

GAHC030002942023



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

Case No. : WP(C)/64/2023

Sh. Miltona and 33 Ors.

S/o Nengzachin

R/o Vaivakawn, Aizawl. 2: Sh. C. Laltlankima

3: Sh. David Laltanpuia Sailo

4: Smt. F. Lalhmuzuali

5: Smt. Irene Lalliankimi

6: Sh. Lalhruaitluanga

7: Sh. Lalnghakmawia

8: Smt. Lalnunpuui

9: Sh. Laltlansanga

10: Sh. PC Lalsawmzuala

11: Smt. PC Zoramsangliani

12: Smt. R. Lalawmpuii

- 13: Smt. Rita Lalhlupui
- 14: Sh. RL Lalremruata
- 15: Sh. Samuel Lalhriatzuala
- 16: Smt. V. Lalbiaknii
- 17: Smt. Vanlalhruaii
- 18: Sh. Zonunsanga Jongte
- 19: Sh. K. Lalchamliaana
- 20: Sh. K. Laltanpuia
- 21: Smt. Lalrindiki Hmar
- 22: Smt.Chawnghlunchhungi Chawngthu
- 23: Smt. Dilys Laldinpuii
- 24: Sh. F. Lalchhuanmawia
- 25: Sh.Joseph Vanlalremruata Hauhnar
- 26: Sh. K. Zothanpuia
- 27: Smt. Lalremsiami
- 28: Smt. Lalruatfeli

29: Smt. Laltanpuui

30: Shri. Ngurchhuanmawia

31: Smt. Sylvia Zomuanpuui Colney

32: Smt. Vanlalawmpuii

33: Smt. Vanlalnghaki

34: Shri. Zoremaw

VERSUS

State of Mizoram and 4 Ors.

R/b the Chief Secretary to the Govt. of Mizoram.

Aizawl, Mizoram. 2: The Secretary to the Govt. of Mizoram
School Education Dept.

3: The Secretary to the Govt. of Mizoram
Dept. of Personnel and Administrative Reforms.

4: The Secretary to Govt. of Mizoram
Finance Dept

Advocate for the Petitioner : Ms Dinari T Azyu

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 5

Linked Case : WP(C)/52/2022

H.D. Lalnunzira and 9 Ors.

S/o Rokunga

R/o H.No. D-29

Vanbawng

Saitual

VERSUS

State of Mizoram and 4 Ors.
Aizawl
Mizoram

Advocate for the Petitioner : Ms Dinari T Azyu
Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.AG/GA
Mizoram)

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

JUDGMENT & ORDER

06.05.2024

This Order will dispose of both the writ petitions. Heard Mr. Victor L. Ralte, learned counsel for the petitioners in both the writ petitions and Mrs. H. Lalmalsawmi, learned Govt. Advocate for the State respondents in WP(C) No. 52/2022. Mrs. Mary L. Khiangte, learned Govt. Advocate who represents the respondents in WP(C) No. 64/2023 is absent today. However, since the issues involved in both the writ petitions are similar and as pleadings are complete, the writ petition is taken up for disposal.

[2.] Brief facts of the case as projected by the petitioners in WP(C) No. 52/2022 is that the petitioner Nos. 1 to 9 were appointed as High School Teacher on adhoc

basis under various Schools during the period between 2008 to 2011. As for the petitioner No. 10, he was appointed as Middle School Teacher on adhoc basis in the year 2008. The appointment of the petitioners were duly approved by the District Education Officer concerned as per the relevant provisions of the Govt. of Mizoram, Education & Human Resources Development Adhoc Recurring Grant-in-Aid for General Maintenance of School Rules, 1997.

[3.] It is the case of the petitioners that the Govt. of Mizoram in the School Education Department vide Notification dated 17.07.2014 allowed placement of Teaching cadre to employees in Deficit and Adhoc Aided School Teachers to Senior and Selection Grade subject to fulfillment of eligible criteria provided in the Notification with effect from 01.09.2012. Teachers having 8 years regular service in the relevant entry grade in teaching profession in Deficit or Adhoc Aided Schools as Teacher, Lecturer, Headmaster shall be eligible to enjoy the Senior Grade. Likewise, Teachers having 16 years of regular service in the relevant entry grade in teaching profession in Deficit or Adhoc Aided Schools as Teacher/Lecturer/Headmaster shall be eligible to enjoy the Selection Grade. In terms of the Notification, the petitioner Nos. 1 to 4 and 6 to 10 were upgraded to the Senior Grade between the years 2016 to 2017. However, the petitioner No. 5 was not upgraded.

[4.] For filling up of 111 posts of Government High School Teacher in Science and in Maths subject, an Advertisement was issued by the Mizoram Public Service

Commission (MPSC) on 06.01.2017 through Advertisement No. 21 of 2016 to 2017. All the petitioners applied for the post advertised through proper channel and after going through the selection process, they were selected for appointment. The petitioner Nos. 1 to 7 and 10 were appointed vide Office Order dated 09.02.2018 while the petitioner Nos. 8 & 9 were appointed vide Office Order dated 15.05.2018. The services of all the petitioners were thereafter confirmed vide Office Order dated 08.11.2021.

[5.] The Governor of Mizoram in exercise of the powers conferred by proviso to Article 309 of the Constitution of India framed the eligibility criteria for pay upgradation of Government Primary School, Middle School and High School Teachers in the Senior and Selection Grade with effect from 01.06.2012. The same was notified by the Govt. of Mizoram in the School Education Department vide Notification dated 19.07.2013 (Annexure-10). As per Clause 1(a) of the Notification, regular/confirmed School Teachers/Headmasters with 8 years of service in the relevant entry grade in teaching profession shall be eligible to enjoy the Senior Grade. Clause 1(b) provides that for the purpose of counting 8 years service in the entry grade, those services rendered in adhoc/deficit service continued by regularization into Government Service without any break shall be counted as qualifying service. Likewise, for being placed in the Selection Grade, 16 years of service (8 Senior Grade years + 8 years service) in the entry grade, the

services rendered in adhoc/deficit services continued by regularization into Government Service without any break shall be counted as qualifying service. The Notification dated 19.07.2013 was amended vide Corrigendum dated 02.07.2014 (Annexure-11) by which services rendered under the CSS too came to be added for counting the number of years of service for being placed in the Senior and Selection Grade in respect of Middle School and High School Teachers.

[6.] It is the case of the petitioners that they are eligible to count their services rendered on adhoc basis in terms of the Notification dated 19.07.2013 and Corrigendum dated 02.07.2014 but however, despite approaching the respondent authorities concerned, they have not been given such benefit. The further case of the petitioners is that similarly placed Teachers who rendered their initial service under the RMSA (CSS) were granted the benefit of counting their past service for placement to Senior and Selection Grade Scale vide Notification dated 24.04.2020 (Annexure-12). The petitioners contend that the RMSA Teachers under the CSS were appointed initially by the State Project Director concerned and thereafter, like the petitioners, they responded to the Advertisement dated 06.01.2017 advertised for filling up of 111 posts of Government High School Teachers in Maths and in Science subjects. Therefore, the petitioners being similarly situated, they should also be given similar benefit.

[7.] Mr. Victor L. Ralte, learned counsel for the petitioners submits that as many

as 55 High School Teachers appointed along with the petitioners vide Appointment Order dated 09.02.2018 and who were previously working under the RMSA (CSS) upon being appointed as Government High School Teachers vide Notification dated 24.04.2020 were allowed to count their services rendered under the RMSA (CSS) as qualifying service for placement to Senior and Selection Grade in terms of the Notification dated 19.07.2013. Likewise, one Smt. C. Lalzarliani, who was previously working in adhoc aided School and whose appointment was approved by the SDEO concerned with effect from 31.07.2008 vide Office Order dated 31.07.2008 entered into Government service as Government Middle School Teacher on regular basis through proper channel vide Notification dated 02.12.2019 and she was upgraded to Senior Grade with effect from 01.04.2016. The learned counsel also submits that the case of the petitioners is also squarely covered by the Judgment & Order dated 08.11.2017 passed by this Court in WP(C) No. 33/2018 wherein, the services rendered by the petitioners under the Operation Blackboard (CSS), SSA (CSS) and State contract were allowed to be counted as qualifying service for upgradation of pay in terms of Notification dated 19.07.2013 and Corrigendum dated 02.07.2014 with effect from their initial appointment under the CSS. The learned counsel also relies upon a similar Order passed by this Court on 31.08.2018 in WP(C) No. 101/2018 (*P.C. Lalthlamuana & 33 Ors. -Vs- State of Mizoram & 4 Ors.*). He therefore submits that the petitioners in the instant case being similarly situated in all respects, they cannot be treated differently and

denied the benefit of counting their past service rendered on adhoc basis.

[8.] Mr. Victor L. Ralte, learned counsel in respect to WP(C) No. 64/2023 submits that there are 34 petitioners in the said writ petition. On 10.04.2015, an Advertisement was issued for filling up of 102 posts of Government Middle School Teachers through the MPSC. The petitioner Nos. 1 to 21 responded to the Advertisement and participated in the selection process. They were selected and recommended for appointment and accordingly, the petitioner Nos. 1 to 18 were appointed on 13.01.2016 while the petitioner Nos. 19, 20 & 21 were appointed on 09.05.2016 against the vacancy caused due to the resignation of the incumbents concerned.

[9.] The learned counsel submits that the MPSC again published an Advertisement on 09.10.2017 for filling up of 60 posts of Government Middle School Teachers. The petitioner Nos. 22 to 34 applied for the post and were selected and appointed on 14.05.2019. Subsequently, the petitioners were confirmed in service between the years 2018 to 2022. The learned counsel submits that the State Project Director, SSA, Mizoram has issued individual certificates to all the petitioners certifying that there was no break in the service of the petitioners between their initial appointment under the SSA (CSS) and their appointment in the Government Service as per the selection made in terms of the two (2) Advertisements. He therefore submits that the petitioners like the petitioners in

WP(C) No. 52/2022 are entitled to be considered for counting their past service rendered from their initial appointment under the SSA (CSS) for giving them the benefit of placement to Senior and Selection Grade.

[10.] The learned counsel further submits that although according to the State respondents, counting of past service of 55 RMSA Teachers was before the issuance of the Mizoram Government Employees (Counting of Past Service) Rules, 2020 (Rules of 2020), the Rules of 2020 is not applicable to the case of the petitioners inasmuch as, Clause 5 of the Rules of 2020 provides for counting of one third of the past service rendered by Work Charge, Contract, Provisional or any adhoc/officiating employee as specified under Rule 2 of the Rules of 2020 upon regular appointment to substantive sanctioned post in the feeder post/grade, as regular service for the purpose of determining eligibility for promotion to the next higher post/grade, including promotion through Limited Departmental Examination. Whereas, in case of the petitioners, it is not a case of regular appointment to the same substantive sanctioned post but a provision provided as per the Notification dated 19.07.2013 for counting of past services rendered in adhoc/deficit or CSS service continued by regularization into Government Service without any break which can be counted as qualifying service for the purpose of pay upgradation to Senior and Selection Grade. He thus submits that the writ petitions may be allowed as prayed for.

[11.] Mrs. H. Lalmalsawmi, learned Govt. Advocate by referring to the affidavit-in-opposition of the State respondents more particularly at paragraph Nos. 6 and 20 submits that as per the Advertisement floated by the MPSC, those who are in government service should apply through proper channel. The petitioners were also given No Objection Certificate by the District Education Officer to participate in the selection process but however, the same cannot be the basis to show that the petitioners were in Government Service prior to their appointment as regular High School and Middle School Teachers. She submits that the Notification dated 19.07.2013 provides for counting of past service rendered on adhoc/deficit without break till regularization for those Teachers of newly provincialized Schools. This provision is not applicable for directly recruited Teachers like the petitioners in the present case unless their service were provincialized prior to their appointment in Government service in terms of the Advertisement floated by the MPSC. The petitioners not being in Government Service prior to their direct appointment as Government High School Teachers and Middle School Teachers, they have no right to claim counting of their past services rendered on adhoc basis.

[12.] The stand of the State respondents in WP(C) No. 64/2023 is contained in their affidavit-in-opposition filed on 12.12.2023. The stand taken in paragraph No. 11 of the counter affidavit is that the counting of the past services of 55 RMSA Teachers who were directly appointed as High School Teachers were considered

just before issuance of the Rules of 2020 and therefore, the same is not similar to the case of the petitioners. Further, even though the petitioners in WP(C) No. 33/2018 were initially appointed under the CSS (Operation Blackboard) they were appointed as State Contract Teachers after the discontinuation of Operation Blackboard (CSS Scheme) and subsequently, they were regularized through Contract Regularization Scheme. However, in case of the present petitioners, they were neither appointed as State contract nor regularized through provincialization or Contract Regularization Scheme like that of the petitioners in WP(C) No. 33/2018 but they were directly recruited. Therefore, the provision relied upon does not apply to directly recruited Teachers like the petitioners.

[13.] I have heard the submissions made by the learned counsels for the parties and I have perused the materials available on record. The issue to be considered is as to whether the petitioners who were initially appointed under the SSA (CSS) or as adhoc Teachers can be given benefit of counting their past services rendered prior to their appointment on regular basis in terms of the Notification dated 19.07.2013 and the Corrigendum dated 02.07.2014.

[14.] A perusal of the Notification dated 19.07.2013 goes to show that the same has been issued by the Governor of Mizoram in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. In order to be eligible to be upgraded to Senior Grade, one has to be a regular/confirmed Government School

Teacher/Headmaster with 8 years service in relevant entry grade in teaching profession. For the purpose of counting 8 years of service in the entry grade, the services rendered in adhoc/deficit service continued by regularization in Government Service without any break shall be counted as qualifying service. Similar criteria is provided in order to be upgraded to the Selection Grade. Only difference is that 16 years of service in the relevant entry grade in teaching profession is required. For the purpose of counting the 16 years in the entry grade, the services rendered in adhoc/deficit service continued by regularization into Government Service without break shall be counted as qualifying service. The Corrigendum dated 02.07.2014 also issued by the competent authority in exercise of the powers conferred by proviso to Article 309 of the Constitution of India and the services rendered under the CSS in the past could be counted for upgradation to Senior and Selection Grade.

[15.] As already stated herein above, 55 numbers of High School Teachers who were initially appointed under the RMSA (CSS) were allowed to count their initial service rendered as qualifying service for placement to Senior and Selection Grade scale subject to their substantive appointment is made without break and no claim to arrear pay and placement to Senior/Selection Grade should be made effective from the actual date of regularization vide Notification dated 24.04.2020. Likewise, the petitioners in WP(C) No. 33/2018 were initially appointed under Operation

Blackboard (CSS) and thereafter, under the SSA and subsequently, on Contract basis under the State on fixed pay. They were then regularized in service as per the Regularization Scheme for Contract Employees. They were found to be entitled for consideration for placement to the Senior and Selection Grade in terms of the Notification dated 19.07.2013 by this Court and a direction to that effect was passed vide Judgment & Order dated 28.03.2018. Likewise, a similar direction was made in respect of Primary School Teachers who were appointed under the Scheme for Non-Formal Education Scheme vide Order dated 31.08.2018 in WP(C) No. 101/2018. It may be noticed that vide Office Order dated 08.11.2021, all the petitioners in WP(C) No. 52/2022 were regularized in service with effect from the date of their completion of their probationary period i.e., 09.02.2018. In respect of the petitioners in WP(C) No. 64/2023, they were confirmed in service between 08.05.2018 to 26.05.2022.

[16.] The stand taken by the respondents is that the Rules of 2020 was made effective from the date of publication in the Mizoram Gazette i.e., 29.05.2020 and by the clarification on the implementation of the Rules of 2020 issued vide Office Memorandum dated 22.01.2021, the Rules of 2020 is applicable to all employees with prior services rendered as specified under Rule 2 of the Rules of 2020 irrespective of their date of regularization whether, before or after the said Rule came into force. It may however be seen that Rule 2 of the Rules of 2020 is

applicable to all Group 'A', 'B', 'C' & 'D' employees with prior service rendered as Work Charge, Contract, Provisional or any Adhoc/officiating employees under the Government of Mizoram, including services rendered under (a) Centrally Sponsored Scheme or other Scheme born post, and (b) deficit/adhoc/Government Aided Colleges/Schools upon their regular appointment to the same substantive sanctioned post.

[17.] What can be noted from the said provision is that Rule 2 speaks about application of the Rules to those employees who were given regular appointment to the same substantive sanctioned post. The petitioners in the present case have not been regularized or confirmed against the same substantive sanctioned post and therefore cannot have any application to their case. The clarification made through Office Memorandum dated 22.01.2021 clarifying that the Rule will apply to everyone irrespective of their date of regularization before or after the Rules of 2020 came into force can also be not made applicable to the case of the petitioners particularly, in view of the fact that the Rules of 2020 was framed under the powers conferred by the proviso to Article 309 of the Constitution of India whereas, Office Memorandum 22.01.2021 is only a clarification in the form of an executive instructions.

[18.] Therefore, upon due consideration of the case in its entirety, I am of the considered view that the petitioners are entitled to be considered for counting their

past services rendered prior to their regular appointment in terms of the Notifications dated 19.07.2013 and 02.07.2014. Accordingly, the respondents are directed to process the case of the petitioners for counting their services rendered under the CSS/Adhoc for their placement to the Senior and Selection Grade in terms of the Notification dated 19.07.2013 read with Corrigendum dated 02.07.2014. In doing so, the respondent authorities concerned will be at liberty to verify and scrutinize the service particulars of all the petitioners. The entire exercise shall be carried out within a period of eight (8) weeks from the date of receipt of a certified copy of this Order. Writ petitions accordingly stand disposed of. No cost.

JUDGE

Comparing Assistant