GAHC030000792024

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

Case No. : WA/2/2024

Amit Kumar
S/o Hariwansh Prasad Singh, R/o Tola North Side, Village-Noni, P.S.Chandradeep, District - Jamui, Bihar

VERSUS

Mizoram Rural Bank and 3 Ors.
r/b its Chairman, Head Office - Plot No.B-21, Mizoram New Capital Complex (MINECO), Khatla, Aizawl, Mizoram

2:The Mizoram Rural Bank

3:Pachhunga University College

4:Mizoram University
Aizawl
Mizora

Advocate for the Petitioner : Vinod Kumar
Advocate for the Respondent : Mr C Zoramchhana, Standing Counsel, MRB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT & ORDER (CAV)

Date : 17-09-2024
(Marli Vankung, J)

Heard Mr. Vinod Kumar, learned counsel for the appellant. Also heard Mr. C. Zoramchhana, learned Standing counsel for Mizoram Rural Bank, respondents No.1 & 2 as well as Mr. L.H. Lianhrima, learned senior counsel for respondent Nos. 3 & 4 assisted by Ms. Ruth Lalruatfeli, learned counsel.

2. This is an appeal filed against the Judgment & Order dated 19.01.2024 passed by the learned Single Judge, wherein, WP(C) No. 31/2023 and WP(C) No. 39/2023, were jointly heard and disposed of by the impugned common Judgment & Order. We therefore find it fit to hear both the writ appeals, WA No. 2/2024 arising out of WP(C) No. 31/2023 and WA No 3/2024 arising out of WP(C) No. 39/2023 jointly and dispose of both the writ appeals by a common judgment and order.

3. The background of the case in a nutshell is that the present appellants had responded to the advertisement issued by the Director, Institute of Bank Personnel Selection, for online examination for recruitment for the post of Office Assistant (Multi-purpose), amongst others. Upon being successful in the selection process, the appellant in WA No. 2/2024 was given the offer of appointment vide letter dated 03.04.2018 and letter dated 26.04.2018. The appellant in WA No. 2/2024 was also given offer of appointment, details of which is not reflected. Thereafter, the appellants joined their post on 07.05.2018 and on 03.08.2021 respectively, being on probation, and served in their appointed post beyond the probation period, including the period of extension of probation. The appellant in WA No. 2/2024 was terminated from service w.e.f. 31.03.2021, for not having fulfilled the eligibility criteria of having local language proficiency upto 8 standard within his probationary period, without any show cause notice issued to him. The appellant in WA No. 3/2024 was also terminated from service w.e.f. 28.02.2023, for not having fulfilled the eligibility criteria of having local language proficiency within his probationary period, and show cause notice was issued to him. Aggrieved with the show cause notice, the appellant in W.A. No. 3/2024 had filed WP (C) No.16/2023 which was later withdrawn on receipt of the termination

order dated 28.02.2023. Aggrieved by the termination orders the appellants had approached the learned Single Judge in WP (C) 31/2023 and WP (C) 39/2023.

4. The contention of the petitioner in WP(C) 31/2023/ appellant in W.A No. 2/201, before the learned Single Judge was that prior to the impugned termination order dated 31.03.2021, he has been in service as Office Assistant(MULTI PURPOSE) for a period of 2 years, 10 months and 24 days, which is beyond his probation period of 18 months (1year probation period which may be extended for a period not exceeding 6 months) as stipulated under the Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010 (the 2010 Regulations).That since there is no provision for extension of the probation period beyond the 18 months and the petitioner has been in service almost double the probation period, the petitioner should be deemed confirmed in service. That the offer of appointment dated 03.04.2018 had stipulated that the service of the petitioner/present appellant is to be governed by the 2010 Regulations and that as per regulation 9, an employee is to be confirmed into service on completion of the probation period. The Regional Rural banks (Appointment of officers and Employees) Rules,2017 provides that the *Candidate not having proficiency in local language at the time of selection, will be given a time of six months from the date of joining, to acquire the proficiency. which may be extended by the Board for a further period of six months and which may be extended for a further period of six months, at a time, by recording the reasons in writing, and no such extension is allowed beyond the said extension period.* That there is no mention of the requirement of having to acquire the proficiency in the local language in order to be confirmed in service. He also submitted that after completing 2 years of service he was permanently transferred to Ngopa branch and hence he is deemed confirmed.

The learned counsel had relied on the case of ***Chief General Manager, State Bank of India & Anr. Vs. Bijoy Kumar Mishra, reported in (1997) 7 SCC 550*** *and the case of* ***Om Prakash Maurya Vs. U.P Cooperative Sugar Factories Federation, Lucknow & Ors., reported in 1986 (Supp) SCC 95*****.**

5. It was also the contention of the petitioner that he had successfully completed the 3 months course for proficiency in the Mizo Language given by the Pachhunga University College but, the same has been wrongfully recalled vide the order dated 24.11.2020, without assigning any reasons Thereafter, the appellant appeared in the proficiency test in Mizo Language but could not secure the pass percentage of 40% in the examination by securing 33.75%, whereas the passing marks is 30% for VIII standard. It was also the contended that prior to his termination order no show cause notice was issued as mandated in para 10 of the 2010 Regulations.

6. In WP(C)39/2023 the contention of the petitioner was also similar to the contention of the appellant/petitioner in WP(C)31/2023, however, the facts of the case are slightly different. The impugned termination order dated 28.02.2023 terminating him from his service as Office Assistant(MULTI PURPOSE) was issued beyond his probation period of 18 months as stipulated under the Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010 (the 2010 Regulations), as the petitioner continued to be in service for 25 days beyond his probation period. Thus, since there is no provision for extension of the probation period for more beyond the 18 months, the petitioner should be deemed confirmed in service. It was contended that though the petitioner had secured 36.5% marks in his proficiency test held on 13.01 2023, while the pass mark was 40%, however, since he was not terminated during his probation period, including his extension period, he cannot be terminated after he was in service for 25 days after his probation period including the extension period.

7. On the other hand, the contention of the respondents was that the petitioners had failed have the required proficiency in the Mizo language, inspite of the respondents giving them sufficient opportunity, by extending their probation period. That the respondents had rightly issued their termination orders, since sufficient knowledge of the local/regional language was essential for the performance of their duties. That the petitioners cannot be confirmed without having proficiency in the Mizo language as mandated under the 2017 Rules.

8. From the contentions of both the parties, the learned Single Judge had held that the issue to be decided was, whether the petitioners had been wrongly terminated from their service on having failed to secure local language proficiency up to 8 standards and whether such stipulation is authorized and sustainable. After hearing both the parties in WP(C) 31/2023 and WP(C) 39/2023, the learned Single judge had dismissed both the writ petitions by the impugned common judgment and order dated 19.01.2024.

9. The learned Single Judge held as follows;

"*That though the Regulations nowhere provide for the fulfillment of such requirement but it is seen that in the Rules of 2017, which has been framed in terms of the relevant provisions of the Act of 1976, the qualifications for direct recruitment for Office Assistant (MULTI PURPOSE) Group 'B' has been provided under Serial No. 6 of the Schedule to the Rules of 2017 which is relatable to Rule 8 of the same Rules. The essential qualification for the said post is a Bachelor's Degree or its equivalent from a recognized university in any discipline and proficiency in local language. Under Note 1 of Column 4 in Serial No. 6 of the Schedule, it is provided that candidates who have studied the language of the State in standard VIII or above in Boards of Education or School recognized by the Government or candidates possessing any certificate to the effect for standard VIII or above will be considered proficient in that local language. Again under Note 2 (i), candidate not having proficiency in local language at the time of selection, will be given a time of 6 months from the date of joining to acquire the proficiency and under Note 2 (ii), the period of 6 months may be extended by the Board for a further period of 6 months which may be extended for a further period of 6 months, at a time, by recording the reasons in writing, provided that no such extension shall be granted beyond the probation period.*

That the absence of such stipulation in the Regulations also cannot be the basis for claiming exemption from having proficiency in local language inasmuch as, the same is already provided by the Rules of 2017, which is again framed under the Act of 1976. The requirement of having language proficiency and the same being an essential qualification has been clearly reflected in the Advertisement responded to by the petitioners. A perusal of the Offer of Appointment also goes to show that the appointment offered was a provisional offer and a conditional one i.e., subject to the

petitioners acquiring necessary proficiency in local language. Therefore, the contention of the petitioners that possession of local language proficiency is not necessary since it is not the stipulation of the Regulations cannot be accepted.

[13.] The petitioner in WP(C) No. 31/2023 has claimed that the termination order is vitiated for violation of principles of natural justice. In this connection, it may be seen that the petitioner upon accepting the terms and conditions of his appointment as stipulated in the Advertisement and also in the Offer of Appointment had joined the post. He continued as such beyond the probationary period of 18 months and in doing so, it cannot be said he can make a claim that that he is deemed to have been confirmed in service. The authorities relied upon by the learned counsel for the petitioners by comparing the facts and circumstances involved in those cases and in the present case is found to be not applicable inasmuch as, in the present case, a condition has clearly been imposed that the appointees have to acquire local language proficiency during the probationary period and without which, their service are liable to be terminated. The petitioners having failed to acquire the same, cannot have any legitimate grievance.

[14.] The petitioner in WP(C) No. 31/2023 may have the benefit of the 3 months course given by the Pachhunga University College but as already noticed, the same has been recalled and the petitioner has not put to challenge the action of the College or the University. Therefore, the petitioner cannot be said to have fulfilled the criteria as stipulated in the Advertisement and the Rules of 2017 to continue in his appointed post. As regards the issuance of notice at this stage, the same in the considered view of this Court will only be an empty formality. Moreover, petitioner was terminated from service vide order dated 30.03.2021 but he has only approached this Court by filing the writ petition on 21.03.2023. There is no explanation as to why it took him about two (2) years to approach this Court. Even on this ground, the writ petition is not maintainable."

10. Mr. Vinod Kumar, learned counsel for the appellant submitted that the common judgment and order dated 19.01.2024, is liable to be set aside on the grounds that the learned Single Judge failed to appreciate that Section 9(1) of the Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010, which stipulates for the confirmation of an employee of Mizoram Rural Bank, who have completed their

probation period including extension of probation satisfactorily and that in the letter of offer of appointment issued by the Mizoram Rural Bank to the appellants in WA No. 2/2024 and WA No. 3/2024, the appellants were to be governed by the 2010 Regulations. He submits that there is no provision in the 2010 Regulation for the requirement to obtain proficiency in the local language.

11. The learned counsel also submitted that the subject of confirmation and termination is not defined in the Regional Rural banks (Appointment of officers and Employees) Rules, 2017 nor was it mentioned in the advertisements. He submitted that the learned Single Judge failed to appreciate that the Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010 (referred to as 2010 Regulations), is applicable in service condition and cannot be superseded by the Regional Rural Bank (Appointment of Officers and Employees) Rules, 2017 (referred to as 2017 Rules),or by the executive termination orders. In support of his submissions he has cited the judgment of the Apex court in ***Ajay Kumar Das Vs. State of Orissa & Ors.***, reported in ***2011 11 SCC 136*** (para 14),

12. The learned counsel further submitted that the Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010 and also the Rural Bank (Appointment of Officers and Employees) Rules, 2017, provides for probation period of 180 days including the extension of probation. Both the 2010 Regulations and the 2017 Rules provided that no further extension is to be granted after that, however, the appellants continued to be in service even after the expiry of the probation period and therefore, since no immediate termination notice was given after the expiry of the probation period, it can be presumed that they have been confirmed into service.

13. The learned counsel also submitted that it is clearly provided in the 2017 Rules, that proficiency in the local language is to be acquired during probation period, therefore, there is no necessity to acquire proficiency in the local language after the

probation period is over. After confirmation of service, there is no requirement to obtain proficiency in the local language, which is to be obtained only during the probation period and that the advertisement for the post also mentioned that the proficiency in the local language should be during the probation period. Thus, if the appellants are still in service after the expiry of the probation period, they considered confirmed in service.

14. The learned counsel for the appellants submitted that the learned Single Judge had erred in not appreciating the judgments relied upon by the appellants which squarely covers the case of the present appellants. The learned counsel also relied on the judgments of the Apex Court in ***Punjab National Bank Vs. Astamija***, reported in **(2008) 14 Supreme Court Cases 370** and the judgment of the Allahabad High Court in **Khar Bam Ram Vs. General Manager, Punjab National Bank** reported in **1992 (65) FLR, (1993) ILLJ 263** All.

15. The learned counsel further submitted that the learned Single Judge had failed to appreciate that the appellant in W.A No. 2/201 was terminated by the Manager of Mizoram, Rural Bank dated 30.03.2021 without issuing notice to the appellant which is in complete violation of Sub-clause (1)(a) of para 10 of Mizoram Rural Bank (Officers and Employees) Service Regulation, 2010. He further submitted that the learned Single Judge had failed to appreciate that on the request of the staff of MRB, the Pachhunga University College had conducted the Mizo training post for a period of 3 months and that the certificate regarding Mizo language training upto standard VIII was issued by Pachhunga University College recognized by Mizoram University, Aizawl, which was wrongly cancelled without any valid reason. That the appellant in W.A No. 2/2021 had also secured an average of 33.75% marks and the appellant in W.A No. 3/2021 secured an average of 36% in a proficiency test in Mizo language, while the passing mark was fixed at 40% by Mizoram Rural Bank. The learned counsel however, pointed out that the pass mark for standard VIII in Mizo language is otherwise 30%.

16. The learned counsel has relied on the judgment of a coordinate bench of this court in **Chandan Kumar & 3 ors. versus State of Mizoram in WP(C) 74/2022** 24.01.2023, wherein the cancellation of the proficiency test results of the petitioners was set aside and the petitioners were reinstated. The learned counsel submitted that the same treatment should be given to the appellants.

17. Per contra, Mr. C. Zoramchhana, learned counsel representing respondents/Mizoram Rural Bank submitted that there were no grounds for setting aside or interfere with the joint judgment and order of the learned Single Judge in WP(C) No. 31/2023 and WP(C) No.39/2023. The learned counsel submitted that on perusal of the initial advertisements, the eligibility criteria is laid down for the post of Office Assistant (Multi-purpose) Group 'B' and it is mentioned under Note 2 (i) *candidates not having proficiency in local language at the time of selection, will be given a time of 6 months from the date of joining to acquire the proficiency (ii) the period of 6 months may be extended by the Board for a further period of 6 months, at a time, by recording the reasons in writing, provided that no such extension shall be granted beyond the probation period*. He therefore submits that the essential requirement for the post of Office Assistant is to know the local language, otherwise they are not qualified to work in the Mizoram Rural Bank. The learned counsel for respondents submitted that on perusal of the Offer of Appointment dated 03.04.2018, the Offer of Appointment is only on provisional basis and that if the concerned did not possess the required qualification in regard to proficiency in local language as per terms and conditions, the selection being on provisional basis and the confirmation in Mizoram Rural Services is subject to acquiring the necessary proficiency in local language within a period of 6 months from submission of joining report which will be reviewed by the appropriate authority after expiry of the said 6 months and subject to satisfactorily report on character and antecedents from the police authority. He further submits that though it was mentioned in the appointment letter that they will be governed by the Mizoram Rural Bank (Officers and Employees) Services Regulation,

2010, the Regional Rural Bank (Appointment of Officers and Employees) Rules, 2017 (Rules of 2017) will be applicable to them. It is clearly provided in the said Rule that there is a requirement of having local language proficiency up to 8th standard. This requirement is not just an executive instruction and the same i.e, Rules of 2017 has been framed in exercise of the powers conferred on Section 29 r/w Section 17 of the Regional Rural Banks Act, 1976 (Act of 1976).

18. The learned counsel further submitted that the learned Single Judge has rightly taken note of the fact in W.A 2 of 2024, that the cancellation proficiency certificate from Pachhunga University dated 24.11.2020 had not been put to challenge nor was the action of the College or the University, challenged. The learned counsel has relied on the judgment of the Apex Court, in ***Senguttuvan Vs. Director of School Education***, reported in ***2010 1 SCC 756*** (para 22) with regard to not challenging the cancellation of the test result.

19. The learned counsel for the respondents further submitted that the learned Single Judge had rightly observed that the judgments relied on by the appellants, wherein the appellants were not terminated after their probation period was over, is not applicable in the instant case since the facts and circumstances were different. He submits that the reason why the appellants were not terminated from service and were allowed to be in service beyond their probation period and the extended period, was that the Mizoram Rural Bank was gracious enough to give them the chance to acquire the required proficiency in the local language and it cannot be presumed that they would be automatically confirmed in the post after the expiry of the said probation period. He submits that the appellants were not fit to continue to be employed in their post since they had failed to acquire the required proficiency in the local language. That having sufficient knowledge of the local language is necessary for the performance of the work of a Office Assistant (Multi-purpose) since the duty entails dealing with the local public directly. That as per Regulation 10, the appellants

are not an employee and are being appointed only on provisional basis. Their promotion or confirmation is subject to the provisions of Rule of 2017 which needs to be first satisfied. He submits that the appointment letter is also only provisional which is subject to acquiring proficiency in the local language.

In support of his submissions the learned counsel has relied on ***Ramesh Chandra Shah Vs. Anil Joshi***, reported in ***2013 11 SCC 309*** (para 18), wherein it was held that it is a settled law that a person who conscious takes part in the process of selection cannot thereafter turn around and question the method of selection or its outcome, while the appellants were well aware of the condition incorporated in the advertisement for the post that they have to acquire proficiency in the local language within the probation period.

It was further submitted that the posting of the appellant to Ngopa is only an executive order and cannot over-rule the 2017 Rules which clearly mentioned the requirement of having proficiency in the local language before confirmation.

20. The learned counsel further submitted that it is in the discretionary power of te concerned authority to fix the pass percentage at 40% since proficiency in the local language is necessary in the nature of their job. He has relied on the decisions of the Apex court in ***Manish Kumar Shahi Vs. State of Bihar***, reported in (***2010) 12 SCC 576*** (para 11), He further submitted that the judgment in **WP(C) 74/2022 (supra)**, passed by a Coordinate Bench of this Court, is not applicable in the present case, wherein the facts of the case are also different, in the cited case, the petitioners were reinstated because they had passed the proficiency test in the local language

21. Mr. L.H. Lianhrima, learned senior counsel for the respondents/Pachhunga University and Mizoram University assisted by Ms. Ruth Lalruatfeli learned counsel, submits that there is inordinate delay in approaching the Court by the appellants since

they were terminated from service on 30.03.2021 and on 21.03.2023 but approached the Court in 2024. No explanation has been given for the delay in filing the writ petitions. He submits that no sufficient grounds have been made out in order to upset the impugned judgment and order of the learned Single Judge, who has taken into consideration all the orders mentioned by the appellant before the Court.

22. We have heard and considered the submissions made by the learned counsels for both the parties and have perused the impugned Judgment & Order dated 19.01.2024 passed by the learned Single Judge.

23. We find that the main issue to be looked into in this appeal is, whether the learned Single Judge had failed to appreciate the 'Authorities' relied upon by Mr. Vinod Kumar, the learned counsel for the appellant, while jointly dismissing the Writ petitions, by observing that continued services, as such, beyond the probationary period of 18 months, cannot be said that they are deemed to have been confirmed in service.

24. We have perused the cited case in **Chief G.M., State Bank of India v. Bijoy Kumar Mishra(supra),** wherein, *the facts of the case was that the respondent, Bijoy Kumar Mishra, was appointed as a Probationary Officer in the State Bank of India and posted at Jharsuguda Branch in Bhubaneswar circle by an order dated 24-10-1980. The respondent joined duty on 15-12-1980 and his period of probation commenced from that date. The respondent remained absent unauthorized from duty from 2-4-1981 for a long period and was present on duty in the first week of August 1983. Thereafter, he was absent till the year 1988. The maximum period of probation under the Service Rules was three years which expired in his case on 14-12-1983. From May 1984 to 1988, he was not even in touch with the Bank, under this circumstance, the Bank issued an order dated 04-10-1988 terminating his service. The question for consideration was whether the respondent can be deemed to have been confirmed without any order of confirmation during his unauthorized absence from*

duty under the relevant Service Rules. Consequently, the appeal was allowed and the termination order was upheld.

25. In **Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation (Supra),** *the appellant is an officer/ Superintendant in a sugar factory run by the respondents, and was placed on probation for one year against the regular vacant promotional post of Commercial officer, with a condition that the probationary period may be extended further and during the probationary period he could be reverted back to the post of Superintendant, without any notice. After the expiry of one year, his probation was extended for another year, after which there was no further order for extension of his probation period, nor was there any order for the confirmation of his promotion, while the appellant continued to hold the post of Commercial officer. Some time thereafter, an order was issued to revert the appellant back to the post of Superintendant, which was under challenge. In this case the Apex court held that the order of reversion is illegal since under applicable Regulations, the appellant's probationary period could not be extended beyond the maximum period of two years and he stood confirmed on the expiry of maximum probation period.*

26. In ***Punjab National Bank Vs. Astamija (supra)***, the facts of the case is that *the offer of appointment was made to the respondent for appointment as manager training in the appellant bank, one of the terms and conditions of the offer was that the respondent would be on training/probation for a period of 2 years and she would be considered for confirmation, subject to satisfactory report on training and passing of the Bank's confirmation test. The offer also mentioned that the respondent may be required to pass test in a language other than her mother tongue before confirmation. The respondent appeared in the examination held twice, but was unsuccessful. She was asked to appear again for the examination third time, but she had expressed her inability on the ground that she was pregnant and had been advised by the Doctor not*

to take long journey. She had however sought permission to appear in the test, wherein, the respondent was again asked to appear in the test held at a later date, but again, she was unable to appear for the test. Meanwhile, the normal probation period of 2 years expired, which was extended for one more year, after which another opportunity was given to the respondent to appear for a test but she had not qualified. The respondent services were then terminated and the respondent had preferred an appeal by requesting for another chance to pass confirmation test, stating that similarly situated employee had been given another chance to pass the test, which was granted. On appeal, the High Court allowed the writ petition. The High Court had allowed the respondent's writ petition on the ground that she had been subjected to discriminatory treatment vis-à-vis other candidates like/who had been given another chance, whereas this was denied to the respondents. Thus, the Punjab National Bank had approached the Apex Court on appeal. The Apex Court however, dismissed the appeal keeping in mind the principle underline the statutory provisions of the Maternity Benefit Act and had taken into consideration the fact that the respondent had suffered two miscarriage and also held that the bank is required to follow equality clause contained in Article 14 & 16 of the Constitution and its action in relation to other employees should be not only fair, but also non arbitrary.

27. On perusal of the issues and the facts in the case of **Khar Bam Ram Vs. General Manager, Punjab National Bank (supra),** we find that this *cited case cannot be said to be similar to the present case, wherein the single bench of the Allahabad High Court had allowed the petitioner to be reinstated because he had continued to be in service beyond the prescribed probation period. In the cited case, a condition of qualifying the examination of Bank, known as Confirmation Test, was laid down by Board of Directors by an administrative order. No such confirmation test finds place in Regulations of the Bank. The proviso to the Regulation at regulation 16 (1) permits a language test in a language other than mother tongue, but it was not*

the case of the Bank that the confirmation test which petitioner could not qualify, was the language test, as contemplated under Proviso to Regulation 16 (1). It was held that the introduction of confirmation test and making it compulsory for every officer to qualify before an officer could be confirmed is an addition to the conditions for confirmation laid down by Regulations and a variation in conditions of service of an officer for confirmation. That since it is well settled that an executive instruction of an authority cannot over-ride rules or regulations framed in discharge of its legislative functions the termination order was also cancelled and the petitioner was deemed confirmed for being continued in service beyond the probation period.

28. Thus, on perusal of the above cited cases and we find that the facts and circumstances in which the aggrieved parties were reinstated after the dismissal order, are different from the present case, wherein in the present case, there is a stipulation or condition to be fulfilled by the appellants *i.e* to acquire proficiency in the local language.

29. The stipulation, which was clearly provided in the Advertisement and in the Offer of Appointment of the petitioners and also in the Regional Rural Bank (Appointment of Officers and Employees) Rules, 2017, is that proficiency in the local language, is a necessary criteria to be obtained by the appellants before they can be confirmed and absence of such stipulation in the Regulations, cannot be the basis for claiming exemption from having proficiency in local language, inasmuch as, the same is already provided by the Rules of 2017, which is again framed under the Regional Rural Banks Act of 1976.

30. The Regional Rural banks (Appointment of officers and Employees) Rules, 2017 provides that) *Candidate not having proficiency in local language at the time of selection, will be given a time of six months from the date of joining, to acquire the proficiency. (ii) The period of six months may be extended by the Board for a further period of six months which may be extended for a further period of six months, at a*

time, by recording the reasons in writing, provided that no such extension shall be granted beyond the probation period

31. We have also noted that the advertisements and the offer of appointment had clearly stipulated the requirement to clear the proficiency test in the local language and both the appellants knowing full well that they need to clear the proficiency test in the local language, had consciously joined their post and made attempts to clear the proficiency tests, but both of them could not get the required pass percentage of 40%, which resulted in the issuance of the impugned dismissal orders. Therefore, we find that the contention of the petitioners that possession of local language proficiency is not necessary since it is not the stipulation of the Regulations and that they being deemed confirmed after the probation period, need not be acquired after the probation period, unsustainable nor acceptable.

32. At this stage, we find it appropriate to refer to the decision of the Apex court in **Madhya Pradesh and Ors. vs. Satya Narain Jhavar, (2001) 7 SCC 161.** The relevant contents of the said judgment are reproduced hereunder:-

"*11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point.*

One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation.

The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination

has not been passed.

The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

33. Thus, in view of the above decision of the Apex court, we are of the considered view that the instant case is fairly covered by the "last line of case" where there is a specific requirement of passing a test in the local language for the purposes of confirmation.

34. In the case of the appellant in WA No. 2 of 2024 we find that the learned Single judge had rightly observed that petitioner has not put to challenge the action of the Pachhunga College dated 24.11.2020 or the University. We find that the facts of the case in **Chandan Kumar & 3 ors (supra)** are different and is not applicable in the present case. In the cited case, the cancellation order was put under challenge, wherein, the petitioners had cleared the language proficiency test and the cancellation order was issued without assigning any reasons.

35. We however find that the impugned termination order dated 31.03.2021, was issued without issuing a show cause notice to the appellant. It is stipulated in regulation 10 (2) (b)(ii) of Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010 , that one months notice is required in cases of officers who are employed on probation. However, regulation 10 (2) (c) of the said 2010 Regulations also provides that in lieu of issuance of notice the bank shall be liable to pay as compensation, a sum equal to his pay for the period of notice required of him.

36. We therefore find that, in view of the reasons and findings as discussed above, there are no grounds to interfere with the common judgment & order dated 19.01.2024 passed by the learned Single Judge wherein WP(C) No. 31/2023 and

WP(C) No. 39/2023 were jointly disposed of, except to the extent that the appellant in WA No. 2 of 2024 i.e. petitioner in WP(C) No. 31/2023 , should be paid his due as stipulated under regulation 10 (2) (c) of The Mizoram Rural Bank (Officers and Employees) Service Regulations, 2010.

37. Both the Writ appeals, WA No. 2 of 2024 and WA No. 3 of 2024 are thus jointly disposed of as above.

JUDGE **JUDGE**

Comparing Assistant