

GAHC030001452023



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

Case No. : WP(C)/31/2023

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

VERSUS

The Mizoram Rural Bank r/b its Chairman and 3 Ors.
Aizawl2:Mizoram Rural Bank R/b its General Manager

3:Pachhunga University College R/b its Principal

4:Mizoram Univesity R/b its Registra

Advocate for the Petitioner : Vinod Kumar

Advocate for the Respondent : Mr C Zoramchhana for R1 & 2

Linked Case : WP(C)/39/2023

Sh. Pinaki Neogi
S/o Jiban Shankar Neogi

Shyam Nagar Road
South Dumdum

Near natural City
Bangur Avenue North 24 Paranas
West Bengal - 700055.

VERSUS

The State of Mizoram R/b its Chief Secretary and 4 Ors.
Aizawl
Mizoram.

2:The Mizoram Rural Bank
R/b its Chairman
Head Office-Plot No. B-21
Mizoram new Capital Complex(MINECO)
Khatla
Aizawl
Mizoram
Pin-796005.

3:Mizoram Rural Bank R/b its General Manager
Head Office
MINECO
Khatla
Aizawl
Mizoram
Pin- 796001.

4:State Council of Education Research and Training (SCERT)
School Education Dept.
Govt. of Mizoram.
Aizawl
Mizoram.

5:School Education Dept.
Govt. of Mizoram
R/b its Secretary.
Aizawl
Mizoram.

Advocate for the Petitioner : Vinod Kumar
Advocate for the Respondent : Mr C Zoramchhana for R2 and 3

::B E F O R E::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 17.01.2024

Date of Judgment : 19.01.2024

JUDGMENT & ORDER (CAV)

Heard Mr. Vinod Kumar, learned counsel for the petitioners in both the cases, Mr. C. Zoramchhana, learned Standing Counsel for the respondent Mizoram Rural Bank and Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the respondent Mizoram University and Pachhunga University College in WP(C) No. 31/2023. This Order will dispose of both the writ petitions since the issues involved are similar.

[2.] Both the writ petitioners responded to the Advertisement issued for the post of Office Assistant (MULTI PURPOSE) issued by the Director, Institute of Banking Personnel Selection amongst others. Upon being found successful in the selection process, they were given the Offer of Appointment vide letter dated 03.04.2018 and 26.04.2018 in respect of the petitioner in WP(C) No. 31/2023 and similar offer in respect of the petitioner in WP(C) No. 39/2023, the details of which has not been indicated by the petitioner. The petitioner in WP(C) No. 31/2023 joined the post on 07.05.2018 while the petitioner in WP(C) No. 39/2023 joined on

03.08.2021. However, after serving in their appointed post for some time, they were terminated from service with effect from 31.03.2021 and 28.02.2023 respectively for not having fulfilled the eligibility criteria of having local language proficiency within their probationary period.

[3.] In respect of the petitioner in WP(C) No. 39/2023, a show cause notice was given to him as to why his service should not be terminated for failing to fulfill the said eligibility criteria. Aggrieved with the show cause notice, the petitioner filed WP(C) No. 16/2023 but the same was withdrawn by him with liberty to file afresh as he was terminated from service shortly after filing the said writ petition. In respect of the petitioner in WP(C) No. 31/2023, no show cause notice was issued to him prior to his termination from service. Aggrieved with their termination orders, the petitioners are before this Court.

[4.] Mr. Vinod Kumar, learned counsel for the petitioners submits that prior to his termination, the petitioner in WP(C) No. 31/2023 had served for 2 years, ten 10 months and 24 days and therefore, having regard to the fact that the probation period with extension as stipulated under the Mizoram Rural Bank (Officers & Employees) Service Regulations, 2010 (the Regulations) being only 18 months, the petitioner is only deemed to be confirmed in service. In support of his submission, the learned counsel relies upon 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.] The learned counsel by drawing the attention of this Court to the Offer of Appointment of the petitioner in WP(C) No. 31/2023 dated 03.04.2018 and 26.04.2018 submits that it has been clearly stipulated that the service of the petitioner is to be governed by the Regulations and that as per Regulation 9, an officer or employee is to be confirmed in service on completion of probation period. There is no mention about the requirement of having language proficiency in order to be confirmed in service. Therefore, such stipulation being only in the form of executive instruction, the same cannot override the statutory provisions under the Regulations. He therefore submits that the impugned termination orders cannot be sustained and should be set aside.

[6.] Mr. Vinod Kumar, the learned counsel further submits that the petitioner in WP(C) No. 31/2023 was not even issue prior notice before he was terminated from service and therefore, the principles of natural justice or *audi alteram partem* having not been observed, the impugned termination order cannot be sustained. In support of his submission, the learned counsel relies upon the following authorities:-

(i) *A.K. Kraipak & Ors. -Vs- Union of India & Ors.* reported in AIR 1970 SC 150.

(ii) *Smt. Maneka Gandhi -Vs- Union of India & Anr.,* reported in AIR 1978 SC

597.

[7.] The learned counsel further submits that in respect of the petitioner in WP(C) No. 39/2023, although show cause notice was issued to him but in fact, by the time he was terminated from service, he had already rendered more than 18 months of service. In other words, the petitioner had rendered 24 days of service after completion of the 18 months probation period. Therefore, he also has to be deemed to have been confirmed in service. The learned counsel thus submits that the impugned orders of termination should be set aside and the petitioners, reinstated back into their service.

[8.] Mr. C. Zoramchhana, learned Standing Counsel for the Mizoram Rural Bank respondents submits that the requirement of having local language proficiency up to 8th standard is not just an executive instruction and in fact, the same is clearly provided in the Regional Rural Banks (Appointment of Officers & Employees) Rules, 2017 (Rules of 2017) and which in turn has been framed in exercise of the powers conferred by Section 29 read with Section 17 of the Regional Rural Banks Act, 1976 (Act of 1976). In this connection, the learned counsel has drawn the attention of this Court to the Rules of 2017 annexed to WP(C) No. 31/2023 as Annexure-4. The learned counsel submits that despite having been given the opportunity to secure language proficiency, the petitioners have failed to do so and therefore, they had to be terminated from service.

[9.] The learned counsel further submits that the petitioner in WP(C) No. 39/2023 was issued show cause notice prior to his termination from service as per the relevant norms and rules and therefore, there is no violation of principles of natural justice. In respect of the petitioner in WP(C) No. 31/2023, the learned counsel admits that show cause notice was not served to him but nevertheless, as he fail to secure language proficiency within the stipulated period, his termination is only sustainable. He thus submits that both the writ petitions should be dismissed.

[10.] Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel appearing for the Pachhunga University College and Mizoram University respondents submits that on the request of the Mizoram Rural Bank, Pachhunga University College had conducted 3 months training course in Mizo language for the employees of the Bank and had certified completion of the course in Mizo language up to 8th standard level without prior permission of the Mizoram University to which it is affiliated. Therefore, Pachhunga University College also being a constituent college of the University was asked to recall the results it had announced and the certificate that was issued to that effect. He submits that the action of the respondents he represents having not been questioned or put to challenge by the petitioners, the petitioners have no basis to claim that they are duly qualified to be confirmed in their appointed post for having fulfilled the stipulation of securing local language proficiency up to 8th standard. He thus

submits that under the facts and circumstances, the writ petition is liable to be dismissed.

[11.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The issue to be decided is as to whether the petitioners have been wrongly terminated from their service on having failed to secure local language proficiency up to 8th standard and whether such stipulation is authorized and sustainable. Although the learned counsel for the petitioners have submitted that 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.

[12.] The above being the stipulation, it cannot be said that the same stipulation made in the Advertisement and in the Offer of Appointment of the petitioners are merely in the form of executive instructions. 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.

[15.] Thus, upon due consideration of the case in its entirety, I do not find merit in the writ petitions and they are accordingly dismissed. No cost.

JUDGE

Comparing Assistant