

GAHC030000282023



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

Case No. : WP(C)/6/2023

Smt. H. Lalmuanpuui and 34 Ors.
R/o Tuikual North, Aizawl 2: Sh. Lalnuntluanga Hnamte

3: Sh. Zoramchhana

4: Sh. Lalvenhima Khiangte

5: Smt. Linda H. Rinawmi

6: Sh. Lalthankima Ralte

7: Sh. PC Vanlalruata

8: Sh. H. Lalhriatrenga

9: Sh. Emmanuel Lalhruaitluanga

10: Smt. Lalmuankimi

11: Sh. John Lalrinhlua

12: Sh. Lalpekhlua

- 13: Smt. Lalmuanpuii
- 14: Smt. Vantlalthasangi
- 15: Sh. Laldinpuia Chhangte
- 16: Sh. David Lalthazuala Sailo
- 17: Sh. PC Vanlalruata
- 18: Smt. Lalramnghaki
- 19: Sh. Lallawmsanga
- 20: Smt. Vanlalmawii
- 21: Sh. S. Zirduhmawia
- 22: Smt. Varthuamluail
- 23: Sh. Vanlalchhanhima
- 24: Smt. B. Lalhluzuali
- 25: Sh. PC Vantluangpuia
- 26: Sh. Zoramtana
- 27: Smt. Jenny Lalthansangi
- 28: Sh. V. Rosangliana

29: Smt. R. Lalbiaknii

30: Sh. Lalhmingzova

31: Sh. David Vanlalruata

32: Sh. H.C. Lalhmingzanga

33: Smt. Lalramhluni Hnamte

34: Smt. Zoramthangi

35: Sh. H.T. Lalmalsawm

VERSUS

State of Mizoram and 4 Ors.

Aizawl2:The Secretary to the Govt. of Mizoram

3:The Secretary to the Govt. of Mizoram

4:The Secretary to the Govt. of Mizoram

5:The Mizoram State Legal Services Authorit

Advocate for the Petitioner : Ms Dinari T Azyu

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

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

JUDGEMENT

28.10.2024

Heard Mr. Victor L. Ralte, learned counsel for the petitioners and Ms. Linda L. Fambawl, learned Addl. Advocate General, Mizoram appearing for the respondents.

[2.] By filing this writ petition, the petitioners have challenged the approval conveyed by the DP&AR (ARW) vide I.D dated 11.04.2022 (Annexure-16) for extension of engagement of 36 Muster Roll employees under the Mizoram State Legal Services Authority (MSLSA) with effect from 01.03.2022 to 28.02.2023 or till regular appointment is made whichever is earlier. It was also noted that no further extension will be considered even recruitment process for regular appointment is not completed by 28.02.2023. The petitioners have also challenged the Notification dated 24.11.2022 (Annexure-21) by which, the Governor of Mizoram was pleased to order one (1) time adoption of the Mizoram Ministerial Service Rules, 2021 (MMS Rules, 2021) for filling up ten (10) posts of UDC and twelve (12) posts of LDC under the MSLSA. Challenge has also been made to a similar communication dated 24.11.2022 (Annexure-23) in respect of Group 'D' posts under the MSLSA. The petitioners have also made an interim prayer that till disposal of the writ petition, the Advertisement No. 1/2022 to 2023 dated 06.12.2022 (Annexure-28) may be stayed.

[3.] Brief facts of the case is that the petitioners have been appointed temporarily on Muster Roll employees in Group 'B', 'C' & 'D' posts between the years 2011 and 2017 in the MSLSA under the 13th Finance Commission. The 13th Finance Commission was for five (5) years and their appointments were co-terminus with the said Commission. After the expiry of the term of five (5) years, the services of the petitioners have been continued from time to time and in fact till date on the strength of the interim orders passed by this Court despite the approval given on 11.04.2022 up to 28.02.2023.

[4.] The grievances projected by the petitioners is that they have rendered long years of services after their initial appointment and that there should be some provision made by the respondent authorities for their absorption to their respective posts. Initially, the respondent authorities made a Draft Rule in which, a provision for absorption of the incumbents to their respective posts was provided. However, the Draft Rule could not be finalized and therefore, the impugned orders dated 24.11.2022 came to be issued to adopt the MMS Rules of 2021 as a one (1) time measure for filling up of the posts of UDC, LDC and Grade - IV under the MSLSA and following which, the Advertisement dated 06.12.2022 was issued. Aggrieved, the petitioners are before this Court.

[5.] Mr. Victor L. Ralte, learned counsel submits that the petitioners have been rendering their services since their initial appointment with the expectation that

they will be sooner or later absorbed to their respective posts. He submits that under Section 28 of the Legal Services Authorities Act, 1987 (Act of 1987), the State Government has the power to make rules in consultation of the Chief Justice of the High Court. The respondent authorities therefore came up with the Draft Rule by providing that 90% of the incumbents currently engaged under the MSLSA, ADR Center and DLSA Officers in various districts will be absorbed in respect of Group 'C' and Group 'D'. That in respect of Group 'B' post, 90% of the incumbents already working will be absorbed to their respective post and the remaining 10% is to be filled up by way of direct recruitment. However, without proceeding any further with the Draft Rule, the respondent authorities proceeded to issue the impugned Notification dated 24.11.2022 wherein, they have sought to adopt the MMS Rules, 2021 as a one (1) time measure. By adopting the said procedure, the interest of the petitioners would be adversely affected as there is no opportunity provided for them to be absorbed to their respective posts. The learned counsel however submits that in the meantime, certain developments have taken place and the State Government with the approval of the Chief Justice of the High Court have come up with the Mizoram Law & Judicial Department (Mizoram State Legal Services Authority) (Group 'B' Post) Recruitment Rules, 2024. Similarly, recruitment rules have been made in respect of Group 'C' & Group 'D' as well. The learned counsel submits that in the said recruitment rules, which have come into force with effect from 30.08.2024, there is no provision for absorption of the incumbents who

are already working under the MSLSA.

[6.] He submits that the respondent authorities in the DP&AR (ARW) and the Finance Department have however extended the period of engagement of the petitioners up to 28.02.2025. The same was communicated by the Under Secretary to the Govt. of Mizoram, Law & Judicial Department on 25.09.2024 to the Member Secretary, MSLSA. The learned counsel submits that such being the position, the engagement of the petitioners may not be disturbed in terms of the said extension order. He also submits that the impugned Notifications dated 24.11.2022 adopting the MMS Rules, 2021 as a one (1) time measure should also be set aside.

[7.] Ms. Linda L. Fambawl, learned Addl. Advocate General submits that in view of the relevant rules of Group 'B' 'C' & 'D' having been framed in terms of Rule 28 of the Act of 1987, there will be no requirement now to rely upon the MMS Rules of 2021 in order to fill up the posts under Group 'B' 'C' & 'D' category in the MSLSA. She also submits that in view of the approval granted by the competent authority for extension of the incumbents currently serving under the MSLSA up to 28.02.2025, their services will not be disturbed till that date.

[8.] Upon considering the submissions made by the learned counsel for the rival parties and upon perusal of the materials available on record including the new Rules which have been framed in terms of Section 28 of the Act of 1987 for recruitment to Group 'B' 'C' & 'D' posts under the MSLSA, it only appears that the

instant writ petition with the kind of relief sought has been rendered infructuos. The question of adopting the MMS Rules, 2021 now will not arise and therefore, the impugned Notifications dated 24.11.2022 (Annexures - 21 & 23) are hereby set aside. The interim order of staying the Advertisement dated 06.12.2022 is also made absolute.

[9.] The respondent authorities can proceed with the recruitment for filling up of the posts in Group 'B' 'C' & 'D' category in accordance with the new Recruitment Rules, which has come into force with effect from 30.08.2024. It is needless to provide herein that the petitioners shall be allowed to continue in their respective posts up to 28.02.2025 in terms of the extension granted by the respondent authorities themselves.

[10.] Before parting with the records, it is further provided herein that as some of the petitioners may be interested to participate in the recruitment process to be initiated as per the new Recruitment Rules, they having rendered long years of service in their respective posts maybe overaged by now to participate in the recruitment process. Therefore, in the event they wish to participate in the selection process but on account of being overaged are not able to do so, they may submit appropriate application for condonation of their age to enable them to participate in the selection process and in the event of submission of such application, the respondent authorities shall consider relaxing their upper age as

may be permissible in law, in view of Rule 9 in the new Rules meant for Group 'B' 'C' & 'D'.

[11.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant