Minutes of the Meeting dated 20.11.2019, and as such, the

petitioner's age limit could have been relaxed. We are of the opinion that the question of relaxation in terms with Rule 10 (2) of the Mizoram Ministerial Service Rules, 2011 is within the discretion of the Government. Under such circumstances, we grant liberty to the petitioner to file a representation before the respondent Nos.2 & 3 in WA No.1/2024 seeking relaxation of the age in terms with Rule 10 (2) of the Mizoram Ministerial Service Rules, 2011 and in the circumstance such relaxation is granted, the petitioner be considered for regularization in terms with the Government of Mizoram Regularization of Muster Roll Employees Scheme, 2018. The said exercise be completed subject to submission of the representation before the Respondent Nos.2 & 3 as noted above, within a period of 4 (four) months from the date of such representation along with a certified copy of the instant judgment is submitted before the authorities concerned.

JUDGE

JUDGE

Comparing Assistant