

GAHC030004582024



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

Case No. : WP(C)/73/2024

Smt. R. Lalhmachhuani and 2 Ors.
D/o R Lalnithanga
R/o Hunthar Veng, Aizawl

VERSUS

The Mizoram Co-operative Apex Bank Ltd. R/b its Chairman and 2 Ors.
having its Head Office at Tuikual South, Near Tennis Court, Aizawl

2:The Chief Executive Officer (CEO)
Mizoram Co-operative Apex Bank Ltd.

3:The Assistant General Manager
Administration Dept.
Mizoram Co-operative Apex Bank Ltd

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv.

Advocate for the Respondent : Mr C Lalfakzuala

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of hearing : 16.10.2024
Date of Judgment : 22.10.2024

J U D G M E N T & O R D E R (CAV)

(Nelson Sailo, J)

Heard Mr. C Lalramzauva, learned Senior Counsel assisted by Stephen Lalbuatsaiha for the petitioners and Mr. C Lalfakzuala, learned counsel for the respondents.

[2.] Three petitioners have joined hands in filing the instant writ petition challenging the Communication dated 29.05.2024 (Annexure-7) and the Notification dated 04.07.2024 (Annexure-19), by which they have been found to not possess the required length of service for being considered for promotion from Junior Management Grade (JMG) to Middle Management Grade-III (MMG-III) and that they had already utilized the relaxation benefit for having the qualification of Junior Associate of Indian Institute of Bankers (JAIIB) and Certified Associate of Indian Institute of Bankers (CAIIB) at the time of their promotion to JMG-I in 2021.

[3.] The petitioners have also challenged Note (b) of Rule 7(1) of Appendix-IV of the Mizoram Cooperative Apex Bank Ltd. Staff Service (Amendment) Rules, 2020 (Rules of 2020), wherein employees who already

possessed JAIIB or CAIIB and already having the required length of service can switch over the benefit to next selection process subject to submitting an application at the time of submission of Option for Promotion Channel.

[4.] It is the case of the petitioners that after they were appointed to the post of Assistant Grade-II in the year 2008 & 2012, they were eligible for promotion to the next higher grade of JMG in the year 2021 in accordance with the provisions of Rules of 2020. They were considered and found to be fit for promotion under the Channel-A (Merit-cum-Seniority) and they were promoted vide Order dated 17.04.2021 to JMG in the Level-10A of pay matrix plus all other allowances as admissible as per the Rules of 2020. The respondents then, on 12.04.2024, issued a circular intending to fill up 4 (four) posts of MMG-III under Channel-A and 1 (one) post of MMG-III under Channel-B. The petitioners applied for promotion under Channel-A and sought for relaxation of one year service on account of having possessed JAIIB. The application of the petitioners were however rejected vide the impugned Communication dated 29.05.2024 and Notification dated 04.07.2024 as they failed to apply for switch over of service relaxation at the time when option was submitted by them for the promotion to JMG in the year 2021. Aggrieved, they are before this Court.

[5.] Mr. C Lalramzauva, learned Senior Counsel submits that the Rules of

2020 is preceded by the Staff Service Rules of 2011 (Rules of 2011), wherein no such condition has been stipulated. The Rules of 2020 has been accepted and applied for all practicable purposes, after a bipartite settlement was arrived at between the management and worker as per agreement which was countersigned by the management and workers/employees Union representatives on 20.05.2020. However, the respondents subsequently incorporated Note (b) under Rule 7(1) of Appendix-IV, without taking into confidence or without taking the consent of the employees Union. Therefore, the same having caused a bar for the petitioners to enjoy the relaxation for having acquired the qualification of JAIIB or CAIIB, the offending Note (b) should be set aside.

[6.] The learned Senior Counsel further submits that under the Rules of 2020, three benefits are given to those passing JAIIB and CAIIB. The first benefit is grant of special increment of 1 (one) year in respect of those having JAIIB and 2 (two) special increments in respect of those having CAIIB. The second benefit is addition to 1 (one) mark in the seniority computation for those passing JAIIB and 2 (two) marks for those passing CAIIB. The third benefit is relaxation of 1 (one) year on the required length of service for promotion in respect of those having JAIIB and 2 (two) years in respect of those having CAIIB.

[7.] All the petitioners have been given the benefit under the first category and as for the benefit in the second category, the same has been given only to the petitioner Nos. 1 & 3 and not to petitioner No. 2. The benefit of the third category has not been given to any of them on the ground that they had failed to submit their option to carry forward the benefit of relaxation when they were promoted to JMG in the year 2021. The provision of Note (b) of Rule 7 under Appendix-IV of the Rules of 2020 clearly being against the spirit of the incentives granted to those passing JAIIB or CAIIB, the same should not be set aside. He submits that the said provision cannot be interpreted to take away the benefits which is otherwise available to those passing JAIIB or CAIIB and that the deprivation of the petitioners to enjoy the benefit of relaxation hits at the very root of Articles 14 & 16 of the Constitution of India. Therefore, the offending part of the provision should be set aside by this Court.

[8.] The learned Senior Counsel submits that the petitioners were allowed to sit for the written test but subsequently their candidature was rejected vide the impugned Notification dated 04.07.2024. This Court however vide Order dated 18.07.2024 while issuing notice of motion passed an interim order to the effect that the petitioners be allowed to participate in the interview process, but their results should not be declared, without the permission of this Court. This Court had also granted liberty to the respondents to fill up 1 (one) post of MMG-

III out of the 4 (four) posts sought to be filled up through Channel-A. However, to the information of the petitioners, no posts under Channel-A have been filled up by the respondents till date. He submits that the impugned Communication dated 29.05.2024 and the Notification 04.07.2024 should be set aside and also, Note (b) of Rule 7(1) of Appendix-IV of the Rules of 2020 should also be set aside and quashed and the respondents be directed to complete the promotion process with the participation of the petitioners.

[9.] Mr. C Lalfakzuala, learned counsel, on the other hand, submits that the prayer portion in the writ petition is quite vague since it does not refer to either, the Rules of 2020 or the Staff Service (Amendment) Rules, 2024 (Rules of 2024) but simply mentions Note (b) under Rule 7(1) of Appendix-IV. He submits that this provision is available not only in the Rules of 2020 but also in the Rules of 2024. He submits that although Rule 109(1) of the Rules of 2020 does not specifically provide that the Rules of 2020 has been repealed but Rule 1(3) clearly provides that the Rules of 2024 shall supersede all previous Rules framed by the Bank from time to time or made applicable to the employees of the Bank. Therefore, in the absence of any specific challenge made to the Rules of 2024 apart from the Rules of 2020, no relief can be given to the petitioners. He submits that the Rules of 2020 has been framed for all the employees of the Bank and not for the petitioners alone. He submits that the petitioners should

be vigilant and aware about the Rules being framed by the Bank from time to time and that the Rules of 2020 came into force w.e.f. 20.05.2020. Therefore, the petitioners while submitting their option for their promotion to JMG from Assistant Grade should have submitted an application giving their option to utilize the relaxation provision. Since they had failed to do so, they cannot avail for the relaxation for the second time for promotion to MMG-III. He submits that when the Rule provides for something to be done in a particular manner, the same has to be done in that manner only and not otherwise. In support of his submission, the learned counsel relies upon the case of *Krishna Rai (Dead) THROUGH LRs & Ors, 2022 Live Law (SC) 553*.

[10.] The learned counsel lastly submits that as per Rule 4(a) of the Rules of 2024, the Executive Committee or Board is competent to modify, change or abrogate any of the clauses of the Service Rules as it deems fit from time to time as per bipartite settlement between the management and the workers. Therefore, the petitioners cannot have any legitimate grievance and the writ petition should be dismissed.

[11.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record.

[12.] At the outset, we have noticed that the petitioners have not

quoted any particular Service Rules in the prayer portion of the writ petition i.e. Rules of 2017, 2020 or 2024. As pointed out by the learned counsel for the respondents, the provision of Note (b) of Rule 7(1) under the Appendix-IV is available both in the Rules of 2020 as well as in the Rules of 2024. The learned Senior Counsel has referred to the Rules of 2020 in particular and assuming that the said provision under the Rules of 2020 is to be interfered with by this Court, a similar provision in the Rules of 2024 would still remain in absence of any challenge to the same.

[13.] It may further be seen that Appendix-IV provides for two Channel of promotions viz., namely Channel-A and Channel-B. Channel-A pertains to promotion by way of Merit-cum-Seniority and Channel-B provides for promotion on the basis of seniority, performance, etc. Insofar as the petitioners are concerned, they admittedly opted for Channel-A for being considered for promotion from Assistant Grade to JMG. Note (b) of Rule 7 (1) under Appendix-IV provides that employees with JAIIB or CAIIB who already are eligible in respect of their length of service to be considered for promotion, the relaxation will be switched over to the next promotion process, if the employee concerned submits an application at the time of submission of option for promotion channel. The petitioners admittedly did not submit their application for switch over of the relaxation to the next promotion process, as was required at the

time of consideration of their promotion from Assistant Grade to JMG in the year 2021. Therefore, the benefit of relaxation was utilized in their promotion from Assistant Grade to JMG and which in fact can be utilized only once in the entire service career of the employee as per the Note under Rule 23(7)(5) of the Rules of 2020.

[14.] The length of service required in the JMG is 4 (four) years in order to be considered for promotion to MMG-III. The petitioners were promoted to JMG on 17.04.2021 and therefore, on the date of issuance of the Circular dated 12.04.2024, they did not have the length of service of 4 (four) years in JMG as required. Having failed to submit their respective application for switching over the benefit of relaxation to the next promotion process when they were promoted in the year 2021, the respondents have declined to allow them to participate in the promotion process to MMG-III and which in our considered view cannot be said to be bad in law. Note (b) of Rule 7(1) in Appendix-IV of either the Rules of 2020 or the Rules of 2024 provide that the benefit of relaxation of length of service would be available to those who possess either JAIIB or CAIIB qualification at any stage of the promotion process but only once during the service career and as per the option to be exercised by the employee concerned. The same cannot be by any means in our considered view said to be an attempt to debar any of the employees having

such qualification from availing the benefit of relaxation. Failure to exercise such an option cannot be the basis of declaring the relevant provisions of the Rules to be violative of one's right provided under Article 14 & 16 of the Constitution of India.

[15.] In that view of the matter, we do not find any merit in the writ petition and accordingly, the writ petition is dismissed by leaving the parties to bare their own cost. The interim order passed earlier also stands vacated.

JUDGE

JUDGE

Comparing Assistant