

GAHC030003182022



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

Case No. : WP(C)/77/2022

C. Vanlalhlengi and 7 Ors.
D/o C. Thanpuia
R/o Chaltlang, Lily Veng,
Aizawl, Mizoram. 2: Richard Zakhuma Tlau

3: C. Lalkhawngaiha

4: Vanlalfeli

5: Lalhruaitluanga

6: Lalthantluanga Hnamte

7: Lalthlamuanzuala

8: Esther Lalchhanhim

VERSUS

The Mizoram University r/b the Vice Chancellor and 4 Ors.
Mizoram University,
Tanhri, Aizawl, Mizoram. 2: The Vice Chancellor
Mizoram University

3: The Registrar
Mizoram University

4:The Director
UGC-Human Resource Development Centre
Mizoram University

5:The University Grants Commission r/b its Chairma

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

Advocate for the Respondent : Mr. L.H. Lianhrima, Sr.Adv. (Standing Counsel for MZU) for R1-R4

ORDER

BEFORE

HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

20.03.2024

This writ petition is filed by 8 petitioners, who are presently employed in various capacities at the UGC-Human Resources Development Centre, Mizoram University.

2. These petitioners were appointed pursuant to the advertisement issued by the Mizoram University for selection and appointment to the posts advertised for recruitment in the UGC-Human Resources Development Centre, Mizoram University.

3. The grievances of the petitioners are that notwithstanding their selection and recruitment was undertaken as per the Rules which were applicable for the selection for posts under the Mizoram University and the selection having been initiated by the Mizoram University, they are not given the benefits of seniority and promotion and other service benefits as well as being put up for departmental training as has been done in other similarly situated employees,

who are working under the Mizoram University.

4. The petitioners have represented before the Mizoram University seeking this benefits including promotion to the higher posts as per the Service Rules, however, since they were recruited for this UGC-Human Resources Development Centre, Mizoram University, they are not considered for promotion to the higher posts as well as grant of other service benefits as according to the authorities of the Mizoram University, they are not employees of Mizoram University.

5. Pursuant to a Memorandum of Understanding entered in between the Mizoram University and University Grants Commission, this Centre namely, UGC-Human Resources Development Centre (formerly UGC-Academic Staff College) was established to cater to the needs of Teachers/Principal/Research Scholars/Non-Academic Staff to enable them to enhance their knowledge/skills through systematic course work and methodologies. This MoU still subsists and the UGC-Human Resources Development Centre, Mizoram University is still functioning.

6. Under the said MoU, the Mizoram University inter alia is required to appoint/depute/outsource the appointment of Non-Teaching Staff so that the work in the Centre should not suffer and also to support the Centre financially in case of delay in the release of funds from the UGC. Although, as per the MoU, the duration was initially for a period of 5 years, but the same has been extended from time to time by mutual consultation and agreement.

7. Pursuant to the establishment of the UGC-Human Resources Development Centre, the Mizoram University issued advertisement and the procedure for recruitment to the various posts in which presently the petitioners having been

selected are presently employed.

8. The learned counsel for the petitioners submits that pursuant to the appointment orders of the petitioners, they were appointed on probation for a period of 2 years and in the appointment order, it is categorically mentioned that the appointee will be governed by CCS Rules as adopted by the Mizoram University and other rules and regulations framed by the Mizoram University from time to time. The appointment order also reflects the posts in which the petitioners are appointed, namely of the posts under the UGC/UGC-Academic Staff College, Mizoram University.

9. The learned counsel for the petitioners submits that pursuant to the period on probation, the petitioners were confirmed in their services and in the order confirming their services, there is a reference that their services are under Group 'B' and Group 'C' Staff (Non-teaching) of Mizoram University and UGC-Human Resources Development Centre.

10. The learned counsel for the petitioners submits that this is evident that the petitioners were recruited by Mizoram University and they are governed by all the rules and regulations which also governs the services of other similarly situated employees. The petitioners are also granted regular scale of pay as per the pay scale prescribed.

11. Under such circumstances, the respondent authorities are not justified in rejecting the claims of the petitioners for promotion and consideration of their career enhancement by restraining them from being included in the seniority list of similar grade and from appearing in departmental examination for being promoted to the next higher posts.

12. The learned counsel for the petitioners submits that the pay scale presently received by the petitioners are equivalent to the pay scale given to other similarly situated posts and therefore, there is no reason for the Mizoram University respondents to reject the claims of the petitioners for career advancement and promotion. He further submits that as per the Cadre Recruitment Rules (Non-teaching) under the Mizoram University, employee means any person duly appointed by Mizoram University through a Regular Selection Committee. He submits that the said Cadre Recruitment Rules governs the services of all employees under the Mizoram University including the present petitioners and therefore, there is no ground for the Mizoram University authorities to deny the claims of the petitioners for promotion to the next higher posts or career advancement etc.

13. In support of his contention, the learned counsel for the petitioners refers and relies upon the judgment of the Apex Court rendered in *Virendra Krishna Mishra Vs. Union of India and Others* reported in (2015) 2 SCC 712. Pressing the judgment into service, the learned counsel for the petitioners submits that the Apex Court held that encadring any particular posts while leave out others without justifying reasons is violation of Article 14 & 16 of the Constitution of India. The Cadre Review Committee is required to reasonably examine the claims of the employees belonging to different cadres while taking any decision in respect of encadring the various posts. The learned counsel for the petitioners submits that this aspect of the matter was never considered by the Mizoram University authorities and they have deliberately neglected to consider the claims of conferring promotional avenues or benefits to the petitioners and their representations having not been redressed, the petitioners have approached this Court for appropriate writ or direction or order.

14. The learned senior counsel representing the Mizoram University submits that the Mizoram University has disputed the claims of the petitioners by filing the counter affidavit. It is submitted that the executive council of the Mizoram University in its meeting held on 29.04.2013 has resolved that the Academic and Non-teaching Staff of the Academic Staff College shall be treated as regular staff, but they shall be considered as separate cell from the other regular employees of the University and therefore, cannot be pulled together. Such employees shall continue until the Academic Staff or its scheme of the UGC continues to exist in the Mizoram University and they will draw the salary from the funds allocated for Academic Staff College until further directions.

15. The learned senior counsel further submits that a communication from the UGC received by the University on 26.10.2018 reveals that the UGC has decided that the said Human Resources Development Centre (earlier Academic Staff College) will continue to run as a specific scheme of UGC and the expenditure on the staff deployed under the scheme will be borne under the scheme only and no expenditure on staff will be booked under the regular establishment of the University. He further submits that the representations submitted by the petitioners have been forwarded for due instructions to the UGC. However, no such instructions have been received by the Mizoram University so far.

16. Rival submissions have been duly considered. Pleadings on record have been carefully perused. Judgment cited at the bar has also been carefully perused.

17. Human Resources Development Centre was set up pursuant to the MoU executed by and between the Mizoram University. Clause 3 of the MoU place down the arrear in which the Mizoram University and the UGC are required to

work in collaboration. The same is extracted below:-

"3. Agreement to work in Collaboration:

(a) The University will/shall agree:

- (i) To provide adequate space for classrooms, computer lab, a seminar hall and hostel/guest house for HRDC.
- (ii) To provide quality power supply and include HRDC in campus network to provide Wi-Fi.
- (iii) To adhere to the guidelines strictly in carrying out the training programs including the appointment of teaching faculty and non-teaching staff as per UGC guidelines from time to time.
- (iv) To allow the faculty of HRDC to participate in teaching, research and extension on par with University faculty and extend similar benefits to HRDC faculty.
- (v) To appoint/ depute/ outsource the appointment of non-teaching staff so that the work in HRDC should not suffer.
- (vi) To include the faculty in all University statutory bodies as per norms of the University.
- (vii) To support HRDC financially in case of delay in the release of funds from UGC.
- (viii) To settle the accounts of HRDC by 30th June every year.
- (ix) Assets of HRDC like facilities, and human resources shall be under the control of HRDC.

(b) The UGC will/shall agree:

- (i) To provide necessary guidelines to implement to programs of HRDCs and monitor their performance regularly.
- (ii) To release the grants in time as to implement the training programs as per schedule.
- (iii) To review the performance of HRDCs periodically once in 3 years.
- (iv) To settle the accounts by 30th September of subsequent year.
- (v) To conduct the meeting of the Directors every year to take the feedback from the Directors and dovetail the objectives of HRDCs for effective functioning."

18. The administration of the Centre is vested on the authorised signature of the Mizoram University and the UGC. The duration of the MoU was initially for a period of 5 years from the date of its execution, namely 09.01.2020 or till such time as may be extended by mutual consultation and agreement. The Mizoram University is a Central University established under the Act of Parliament.

19. From the pleadings, it is seen that the recruitment of the petitioners have been conducted by a duly constituted Selection Committee following the notification regarding the recruitment process to be undertaken for the posts indicated therein. The petitioners were selected and appointed on probation for a period of 2 years. Upon completion of their probation, they have been regularly absorbed and are bound by all the rules and regulations of the Mizoram University. The petitioners are also getting regular scale of pay as are being granted in respect of other similar posts under the Mizoram University. While there is no dispute that the petitioners have been recruited for the purposes of the Human Resources Development Centre, there is also no dispute that their nature of work and responsibilities are similar to those undertaken under the Mizoram University in the equivalent cadre. The purpose of the Centre is to enhance the skills of both teaching and non-teaching staff under the Mizoram University. Although the Centre was initially conceived for a period of 5 years, however, there is no dispute that as on date the Centre is presently functioning and no such order has been passed by the UGC informing the Mizoram University about its intention to stop functioning of the Centre as on date. The representation filed by the petitioners before the Mizoram University has remained pending and has not been disposed of till date. It appears that the Mizoram University has not yet taken a decision on the claims made by the petitioners.

20. There is no gain saying that in any given enterprise, need for development or enhancement of the career is an essential concomitant of service jurisprudence. Time and again, the question of whether promotional avenues are to be granted to employees has been urged before various Courts of the Country including the Apex Court. A scrutiny of the various judgments rendered by the Apex Court in various aspects will be necessary at this stage.

21. In *Council of Scientific and Industrial Research and Another* reported in (1989) 4 SCC 635, the findings of the Apex Court in this respect are most relevant. The Apex Court held as under:-

"It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. 'The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.' There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."

22. Again, in *Dr.Ms. O.Z. Hussain Vs. Union of India* reported in 1990 (Supp) SCC 688, the Apex Court examined a similar issue and held that avenues for promotion increases efficiency of public service while stagnation reduces efficiency and makes the service ineffective. It was held that promotion is thus a normal incidence of service.

23. In *State of Tripura and Others Vs. K.K. Roy* reported in (2004) 9 SCC 65, the Apex Court held that State within the meaning of Article 12 of the Constitution of India should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Article 14 & 16 of the Constitution of India. The Apex Court held that despite its constitutional obligations, the State cannot take a stand that as the terms and conditions of offer of appointment having accepted, knowing fully well that there was no avenue for promotion, therefore, the concerned employee cannot resile therefrom. The Apex Court held that promotion being a condition of service, the employer concerned should have introduced a scheme which provides avenues for promotion to the employees.

24. In *Food Corporation of India and Others Vs. Parashotam Das Bansal and Others* reported in (2008) 5 SCC 100, the Apex Court categorically held that when employees are denied an opportunity of promotion for long years on the ground that they fell within a category of employees excluded from promotional prospect and the superior court therefore will have the jurisdiction to issue necessary direction. It was held that if there was no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country.

25. The above judgments of the Apex Court have also been found to be relied upon by this Court in *State of Arunachal Pradesh and Ors. Vs. Takam Pate and*

Ors., reported in (2012) 5 GLR 657, *MihirChakroborty and Ors. Vs. State of Assam and Ors.*, reported in (2020) 1 GLR 22 and *BishnuDeo Roy Vs. State of Assam and Ors.*, reported in (2016) 6 GLR 657.

26. From a careful analysis of the judgments rendered above as well as the judgment relied upon by the learned counsel for the petitioners, it is clear that promotion is an incidence of service. The State or instrumentalities of the State under Article 12 is duty bound in law to ensure efficiency in service and in that context is required to examine the possibility of providing promotion avenues so as to remove stagnation and enhance efficiency in service.

27. Coming back to the facts of the present case, there is no gain saying that the institute in which the petitioners are employed is partially if not entirely funded by the Mizoram University and it is in the interest of development and training of both teaching and non-teaching staff of Mizoram University that the institute was set up. The recruitment and selection to the posts in which the petitioners are working was initiated by the Mizoram University and in terms of the Rules as prevalent. The petitioners are receiving regular pay scale and as are being received by the other employees of the Mizoram University in the equivalent posts along with all other service benefits. However, for the purposes of promotion to the next higher posts, the petitioners are not permitted to undertake training or appear in the departmental examination nor are their names included in the seniority lists.

28. The Mizoram University, being a State under Article 12 is amenable to the writ jurisdiction, is required to provide an environment which ensures efficiency and development and healthy work environment. Merely because the petitioners have accepted their terms of appointment, their claims for career advancement

including promotion cannot be over looked on the ground that they were employed only for the purposes of Human Resources Development Centre.

29. Under such circumstances, this Court considers it appropriate to direct the Mizoram University authorities to forthwith consider the claims of the petitioners which have been ventilated by the representations filed. The competent authorities will constitute committee of 3 members comprising of the Registrar of the Mizoram University and any other competent officials as may be deemed fit and proper. This committee will examine the claims of the petitioners and also examine the possibility of bringing out a scheme to ensure the career enhancement of the petitioners as has been prayed for. The report of this committee will thereafter be placed before the Executive Council of the Mizoram University and which will thereafter pass appropriate orders. Both the said committee and the Executive Council of the Mizoram University while considering the grievances of the petitioners will take adequate note of the directions of the Apex Court as well as of this Court in the judgments discussed above. The authorities will endeavour to provide such avenues of career enhancement as per provisions of law. The committee be set up within a period of 15 days from the date of receipt of a certified copy of this order. The committee will thereafter place its findings before the Executive Council of the Mizoram University within a period of 30 days thereafter. The Executive Council will thereafter consider the committee report along with the directions of this Court and pass appropriate orders or resolutions as expeditiously as possible within the outer limit of 60 days from the date of receipt of a report of the committee directed to be set up by this Court. It is also directed that their current salaries alongwith emoluments if any be continued to be paid and released on time.

30. With the above observation, writ petition stands disposed of in terms of the above.

31. No orders as to cost.

JUDGE

Comparing Assistant