

GAHC030003842023



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

Case No. : WA/6/2023

Sh. C. Lalhliapa and 2 Ors.
S/o C. Lalkhuma (L)
C/o Principal, Govt. Higher Secondary School
Lunglei, Mizoram

2: Smt. C. Lalmuanpuii

3: Smt. Vanhmingliani Tochhawn

VERSUS

State of Mizoram and 5 Ors.
Represented by the Chief Secretary
to the Govt. of Mizoram, Aizawl 2:The Secretary to the Govt. of Mizoram

3:The Secretary to the Govt. of Mizoram

4:The Secretary to the Govt. of Mizoram

5:The Mizoram Public Service Commission

6:Sh. Lalnghilhlova Chinza

Advocate for the Petitioner : Ms Dinari T Azyu

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - R4

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
HONOURABLE MRS. JUSTICE S.P. KHAUND**

JUDGEMENT & ORDER (Oral)

Date : 13-11-2024
(*Marli Vankung, J*)

Heard Mr. Victor L. Ralte, learned counsel for the appellant along with Mrs. Mary L. Khiangte, learned Government Advocate for the State respondents. None appeared for the private respondent No. 6, though notice was deemed to be served vide this Court's Order dated 07.02.2024.

2. The present writ appeal is challenging the judgment and order passed by the learned Single Judge in Writ Petition No. 131/2021, wherein the learned Single Judge had dismissed the writ petition.

3. The case of the appellants/petitioners in WP(C) No. 131/2021 was that they had reached the stage of Selection Grade Lecturers as on 25.06.2012 and as per the relevant seniority list, which was published on 18.03.2013, they are now the senior-most Lecturers in the Selection Grade. As per the Mizoram School Education Department (Group 'A' Posts) Recruitment Rules, 2017 (Rules of 2017), there are 18 sanctioned posts of Principal, Govt. Higher Secondary School and the method of recruitment as provided in Column No. 11 of

Annexure-1 appended to the Rules of 2017 provides that 50% of the posts shall be filled up by promotion and the remaining 50% by Limited Departmental Examination (LDE). Column No. 12 of the same annexure further provides that promotion to the post of Principal, Govt. Higher Secondary School can be made from Lecturer, Govt. Higher Secondary School working on regular basis and who is in the Selection Grade having Bachelor of Education Degree (B.Ed) failing which, from Lecturer, Govt. Higher Secondary School who is in Senior Grade having B.Ed with 5 years of regular service in the grade. Recruitment, through LDE can be made from Lecturer, Govt. Higher Secondary School who have served on regular basis in Selection Grade having B.Ed or from Lecturer, Govt. Higher Secondary School in the Senior Grade, who have B.Ed Degree with 5 years of regular service in the grade. According to the appellants/petitioners, these are the only two methods for recruitment to the post of Principal of Govt. Higher Secondary School. Meanwhile, in a Notification dated 10.07.2018, pursuant to the decision of the Council of Ministers held on 04.06.2018 & 12.06.2018, C. Zakhuma Higher Secondary School, Kolasib was taken over by the Govt. of Mizoram. The notification dated 10.07.2018 also provided that, post creation, absorption of existing staff, etc. involving financial implication will be done later subject to the approval of the DP&AR (ARW) and Finance Department. Thus, 16 posts in all, including one post of Principal was approved

by the DP&AR (ARW) and Finance Department vide notification dated 27.09.2018. However, the State respondents, had filled up the incumbents of the school against posts which are suitable, particularly the post of Principal, Govt. C. Zakhuma Higher Secondary School, Kolasib by way of absorption by absorbing the respondent No. 6 to the said post without obtaining the approval for absorption from the DP&AR and the Finance Department vide the Notification dated 29.05.2019. The absorption of the respondent No. 6 was done without considering the case of the petitioners who are the eligible Senior Grade or Selection Grade Lecturers, wherein there was no provision for the post of Principal Government Higher Secondary School to be filled up by way of absorption. Therefore, the case of the petitioners was that the absorption of the private respondent No. 6, vide Notification dated 29.05.2019 being not sustainable should be set aside.

4. It was also the case of the petitioners that the Mizoram Middle School and High Schools (Provincialisation) Rules, 1994 (Provincialization Rules of 1994) provides that the existing incumbents of the provincialized schools shall be absorbed into Government service in suitable ranks or grades with effect from the date of provincialization, subject to suitability or appointment in Government service in consonance with the corresponding and relevant Recruitment Rules framed by the Department concerned. The Recruitment Rules

concerned in the present case is the Rules of 2017, which otherwise does not provide recruitment to the post of Principal, Higher Secondary School by way of absorption. That the petitioners though not challenging the provincialization of the school, were aggrieved by the absorption of the respondent no. 6, without there being any consideration of the other qualified persons . That on the creation of one post of Principal, Higher Secondary School , there are now 19 sanctioned posts of the Principal, Govt. Higher Secondary School and the eligible candidates should have been considered for the post of Principal, Higher Secondary School as per the existing rules. There was no mention of any relaxation of the Recruitment Rules 2017 in the appointment, absorption of respondent No. 6 to the post of Principal vide the impugned Notification dated 29.05.2014 and is thus liable to be set aside and quashed.

5. On the other hand, the contention of the respondents was that the Rules of 2017 provides for 18 posts of Principal, Govt. Higher Secondary School and that the 1 (one) post of Principal created by the State respondents was pursuant to the provincialization of C. Zakhuma Higher Secondary School as a Govt. Higher Secondary School. Therefore, none of the rights of the petitioners including those claimed under Articles 14 & 16 of the Constitution of India has been affected and the petitioners are not debarred from being considered for promotion against the 18 posts of Principal, Higher Secondary School sanctioned

by the Rules of 2017. On the provincialization of C. Zakhuma Higher Secondary School, the State Government had taken a policy decision to adopt the Mizoram Middle Schools and High Schools (Provincialization) Rules of 1994, so as to provincialize the services of the incumbents working in C. Zakhuma Higher Secondary School. The petitioners did not challenged the provincialization of the school nor have they challenged the provincialization of the other incumbents except the post of Principal, which is filled up by absorbing the services of the private respondent No. 6, and therefore the petitioners have chosen to single out the private respondent No. 6 on account of their personal interest only. That as per the proviso of Rule 6 of the Provincialization Rules 1994, it has clearly been provided that on provincialization of the school concerned, all the existing incumbents of the provincialized schools shall be absorbed in Government service in suitable ranks and grades with effect from the date of provincialization. That the State Government had taken a policy decision to adopt the Provincialization Rules of 1994 to provincialise a school, and absorbed the services of the teaching and non-teaching staff of the school and therefore, there is no further requirement for relaxing of the Mizoram School Education Department (Group 'A' Posts) Recruitment Rules, 2017 (Rules of 2017).

6. It was also contended that the approval was given by the DP&AR (ARW) for the creation of 16 teaching and non teaching posts on the provincialization

of C. Zakhuma Higher Secondary School, Kolasib and which was as proposed by the Commissioner & Secretary, School Education Department, that the creation of posts was for accommodating the existing Principal and staff of the School and that the provincialization and absorption comes under one single package under the Provincialization Rules 1994.

7. The learned Single Judge after considering the submissions made by the learned counsels for both the parties, had referred to Rule 6 of the Provincialisation Rules 1994 and observed *that applying Rule 6 to the present case, it may be seen that there is no question of filling up 50% by promotion in view of the fact that only one post was created vide Notification dated 27.09.2018. However the fact remains that the post of Headmaster can be filled up by absorption, amongst the existing incumbents in the post of Headmaster subject to the suitability for appointment in Government service in consonance with the corresponding and relevant Rules. No doubt, the Rules of 2017 does not provide absorption as one of the method for recruitment to the post of Principal, Govt. Higher Secondary School but the Provincialization Rules of 1994 at Rule 6 provides that all existing incumbents of the provincialized school in which they were serving on the effective date, shall be absorbed in Government service in suitable ranks or grades with effect from the date, subject to the suitability for appointment in Government service in consonance with the*

corresponding relevant Recruitment Rules. Prior to the absorption of the private respondent 6 as Principal of the school concerned, the matter was referred to MPSC, who upon examination, recommended the absorption of the respondent No. 6 as Principal of the school along with other 11 Lecturers and one UDC vide its meeting minutes dated 16.04.2019. The meeting minutes provides that the MPSC carefully assessed the suitability of the candidate referred to it for absorption into Government service , on the basis of their service particulars, academic records and their performance in the interview and it was only on the basis of such assessment that the candidates were recommended for absorption.

That although, the learned counsel for the petitioner submitted that for the purpose of absorption of the services of the respondent No. 6, the approval of the DP&AR (ARW) and the Finance Department has not been taken as was stated in Notification dated 10.07.2018, but on a perusal of the notification, it is seen that the requirement of having the approval of the two Departments was mentioned in view of the involvement of financial implication. Moreover, the petitioners have not challenged the Notification dated 27.09.2018 by which, the approval for creation of the 16 posts including the post of Principal was approved by the DP&AR (ARW) as well as the Finance Department, for establishment of Govt. Higher Secondary School at Kolasib by way of

provincializing C. Zakhuma Higher Secondary School, Kolasib. Therefore, the posts were created for a specific purpose i.e. for provincializing the teaching and non-teaching staff of C. Zakhuma Higher Secondary School. The said notification is also the offshoot of the proposal approved by the DP&AR (ARW) and the Finance Department wherein, it has also clearly been mentioned that the approval is on account of provincialization of C. Zakhuma Higher Secondary School, Kolasib. Once such approval is given, the relevant provisions of the Provincialization Rules of 1994, more particularly Rule 6 & 7 comes into play.

That Rule 6 of the Provincialization Rules of 1994 provides that all the existing incumbents of a provincialized school shall be absorbed into Government service subject to suitability in consonance with the corresponding relevant Recruitment Rules. Therefore, in order to effect provincialization of a school and absorption of the teaching and non-teaching staff of the provincialized school, the provisions of the Rules of 2017 and the Provincialization Rules of 1994 has to be harmoniously read. In absorbing the services of the respondent No. 6 as Principal of the School, after due assessment made by the MPSC, the State respondents cannot be said to have deprived the petitioners a chance for being considered for promotion to the post, inasmuch as, the 18 posts sanctioned in terms of the Rules of 2017 is

not encroached upon and that one post of Principal, Govt. Higher Secondary School was created specifically for Govt. C. Zakhuma Higher Secondary School, as per the approval of the Council of Ministers in the meeting held on 4th & 12th of June, 2018 and notified vide Notification dated 27.09.2018. That upon due consideration, the petitioners under the facts and circumstances of the case, cannot be said to have a legitimate grievance.

The learned Single Judge had thus dismissed the Writ Petition. Aggrieved, petitioners/appellants have filed the instant Writ Appeal.

8. Mr. Victor L. Ralte, learned counsel for the appellants submits that the judgment of the learned Single Judge is liable to be set aside and quashed, since the learned Single Judge had failed to appreciate the materials available on record in its entirety while referring to Rule 6 of the Mizoram Middle Schools and High Schools (Provincialization) Rules of 1994, (also referred to as Provincialization Rules of 1994) wherein, the learned Single Judge had failed to appreciate the fact that the of Rule 6 of the Provincialization Rules of 1994 had been amended from time to time and in the Mizoram Middle Schools and High Schools (Provincialization)(Amendment) Rules, 2002, the proviso of Rule 6 was amended in the following manner that “*the existing headmasters who are not appointed headmasters under the Rule shall be appointed teachers at their*

respective provincialized schools and shall be deemed to be employees of the Government w.e.f. the date of the provincialization of the schools subject to the suitability in consonance with the relevant Recruitment Rules as may be determined by the departmental promotion committees." Because of this amendment, the respondent No. 6 who was the existing Principal at the time of the provincialization of C. Zakhuma, Higher Secondary School, Kolasib, was not to be appointed as Principal, but will have to be absorbed as Teachers/Lecturers in terms of the 2002 Amendment of the proviso to Rule 6 of the Provincialization Rules, 1994. That the respondent authorities including the MPSC, had failed to examine and consider the case of the respondent No. 6 in accordance with the amended Relevant Rules and that the learned Single Judge was misconceived by holding that the absorption of the respondent No. 6 has been done after the MPSC carefully assessed the suitability of the candidate on the basis of their services, particulars, academic records and their performance in their interview. That the recommendation/ Meeting minutes of the MPSC dated 16.04.2019 was without considering the amendment of the Rule 6 of the said Provincialization 1994 Rules vide the Provincialization Amendment Rules, 2002.

9. The learned counsel for the appellant further submitted that the learned

Single Judge was misconceived in coming to a decision that the 16 numbers of posts created vide Notification dated 27.09.2018 was specifically meant for absorption of the existing teaching and non-teaching staff of C. Zakhuma, Higher Secondary School consequent upon its provincialization. That irrespective of the creation of the 16 numbers of posts of teaching and non-teaching staff for a Government C. Zakhuma Higher Secondary School, the filling up of the said posts has to be done in accordance with the relevant Recruitment Rules 2017 and the Provincialization Rules 1994 as amended vide the Mizoram Middle Schools and High Schools (Provincialisation)(Amendment) Rules, 2002. Thus, the learned Single Judge had erred in considering the writ petition without taking into account the Amendment Rules, 2002 which was duly enclosed along with the Provincialization 1994 Rules in the counter-affidavit of the State respondents as Annexure –IV, which was then holding the field.

10. It was further submitted that the learned Single Judge was erroneous in holding that the present appellants/petitioners have not been deprived of their chance of being considered for promotion to the post of Principal due to the absorption of the respondent No. 6, whereas the writ appellants were the senior most Lecturers and due for promotion to the post of Principal during the time of absorption of the respondent No. 6 to the post of Principal and though the writ

appellants are now promoted to the post of Principal in various Government Higher Secondary Schools vide Notification dated 20.01.2022 and 24.06.2022 respectively, the writ appellants have to be placed below the respondent No. 6 in the seniority list of Principal and therefore, the seniority and future promotional avenue of the writ appellants have been illegally deprived by the illegal absorption of the respondent No. 6 ahead of them. Hence, the impugned Judgment & Order dated 17.03.2023 should be set aside and quashed.

11. Mrs. Mary L. Khiangte, the learned Government Advocate submits that the state respondents do not challenge the instant appeal and in all fairness submits that on the amendment of Rule 6 of the Provincialization Rules, 1994 by the Mizoram Middle Schools and High Schools (Provincialization)(Amendment) Rules, 2002, the Respondent No. 6 cannot be absorbed as Principal of Government C. Zakhuma Higher Secondary School on its provincialization since it was clearly provided in the amendment that the existing Principal at the time of the provincialization of C. Zakhuma, Higher Secondary School, Kolasib, was not to be appointed as Principal, but will have to be absorbed as Teachers/Lecturers in terms of the Provincialization Amendment Rules, 2002. The learned Government Advocate thus submits that this aspect should have been taken into consideration by the learned Single Judge, since the Mizoram

Middle Schools and High Schools Provincialization(Amendment) Rules, 2002 was duly annexed along with the Mizoram Middle Schools and High Schools (Provincialization) Rules, 1994, as Annexure – IV in the counter affidavit of the State respondents.

12. The learned Government Advocate further submitted that the Mizoram Middle Schools and High Schools (Provincialization) Rules, 1994, has now been superseded by the Mizoram School Education Department (Terms and condition of appointment of teaching and non-teaching staff of provincialized school) Rules, 2023 wherein it is reiterated that the existing Headmasters of the respective provincialized schools who were not appointed under the existing Recruitment Rules cannot be appointed as Principal of the respective schools on being provincialized. The learned Government Advocate has also submitted that the in subsequent seniority list of Principals of Higher Secondary Schools, the writ appellants have been adversely affected by the absorption of the respondent No. 6 as principal of C. Zakhuma, Higher Secondary School, Kolasib Govt.

13. We have considered the submissions made by the learned counsels for both the parties wherein, the instant writ appeal is not contested by the State respondents and wherein the private respondent No. 6 has chosen not to

appear or contest the appeal though notice was duly served upon him.

14. We find that the point for consideration in this appeal is whether the Judgement of the learned single Judge is liable to be set aside for not considering the amendment of Rule 6 of the Mizoram Middle Schools and High Schools (Provincialization) Rules, 1994 by the Middle Schools & High Schools (Provincialization)(Amendment) Rules, 2002 and whether the learned Single Judge had erred in finding that the State respondents cannot be said to have a legitimate grievance on the absorption of the respondent No.6 to the post of Principal of Government C. Zakhuma Higher Secondary School, Kolasib Govt. on the provincialization of the said school.

15. We find that the learned Single Judge had taken into consideration Rule 6 of the Provincialization Rules of 1994 and held that the Mizoram School Education Department (Group 'A' Posts) Recruitment Rules of 2017 and the Mizoram Middle Schools and High Schools (Provincialization) Rules, 1994 are to be read harmoniously by observing that Rule 6 of the Rules of 1994 provides that all existing incumbents of provincialized schools shall be absorbed in the Government service subject to suitability in consonance with the corresponding relevant Recruitment Rules. Further, the MPSC as per its meeting minutes dated 16.04.2019 had carefully assessed the suitability of the candidate referred to it for absorption into Government service, on the basis of their service particulars,

academic records and their performance in the interview and it was only on the basis of such assessment that the candidates were recommended for absorption.

16. We, however find that Rule 6 of the Provincialization Rules, 1994 had been amended by the Mizoram Middle Schools & High Schools (Provincialization) (Amendment) Rules, 2002, wherein it was provided that "*the existing headmasters who are not appointed headmasters under the Rule shall be appointed teachers at their respective provincialized schools and shall be deemed to be employees of the Government w.e.f. the date of the provincialization of the schools subject to the suitability in consonance with the relevant Recruitment Rules as may be determined by the departmental promotion committees.*" Thus, as per Provincialization Amendment Rules, 2002, rule 6 of the amendment clearly provides that the existing headmasters who are not appointed headmasters under the Rule shall be appointed teachers at their respective provincialized schools. We find that the MPSC, while recommending the respondent no.6 in minutes dated 16.04.2019, appear to have not considered this aspect.

17. Further, as submitted by the learned Government Advocate there is a subsequent development wherein, the State Government has notified the

'Mizoram School Education Department (Terms and condition of appointment of Mizoram School Education Department(Terms and condition of appointment of teaching and non-teaching staff of provincialized school) Rules, 2023 in supersession of the Rule of 1994' whereby, as per Rule 3 of Rules, 2023 the mode of appointment of teaching and non-teaching staff of provincialized schools have been laid down and reproduced as hereinunder:-

“3. MODE OF APPOINTMENT OF TEACHING AND NON-TEACHING STAFF OF PROVINCIALISED SCHOOLS.

All existing teaching and non-teaching staff on the effective date of provincialisation not exceeding the limit prescribed by Rule 6 (a) to (e) of the Mizoram Aided Schools (Recurring and Non-Recurring Grants-In-Aid) Rules, 1990 shall be absorbed in Government service in suitable ranks or grades with effect from the said date, subject to suitability for appointment in Government service as per the eligibility prescribed by the Recruitment Rules in force at the time of their initial appointment, as may be determined by the competent Departmental Promotion Committees constituted for various categories of Government employees by the Government of Mizoram. The incumbents absorbed into government service shall be deemed to be employees of the Government with effect from the date of provincialization of the schools.

(i) PRINCIPALS: The existing Principals shall be absorbed as Lecturer in

their respective provincialized schools or other provincialized schools or Other vacant post of existing Government Higher Secondary Schools according to their specialized subject, as the case may be. All posts of Principals shall be filled by promotion of the eligible lecturers of the Govt. Higher Secondary Schools in accordance with Recruitment Rules/Service Rules in force on the effective date.

(ii) HEADMASTERS: The number of Headmasters to be absorbed shall be as decided by the government. All posts of Headmasters arising from provincialisation of schools which are not filled up by existing Headmasters shall be filled by promotion of the eligible Teachers of the Govt. Middle School or High Schools as the case may be, in accordance with Recruitment Rules/Service Rules in force on the effective date.”

18. Thus, we find that the 'Mizoram School Education Department (Terms and condition of appointment of teaching and non-teaching staff of provincialisation school), Rules, 2023' notified in supersession of the Provincialization Rules 1994 (as amended) has also reiterated that in the event of a school being provincialized the existing Principals/ Headmaster cannot be absorbed as Principals in their provincialized schools.

19. We find that neither of the parties had referred to the Mizoram Middle Schools & High Schools (Provincialization)(Amendment) Rules, 2002, before the

learned Single Judge, though the Amendment Rules, 2002 was duly annexed as Annexure -IV in the counter affidavit of the state respondents along with the Provincialization Rules, 1994. The amendment of Rule 6 of the Provincialization Rules, 1994 was not brought to the notice of the learned Single Judge by the learned counsels and was not raised/pressed by the appellants in the Writ Petition and therefore, was overlooked by the learned Single Judge.

20. We, however, find that it would be in no body's interest and a futile exercise to remand the matter back to the learned Single judge for consideration of the matter in light of the Provincialization Amendment Rules, 2002, considering the fact that the respondents have chosen not to contest the Writ Appeal and wherein it is clearly provided in the Provincialization Amendment Rules, 2002, that '*the existing headmasters who are not appointed headmasters under the Rule shall be appointed teachers at their respective provincialized schools*', which, subsequently, has been reiterated in the 'Mizoram School Education Department (Terms and condition of appointment of teaching and non-teaching staff of provincialisation school), Rules, 2023' notified in supersession of the Provincialization Rules 1994 (as amended from time to time).

21. We are also of the considered view that learned Single Judge had erred in finding that '*the petitioners cannot be said to have a legitimate grievance*', since

it is an admitted fact that on the subsequent promotion of the appellants to the post of Principal of various High School vide the notifications dated 20.01.2022 and 24.06.2022 respectively, the appellants are now placed below the respondent No. 6 in the seniority list of Principal consequent to the impugned Order dated 29.05.2014.

22. In view of the above findings and observations, we are constrained to set aside the judgment and order passed by the learned Single Judge in Writ Petition No. 131/2021 and subsequently set aside and quash the impugned Notification dated 29.05.2.019, in so far as the illegal absorption of the respondent No. 6 to the post of Principal is concerned.

23. WA No. 6/2023 thus stands allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant