

GAHC030002652021



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

Case No. : WP(C)/75/2021

Petitioners:

1. H.Z.Lalrinfela
S/o H.Z. Lallianchhunga (L)
R/o RamtharTlangVeng, Aizawl, Mizoram
2. LalrosangaChhangte
S/o Thangthuama
R/o Central Jail Veng, Aizawl.
3. T.Ramzauva
S/o Lalbiaka
Permanent Address :HuntharAizawl
Present Address : Central Jail, Aizawl.
4. Zosangliana
S/o Lalnuntluanga (L)
Permanent Address : Central Jail Veng, Aizawl.
Present Address : District Jail, Aizawl.
5. LaldinglianaChinzah
S/o C. Mangchheuva (L)
Permanent Address :Vawmbuk, Lawngtlai District.
Present Address : District Jail, Serchhip(Chhiahtlang)
6. C. Lalbiaktluanga
S/o Lalringa (L)
Permanent Address :Chhiahtlang
Present Address : District Jail, Lunglei

7. H.S. Zosangliana
S/o Thanglinga
R/o District Jail, Siaha

8. H.c. Lallianvuta
S/o Khengkulha
Permanent Address : Armed Veng South, Aizawl.
Present Address : District Jail, Champhai

9. H.C. Hratliana
S/o Khengkulha
Permanent Address : Armed Veng South, Aizawl.
Present Address : District Jail, Champhai

10. Thuthlungropuia
S/o Rolala
R/o District Jail, Kolasib.

11. Lalbiakdika
S/o Lalruma
Permanent Address :Tanhiril, Aizawl
Present Address : District Jail, Mamit

12. Lalmuanpuia
S/o R. Vanlallawma
Permanent Address :Kolasib
Present Address : District Jail, Kolasib

13. R. Lalmalsawma
S/o R. Kaprumvunga (L)
R/o District Jail, Champhai

14. Lalruatsanga
S/o B. Thantluanga
R/o Central Jail, Aizawl

15. H. Thanghluna
S/o Saikhuma (L)
R/o Districst Jail, Serchhip

16. C. Vanlaltlana
S/o Tummanga (L)
R/o Central Jail, Aizawl

17. K. Lalremsiama
S/o Vanrikhuma (L)
Permanent Address :Tuithiang, Aizawl
Present Address : District Jail, Mamit

18. R. Lalthuammawia
S/o Lalengliana
R/o Meisatla, Siaha

19. P.Pahu
S/o PPKhaido (L)
R/o Meisatla, Siaha

20. Zosangliana
S/o LH Vanhnuaithanga (L)
R/o Lunglawn, Lunglei

21. P. Sawiluaia
S/o Laldingliana
Permanent Address :Ramthar 'N', Aizawl
Present Address : District Jail, Champhai

22. Ravinder Singh
S/o Tek Chand
R/o District Jail, Lawngtlai

23. Zahmingthanga
S/o Lianhlira (L)
R/o Sazaikawn, Lunglei

24. Khatsiama
S/o Thangkima (L)
R/o Central Jail Veng, Aizawl

25. Chawngsiama
S/o Khaidama (L)
R/o Tanhril, Aizawl

- ***Versus-***

Respondents :-

1.State of Mizoram represented by the Secretary to the Govt. of Mizoram.

2.The Secretary/Under Secretary
Home Department,
Government of Mizoram.

3.The Under Secretary to the Govt. of Mizoram,
Finance Department (PRU)
Government of Mizoram.

4.The Chairman/Secretary
Planning Programme& Implementation Department,
Government of Mizoram.

Advocates for the petitioners : Ms. Rosalynn L. Hmar
Mr. Lalrimdinthara
Mr. Lalrindika

Advocate for the respondents : Ms. Zairemsangpuii, CGC
for No.1
Mrs. H. Lalmalsawmi,
Govt. Advocate, Nos. 2-5

Linked Case : I.A.(Civil)/122/2022

H.Z. Lalrinfela and 24 Ors.
Ramthar Tlang Veng
Aizawl, Mizoram.

VERSUS

Union of India and 4 Ors.
Chairman
5th Commission
Ministry of Home Affairs

Advocate for the Petitioner : Ms. Rosalynn L Hmar
Advocate for the Respondent : Ms Zairemsangpuii
CGC for R1

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (ORAL)

Date of hearing & Judgment : 07.02.2024

Heard Ms. Rosalynn L. Hmar, learned counsel for the petitioners along with Mrs. H. Lalmalsawmi, learned Govt. Advocate for the State respondents.

2. This writ petition filed under Article 226 of the Constitution of India is for issuance of the appropriate writ against respondent Nos. 1-5 for the up-gradation of the pay of the petitioners, so that they are in par with those equivalent ranks in the Police Department.

3. Ms. Rosalynn L. Hmar, the learned counsel for the petitioners submits that the pay scale of the petitioners who are members of the Mizoram Jail Employees should

be up-gradated in terms with the Mulla Committee recommendation. The learned counsel submits that the Mulla Committee had recommended, at Para 24.14.10, that prison personnels should be paid salaries and allowances at par with those of equivalent ranks in the Police Department. The learned counsel submits that the Assistant Jailer is in the equivalent rank of the Sub-Inspector while the Jailer in the Prison Department is equivalent to the rank of the Inspector of Police. However, at present since the Jailer is enjoying the equivalent scale of the Assistant Jailer, his pay is in the rank of Sub Inspector while he should be paid equivalent scale of the Inspector of Police. She submits that at present the Jailer is given only an additional pay of Rs. 200/-while he is given the equivalent scale of the Assistant Jailer.

4. She submits that the petitioners have submitted various representations to the State Government for the up-gradation of the pay scale of the Jailer, so that they are placed equivalent to the pay scale of the Inspector of Police. However, their representations were not considered. The replied to their representations was a letter received was 05.02.2020 which was to the effect that, the consideration of pay up-gradation matters including representation of present Department Officers is being put on hold until report and recommendation of the 15th Finance Commission is available. The learned counsel submits that at present the 15th the Finance Commission is no longer in existence and therefore the petitioners have approach this Court since they do not find any alternative remedy to their grievances.

5. The learned counsel for the petitioner further submits that in the Mizoram Prison

Manual, 2017, Clause 30.1 of Chapter 30 provides that “*salaries and other employment benefits should not be arbitrarily fixed but should be related to the work to be performed in a modern correctional system, which is complex and arduous and is in the nature of an important social service. The correctional staff should be paid salaries and allowances at par with those of equivalent ranks in the Police Department*”. She therefore prays that the Jailer & Assistant Jailer comes within the definition of correctional staff and as mentioned in the Mizoram Prisons Manual, 2017, the correctional staffs are to be paid salaries and allowances at par with those of equivalent ranks in the Police Department.

6. The learned counsel further submits that the Home Secretary, Govt. of India has recently as 10th May, 2023, had written to all the Chief Secretaries and Union Territories that since the Prisons Act, 1894, the Prisons Act 19100 and the transfer of Prison’s Act, 1950 have been reviewed, a ‘Model Prisons Act, 2023’ has been finalized, which is progressive and has made relevant provisions. The State Government & Union Territories Administrations were informed that they could benefit from the ‘Model Prisons Act, 2023’ by adopting the same it in their jurisdictions or with such modifications which they may consider necessary, and repeal the existing three Acts in their jurisdictions.

7. The learned counsel submits that as per the Model Prisons & Correctional Services Act, 2023, the services of the jailer and Assistant Jailer comes within the correctional services, which defines ‘*correctional Service*’ to mean any service or

program aimed at the reformation and rehabilitation of an inmate, and includes services related to the assessment, supervision, treatment, training, control, custody of an inmate.

8. The learned counsel further submits that as recently as in the month of December, 2023, the petitioners have also submitted a proposal to the respondents to up-grade the pay scale of the Jailers/petitioners by submitting an 'Additional/Alteration of Model Prison and Correctional Services Act, 2023,' for the consideration of the State Government.

The learned counsel has relied upon the following authorities in support of her submissions by citing the judgment of the High Court of Tripura wherein similar relief prayed for by the petitioners were granted by the High Court in **Sri. Sanjit Debbarma & 10 Ors. Vs. State of Tripura & 3 Ors** .in WP(C) No. 292/2007 dated 15.02.2014 which was upheld by the division Bench in **State of Tripura & 2 Ors. Vs. Dilip Kumar Deb & 5 Ors.** in WA No. 14/2020 dated 04.07.2022.

9. Mrs. H. Lalmalsawmi, learned Government Advocate for the State respondents submits that the State respondents have considered the proposal made by the petitioners and though they find the submissions and the grievances reasonable, however at this stage, due to financial constraints, they are not able to take the required steps. She submits that since the petitioners have, as recently as in the month of December 2023, also made a fresh proposal, the State respondents is in the process of looking into the said proposal.

10. The learned Government Advocate further submits that the recommendations made by the Mulla Committee also called All India Committee on Jail Reform (1980 - 83) being just a recommendation, lacks binding effect on the State. She submits that the State respondents have always adopted or adapted the Central Rules depending on the financial position of the State. She further submits that the State respondents did not adopt the report and recommendation of the Mulla Committee in toto, as it would disturb the structures of various posts in other Departments which are equivalent to the posts under Prison Department.

11. The learned Government Advocate also submits that with regards to the 15th Finance Commission, which is now available, there is no improvement in the amount of grants to be received from the Central Government instead of increase, the deficit grants recommended during the 15th Finance Commission Award has decreased drastically and therefore, the grievances of the petitioners could not be considered till date. She further submits that the State respondents are still open to consider the grievances of the petitioners depending on the financial situation in the State.

The learned Government Advocate further submits that in view of the decision of the Apex Court in **Union of India Vs. Indian Navy Civilian Design Officers Association & Anr.**, reported in **2023 SCC Online SC 173 (para 9 & 17)**, the court may refrain from passing any order which involves huge financial implications for the State Government.

12. Having heard the submissions made by the learned counsels for both the parties, this Court finds it appropriate to refer to the decision of the Apex Court in **Union of India Vs. Indian Navy Civilian Design Officers Association &Anr. (supra)**, wherein the Apex Court had observed that;

“9. Before advertng to the rival contentions raised by the learned counsels for the parties, it deserves to be noted that the power of judicial review of the High Courts in the matter of classification of posts and determination of pay scale is no more res integra. It has been consistently held by this Court in plethora of decisions that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and the interference of the Court was absolutely necessary to undo the injustice.

17. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.”

13. In the instant case, it is seen that the state respondents have not rejected the representations of the petitioners but are at the stage of considering the recent representations submitted. The respondents have not denied the reasonableness of the representations, but are not able to implement them due to financial constraints. The officers and staff of the Jails are not only discharging a critical role of keeping the offenders in custodial segregates but also help in the process of reformation of the

prisoners through various correctional programmes. The nature of their duties are no less essential and important as those in the Police forces. It is seen that the Division Bench in **State of Tripura & 2 Ors. Vs. Dilip Kumar Deb & 5 Ors.(supra)** had upheld that the Judgment & Order of the Single Bench directing to equate the pay scales of the Jailor with the Inspector of Police and the pay scale of the Asst. Jailor and the pay scale of Sub-Inspector of Police.

14. In view of the above, this Court find it fit that the instant writ petition be disposed by directing the State respondents to consider the grievances of the petitioners with reference to the letter issued by the Home Secretary, Govt. of India, dated 10th May, 2023 addressed to all the Chief Secretaries and UTs and to consider the application of Model Prisons Act, 2023 and to also consider the proposal sent to the respondents by the petitioners for 'Additional/Alteration of Model Prison and Correctional Services Act, 2023,' so that the grievances of the petitioners are adequately addressed to, within a reasonable time frame, keeping in mind the principles for equity and justice.

15. Accordingly W.P(C) No. 75/2021 stands disposed of as above.

JUDGE

Comparing Assistant