

GAHC030005302022



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

Case No. : WP(C)/134/2022

Sh. P.C. Vanlallawma and 65 Ors.
S/o LT Vunga(L)
R/o Durtlang Leitan, Aizawl, Mizoram.

2: Sh. Rofela
S/o Keiliana (L)
R/o Champhai
Mizoram.

3: Sh. R. Lalringngheta
S/o Lianngawra (L)
R/o Ramhlun Vengthar
Aizawl
Mizoram.

4: Sh. Lalbiakvela
S/o Lalngenga
R/o Saitual
Mizoram.

5: Sh. H. Khaizasiama
S/o Vungkhupa (L)
R/o Dawrpui Vengthar
Aizawl
Mizoram.

6: Sh. TC Lalramthara
S/o Thanhkira (L)
R/o Diakkawn
Kolasib
Mizoram.

7: Sh. F. Lalrinmawia
S/o Thanchia (L)

R/o Chanamri-II
Lunglei
Mizoram.

8: Sh. Lalramzauva
S/o L. Rozika (L)
R/o Electric Veng
Aizawl
Mizoram.

9: Smt. Thansiami Hmar
D/o Biakliana (L)
R/o Ramhlun South
Aizawl
Mizoram.

10: Smt. Rosangzuali
D/o Tlangchangeliana
R/o Bilkhawthlir
Mizoram.

11: Sh. Lalpuithanga Pachuau
S/o C. Chhawna (L)
R/o saron Veng
Bilkhawthlir
Mizoram.

12: Sh. Lalhlilmiana
S/o Hrangdailova
R/o Kulikawn
Aizawl
Mizoram.

13: Sh. PS Lalromawia
S/o Raltawnliana (L)
R/o Zemabawk
Aizawl
Mizoram.

14: Sh. B. Lalzoliana
S/o Lalthansanga
R/o Ramhlun South
Aizawl
Mizoram.

15: Sh. F. Thangliana
S/o Laldawla (L)
R/o Dinthar

Aizawl
Mizoram.

16: Sh. Rosangliana
S/o J. Mantluanga (L)
R/o Zotlang
Aizawl
Mizoram.

17: Sh. H. Vanlalhruaia
S/o H. Lalrinawma (L)
R/o Venghlun
Mamit
Mizoram.

18: Smt. K. Lalmangaihzuali
D/o K. Lalsailova (L)
R/o Chaltlang
Aizawl
Mizoram.

19: Sh. Challiansanga
S/o Selluaia (L)
R/o Leitan
Durtlang
Aizawl
Mizoram.

20: Sh. Lalrawngbawla Ralte
S/o RB Laitawia (L)
R/o Chanmari West
Aizawl
Mizoram.

21: Smt. Vanlalchhuangi
D/o K. Lalrina (L)
R/o Ramhlun North
Aizawl
Mizoram.

22: Sh. B.T. Lalzara
S/o BT Namluaia (L)
R/o N. Vanlaiphai
Mizoram.

23: Sh. Vanlalauva Hnamte
S/o Sawithuama (L)
R/o Bazar Veng

Lunglei
Mizoram.

24: Sh. R. Lalfakzuala
S/o R. Lalchungnunga (L)
R/o Ramhlun North
Aizawl
Mizoram.

25: Sh. H. Kapthangchhunga
S/o H. Thanchunga (L)
R/o SOC Veng
Lawngtlai
Mizoram.

26: Sh. Lalnunenga
S/o Thuamzika
R/o Electric Veng
Khawzawl
Mizoram.

27: Sh. Lalmuankima
S/o Hranglungmuana(L)
R/o Dawrpui Vengthar
Aizawl
Mizoram.

28: Sh. C. Lalrawngbawla
S/o C. Lianmawia (L)
R/o Tuikual South
Aizawl
Mizoram.

29: Smt. R. Zodinsangi
D/o Denghlira (L)
R/o PandE Veng
Serchhip
Mizoram.

30: Sh. R. Laltharzuala
S/o R. Laldawla (L)
R/o Venglhui
Aizawl
Mizoram.

31: Sh. JL Neihlaia
S/o Challianchhingi
R/o Zonuam

Aizawl
Mizoram.

32: Sh. Danny Lalzarliana Chhangte
S/o C. Lalngaizuala (L)
R/o Venghlui
Aizawl
Mizoram.

33: Sh. R. Vanlalhruaia
S/o Vanlalvena
R/o Khatla East
Aizawl
Mizoram.

34: Sh. TC Vanlala
S/o Lalmuanga (L)
R/o Luangmual
Aizawl
Mizoram.

35: Sh. F. Lalremruata
S/o Tlangnawnlaia (L)
R/o Zonuam
Aizawl
Mizoram.

36: Sh. KC Lalamlova
S/o tlanglawma (L)
R/o Dawrpui Vengthar
Aizawl
Mizoram.

37: Sh. Lalneihkunga
S/o Zakapa (L)
R/o Remna Veng
Luangmual
Aizawl
Mizoram.

38: Smt. Lalchhuanawmi Zadeng
D/o K. Thanseia
R/o Chaltlang Lily Veng
Aizawl
Mizoram.

39: Sh. HS Lalmuanawma
S/o HS Zachhuma (L)

R/o Hmar Veng
Kolasib
Mizoram.

40: Sh. Laltanpuia
S/o Vanchhunga (L)
R/o Maubawk
Aizawl
Mizoram.

41: Sh.Lalngaihzuala Chawngthu
S/o C. Malsawma
R/o Thleiriat
Lunglei
Mizoram.

42: Smt. C. Lalramhluni
D/o Thanzauva
R/o Bazar Veng
Lunglei
Mizoram.

43: Sh. Vanlalruata Fanai
S/o F. Aibaka(L)
R/o Saron Veng
Aizawl
Mizoram.

44: Sh. K. Lalnghakliana
S/o Thanhnuna (L)
R/o High School Veng
Khatla
Aizawl
Mizoram.

45: Sh. RC Lalthangpuia
S/o Satruma (L)
R/o Ramhlun North
Aizawl
Mizoram.

46: Sh. C. Vanlalmawia
S/o VL Nghaka (L)
R/o Electric Veng
Aizawl
Mizoram.

47: Smt. Lalnunrengi Khiangte

D/o Zaia (L)
R/o Chaltlang Lily Veng
Aizawl
Mizoram.

48: Sh. Lalropara
S/o Ramchullova
R/o Kanan Veng
Aizawl
Mizoram.

49: Smt. Lalhriatpuii Renthlei
D/o Chalbawiha
R/o Chaltlang Lily Veng
Aizawl
Mizoram.

50: Smt. C. Lalhmingthangi
D/o C. Hautawna
R/o Armed Veng
Aizawl
Mizoram.

51: Smt. Vanlalngeni Varte
D/o Lalkhawhluna
R/o Salem Veng
Aizawl
Mizoram.

52: Sh. Vanlalchhuanga
S/o LR Lunga
R/o Venghlui
Aizawl
Mizoram.

53: Sh. C. Vanlalsiama
S/o C. Zama
R/o Khatla
Aizawl
Mizoram.

54: Smt. R. Roengmawii
D/o R. Thangkhuma
R/o Chaltlang
Aizawl
Mizoram.

55: Smt. Lalmuanpuii

D/o Lalnilawma
R/o Khatla
Aizawl
Mizoram.

56: Smt. V. Zodinthari
D/o V. Hmingliana
R/o Bungkawn
Aizawl
Mizoram.

57: Sh. P. Vanlalmawia
S/o P. Sanghulaia
R/o Zonuam
Aizawl
Mizoram.

58: Sh. Hmangaih Johana
S/o V. Lalthanzauva (L)
R/o Khtala
Aizawl
Mizoram.

59: Sh. Lalfakawma
S/o R. Sangliana
R/o Zotlang
Aizawl
Mizoram.

60: Smt. Zarzoliani
D/o Rengchhuana
R/o Electric Veng
Aizawl
Mizoram.

61: Smt. Zothankimi
D/o Vanhnuaithanga
R/o Saikhamakawn
Aizawl
Mizoram.

62: Smt. Lalchhuankimi
D/o Lalkhama
R/o Mission Veng
Aizawl
Mizoram.

63: Sh. Lalchhanhima Zote

S/o Zalianthanga
R/o Durtlang Leitan
Mizoram.

64: Smt. K. Lalmuanpuii
D/o K. Lalthansanga
R/o Chawnpui Veng
Aizawl
Mizoram.

65: Smt.Helen Zorammawii
D/o J. Kapthianga (L)
R/o Chanmari West
Aizawl
Mizoram.

66: Smt. Debbie Laldenga
D/o Laldenga (L)
R/o Tuikhuahtlang
Aizawl
Mizoram

VERSUS

The State of Mizoram and 11 Ors.
r/b the Chief Secretary, Govt. of Mizoram, Aizawl. 2:The Secretary to the GOM
Department of Personnel and Administrative Reforms
Mizoram
Aizawl.

3:The Secretary to the GOM
Finance Department
Govt. of Mizoram
Aizawl.

4:The Mizoram Public Service Commission r/b its Chairman/Secretary
MINECO
Khatla
Aizawl
Mizoram.

5:Smt. Vanlalhruii
D/o Thangdailova
R/o H.No. 374/A
Tlangnuam Vengthar
Field Bul
Aizawl
Mizoram-796005

6:Smt. Lalremruati
D/o Vanramnghaka
R/o H.No. C-140/1
Tuikual North
Aizawl
Mizoram-796001

7:Sh. Laldingliana Sailo
S/o S. Rolianthanga
R/o C-21/A
Khatla Bethel Road
Near Lengchhawn Press
Aizawl
Mizoram-796005

8:Sh. Lalthasangkima
S/o H.C. Lalsangzuala
R/p B-7
Ainawn Section
Thuampui
Near Old Presbyterian Church
Aizawl
Mizoram-796017

9:Smt. Vanlalmangaihi
D/o Lalthakima
R/o LK/C-23
Near Govt. High School
Durtlang
Durtlang Leitan
Mizoram-796025

10:Smt. Jenny Thanhlpuii
D/o K. Lalrinsanga(L)
R/o H-9
Mualvengchung
Republic Veng
near Republic Veng Community Hall
Aizawl
Mizoram-796005

11:Sh. C. Zosangzuala
S/o C. Zothantluanga
R/o C-61
Section-III
Vengthar
Modern Middle School Road

Reiek
Mizoram-796501

12:Sh. Vanlalawmpuia
S/o V.L. Luaha Renthlei
R/o A-104/1
Thlanmual Road
Luangmual
Thlanmual Peng
Aizawl
Mizoram-796009

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Mrs. H Lalmalsawmi, (Addl.A.G./G.A., Mizoram) for R1 to R3

::B E F O R E::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 24.01.2024

Date of Judgment : 31.01.2024

JUDGMENT & ORDER

Heard Mr. B. Lalramenga, learned counsel for the petitioners, Mrs. H. Lalmalsawmi, learned Govt. Advocate for the respondent Nos. 1, 2 & 3, Mr. J.C. Lalnunsanga, learned Standing Counsel, Mizoram Public Service Commission (MPSC) for respondent No. 4 and Mr. A.R. Malhotra, learned counsel for the private respondent Nos. 5 to 12.

[2.] The petitioners have filed the instant writ petition with the following prayer:-

“(i) For cancellation and quashing of the impugned Advertisement No. 7 of 2020-2021 dated 11.03.2021 and the impugned Main Examination result of which had been published vide Notification No. A. 12026/2/2020-MPSC(DR) dated 30.09.2022 insofar as it relates to the recruitment/appointment of the Respondent Nos. 5-12 to the 8 (eight) posts of the Junior Grade of MF&AS.

(ii) For cancellation and quashing of the impugned Notification No. A. 12031/1/2022-F.Est. dated 26.10.2022 by which the Respondent nos. 5-12 were appointed to the 8 (eight) posts of the Junior Grade of MF&AS.

(iii) For initiation of a fresh process for filling up of the said 8 (eight) posts of the Junior Grade of MF&AS by maintaining the quota in the ratio of 25% for Promotion, 50% for Limited Departmental Examination and another 25% for Direct Recruitment as per the MF&AS Rules, 2008, or under any other relevant Recruitment Rules in this regard.

(iv) For cancellation and quashing of the ongoing process for filling up of another 10 (ten) posts of the Junior Grade of MF&AS by way of Direct Recruitment and also the impugned approval for filling up of another 10 (ten) posts of MF&AS; and for directing the Respondent Nos. 1-4 to fill up such 10 (ten) posts by strictly adhering to the quota in the ratio of 25% for Promotion, 50% for Limited Departmental Examination and another 25% for Direct Recruitment as per the MF&AS Rules, 2008, or under any other relevant Recruitment Rules in this regard.

(v) For setting aside and quashing of the impugned Notification Memo No. A. 12018/1/2001-F.Est dated 17.11.2017 issued by the Respondent No. 3 insofar as it debars the Petitioners from making the present claim.

(vi) and/or to pass any other order(s)/direction(s) in favour of the Petitioners as

your Lordship may deem fit and proper.”

[3.] The petitioner Nos. 1 to 44 are said to be presently serving as Accounts Officer, which before re-designation was the post of Divisional Accountant. The petitioner Nos. 45 to 47 are serving as Accounts Officer, which before re-designation was the post of Treasury Accountant. The petitioner Nos. 48 to 66 are said to be serving as Audit & Accounts Officer, which before re-designation was the post of Auditor. They are aggrieved with the action of the Official respondents in filling up eight (8) vacant posts of Junior Grade, Mizoram Finance & Accounts Service (MF&AS) by way of direct recruitment which was advertised through the impugned Advertisement No. 7 of 2020 - 2021 dated 11.03.2021. According to the petitioners, the eight (8) posts should have been filled up as per the relevant provisions of the Mizoram Finance & Accounts Service Rules, 2008 (Rules of 2008) in the ratio of 50:25:25 i.e., by Limited Departmental Examination (LDE), promotion and by direct recruitment respectively. Therefore, the petitioners seek cancellation of the selection and appointment made to the post in question and for initiation of a fresh process in terms of the Rules of 2008.

[4.] The petitioners have also sought for cancellation of the subsequent process for filling up of ten (10) posts of Junior Grade of the MF&AS by direct recruitment initiated by the Official respondents and for initiation of a fresh process to fill up

the ten (10) vacancies by adhering to the quota meant for LDE, promotion and direct recruitment as per the Rules of 2008.

[5.] Besides the above, the petitioners have also sought for setting aside the Notification dated 17.11.2017 by which the posts of Divisional Accountant, Treasury Accountant and Auditor have been deleted from the feeder post of Junior Grade of the MF&AS.

[6.] Mr. B. Lalramenga, learned counsel for the petitioners submits that the petitioners who were holding the post of Divisional Accountant, Treasury Accountant and Auditor were re-designated and upgraded to the post of either Accounts Officer or Audit & Accounts Officer vide three (3) separate Notifications, all dated 14.11.2017 and which was issued by the Finance Department pursuant to the decision of the Council of Ministers in its meeting held on 25.10.2017. However, the same is not a promotion in view of the absence of any process of selection and the fact that the petitioners continue to discharge the same duties and functions which they were discharging before their re-designation and up-gradation. Therefore, by applying the relevant provisions of the Rules of 2008, the petitioners are entitled to be considered for promotion to the Junior Grade of MF&AS. The learned counsel submits that the selection and appointment of the private respondents being in violation of the Rules of 2008, the same should be set aside. The learned counsel in support of his submission has relied upon the case of *B.*

Thirumal -Vs- Ananda Sivakumar & Ors.,(2014) 16 SCC 593. The learned counsel further submits that the impugned Notification dated 17.11.2017 deleting the post of Divisional Accountant, Treasury Accountant and Auditor from the feeder post of the Junior Grade of MF&AS being in the form of executive instruction, the same cannot override the Rules of 2008, which was framed in exercise of the powers conferred by the proviso to Rule 309 of the Constitution of India. In this connection, the learned counsel relies upon the case of *Ajaya Kumar Das -Vs- State of Orissa & Ors.,(2011) 11 SCC 136* and the case of *K. Kuppusamy & Anr. -Vs- State of T.N. & Ors., (1998) 8 SCC 469*. The learned counsel also relies upon the Judgment & Order dated 28.05.2014 passed by a coordinate Bench of this Court in WP(C) No. 25/2013 (*Sh. Lalparliana Sailo & 40 Ors. -Vs- State of Mizoram & 5 Ors.*).

[7.] The learned counsel further submits that it is a settled position in law that vacancies being filled up will be governed by the Rules in force. In the present case, admittedly, the vacancies apart from four (4) posts occurred when the Rules of 2008 was in force and therefore, the same will have to be applied. He submits that although the Rules of 2008 was amended with effect from 31.05.2011 by the Mizoram Finance & Accounts Service (First Amendment) Rules, 2011 (Amendment Rules of 2011), the Rules of 2008 will still apply since the rules governing the method for filling up of the Junior Grade of the MF&AS in particular has not been

amended. In support of his submission, the learned counsel relies upon the case of *Kulwant Singh & Ors., -Vs- Daya Ram & Ors., (2015) 3 SCC 177* and the Judgment & Order dated 08.12.2015 of a coordinate Bench of this Court passed in WP(C) No. 127/2015 (*Sh. Lalthankima & Anr., -Vs- State of Mizoram & 4 Ors.*).

[8.] The learned counsel submits that although the respondents have taken the stand that the Rules of 2008 has been applied but the same is not the case in view of the fact that the eight (8) posts of MF&AS have been filled up and the subsequent ten (10) also are sought to be filled up only by direct recruitment method without adhering to the other two (2) modes of recruitment i.e., promotion & LDE. He thus submits that the impugned action of the Official respondents should be interfered with as prayed for and a fresh recruitment process be initiated by considering the petitioners for promotion to the post in question.

[9.] Mrs. H. Lalmalsawmi, learned Govt. Advocate by referring to the affidavit-in-opposition filed by the State respondents submits that the Subordinate Accounts Service under various departments had grievances regarding their service conditions and therefore, a committee to study the perennial issues and problems of Subordinate Accounts Service was constituted. The constituted committee submitted its recommendation and the same was approved by the Council of Ministers in its meeting held on 25.10.2017. Following the approval, Notification dated 14.11.2017 was issued by the Finance Department upgrading and re-

designating the post of Divisional Accountant as Accounts Officer, Treasury Accountant and Assistant Treasury Accountant as Accounts Officer and the post of Auditor and Assistant Auditor as Audit & Accounts Officer by three (3) separate notifications. She submits that the petitioners have however not challenged the meeting minutes dated 25.10.2017 of the Council of Ministers and the three (3) Notifications all dated 14.11.2017 regarding the upgradation and re-designation of the posts in question. The petitioners therefore have not made out any case for the interference of this Court. She also submits that no case can be made out by only challenging a consequential order without challenging the basic order. In this connection, the learned Govt. Advocate relies upon the case of *Amarjeet Singh & Ors., -Vs- Devi Ratan & Ors., (2010) 1 SCC 417*. The learned Govt. Advocate submits that the petitioners are no longer in the zone of consideration for the post of Junior Grade MF&AS since they have been either re-designated or upgraded to the post of Accounts Officer or Audit & Accounts Officer. In other words, they are enjoying the Grade Pay of Group 'A' (Gazetted) whereas, they were getting the Grade Pay of Group 'B' before their re-designation and upgradation.

[10.] The learned Govt. Advocate further submits that the writ petition also suffers from the vice of delay and laches since they have approached this Court by filing the instant writ petition only in December, 2022 whereas, the cause of action can be said to have arisen on 17.11.2017 when the post of Divisional Accountant,

Treasury Accountant and Auditor were deleted from the feeder post of Junior Grade of MF&AS. She submits that the private respondents have already been selected and appointed pursuant to the advertisement issued on 11.03.2021 and therefore, the writ petition having been belatedly filed, the same should be rejected and dismissed. The learned Govt. Advocate further submits that the petitioners having accepted the decision of the Government to upgrade and re-designate them either to the post of Accounts Officer or Audit & Accounts Officer cannot still claim to be considered for promotion to the Junior Grade of the MF&AS as per the Rules of 2008 despite no longer being in the feeder post. In other words, the petitioners cannot be allowed to approbate and reprobate their claim. In support of her submission, the learned Govt. Advocate relies upon the case of *State of Uttar Pradesh & Ors., -Vs- Rajmati Singh (2022) SCC OnLine SC 1785* and *Union of India & Ors., -Vs- N. Murugesan & Ors., (2022) 2 SCC 25*.

[11.] Mr. A.R. Malhotra, learned counsel for the private respondents adopts the arguments of the learned Govt. Advocate and reiterates that the Notification dated 17.11.2017 impugned by the petitioners relates to the decision of the Council of Ministers, taken in its meeting held on 25.10.2017. The petitioners have not challenged the meeting minutes dated 25.10.2017 and at the same time, they have accepted their re-designation and upgradation from their original post to the post of Accounts Officer or Audit & Accounts Officer. Therefore, the petitioners cannot

be allowed to approbate and reprobate. Besides relying upon the case of *Kulwant Singh & Ors.* (supra) already cited by the learned Govt. Advocate, the learned counsel also cites the case of *State of Tripura & Ors. -Vs- Nikhil Ranjan Chakraborty & Ors., (2017) 3 SCC 646* and the case of *Subodh Kumar & Ors. -Vs- Commissioner of Police & Ors. (2020) 13 SCC 201*. By relying upon the said decisions, the learned counsel submits that there is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arose. He submits that even going by the contention of the petitioners at paragraph No. 12 of the writ petition, 34 posts of Junior Grade of the MF&AS became vacant under the Rules of 2008 and the Amendment Rules of 2011. As per the ratio laid down for direct recruitment under the Rules of 2008 i.e., 25%, the number of posts which can be filled up by direct recruitment will not be less than eight (8) posts out of the 34 posts. Therefore, the Rules of 2008 has not been violated as alleged by the petitioners. The learned counsel further submits that the stand of the petitioners at paragraph No. 13 of the writ petition that 12 posts out of the 34 posts will be the quota meant for promotion is not correct inasmuch as, the ratio for promotion as well as direct recruitment under the Rules of 2008 are 25% each respectively. Therefore, the claim of the petitioners that 12 posts are the quota for promotion is without any basis and cannot be accepted. The learned counsel therefore submits that the writ petition cannot be maintained either on merit or on account of delay and laches and therefore, the same should

be dismissed.

[12.] Mr. J.C. Lalnunsanga, learned Standing Counsel, MPSC also adopts the arguments made by the learned Govt. Advocate and the counsel for the private respondents. By referring to the affidavit-in-opposition filed by the respondent No. 4 he further submits that the writ petition having been belatedly filed, considering the cause of action which arose in 2017, the same should be dismissed. He submits that the process for filling up the eight (8) posts of Junior Grade MF&AS was initiated by the respondent No. 4 in the year 2021 and the process completed with the appointment of the private respondents. The petitioners have never raised any grievance against the steps taken by the respondent No. 4 and therefore, they cannot claim for setting aside of the appointments already made at this belated stage. He submits that the recruitment for filling up of eight (8) vacant posts of Junior Grade MF&AS was done as per the Rules in force and by observing all formalities. Likewise, the process for recruitment for filling up of ten (10) posts of Junior Grade of the MF&AS subsequently was also carried out strictly as per the Rules in force and therefore, no case for interference of this Court has been made out by the petitioners. While also relying upon the authorities cited by the learned Govt. Advocate and the learned counsel for the private respondents, Mr. J.C. Lalnunsanga also relies upon the case of *Sanjay Singh & Anr., -Vs- U.P. Public Service Commission, Allahabad & Anr., (2007) 3 SCC 720*, Judgment dated

11.12.2023 of the Supreme Court in Civil Appeal No. 2669/2013 (*M/S North Eastern Chemicals Industries (P) Ltd. & Anr. -Vs- M/S Ashok Paper Mill (Assam) Ltd. & Anr.*) and common Judgment & Order dated 19.12.2013 of the Division Bench of this Court in WP(C) No. 4415/2008 and 502/2009 (*Ms. Zairemsangpuui & Anr., -Vs- State of Mizoram & Anr.*).

[13.] I have heard the learned counsels for the parties and I have perused the materials available on record. The controversy raised in the instant writ petition is that eight (8) posts of Junior Grade of MF&AS have been filled up in violation of the Rules of 2008 by appointing the private respondents and again further, ten (10) posts are being sought to be filled up by direct recruitment again in violation of the Rules of 2008, its amendment and the Rules of 2021.

[14.] The Rules of 2008 provides for the method of recruitment to the Mizoram Finance & Accounts Service and the entry grade is the Junior Grade. Rule 6 (a) provides that 50% of the substantive post in the Junior Grade shall be filled up by LDE in a manner specified in Part-V of the Rules from amongst those substantively holding the post of Auditors, Divisional Accountants, Treasury Accountants under the Finance Department and Superintendent of Accounts in the Department of Food, Civil Supplies and Consumer Affairs and Transport Department under the Government of Mizoram. Rule 6 (b) provides that 25% of the substantive post shall be filled up by promotion through selection method from amongst those

substantively holding not less than 5 years, the post of Auditors, Divisional Accountants, Treasury Accountants under the Finance Department and Superintendent of Accounts in the Department of Food, Civil Supplies and Consumer Affairs and Transport Department under the Government of Mizoram. Rule 6 (c) provides that the remaining 25% of the substantive post in the Junior Grade shall be filled up by direct recruitment through a competitive examination in the manner specified in Part-IV of the Rules.

[15.] According to the petitioners, they are eligible to be considered for promotion to the Junior Grade in terms of Rule 6 (b). The number of sanctioned post in the Junior Grade of the service as per Schedule – I which corresponds to Rule 3 (a) of the Rules of 2008 is 45 posts. However, in the State's affidavit-in-opposition, it is stated that the number of sanctioned posts are 50 posts. Be that as it may, as already stated herein above, the manner in which the post of Junior Grade is to be filled up through the three methods i.e. LDE, promotion or direct recruitment is in the ratio of 50:25:25. No roster has been produced before the Court to show the manner in which the Junior Grade post of the service has been filled up and the vacancy position.

[16.] The State respondents in their counter affidavit at paragraph No. 12 have however provided a chart on the calculation of vacancies year wise. From a perusal of the chart, it is seen that for the vacancy year 2017-2018, there was 17 vacancies

and six (6) posts each were filled up through LDE and promotion while two (2) posts were filled up by direct recruitment. 14 posts were filled up in all leaving a balance of three (3) posts. For the vacancy year 2018-2019, there were 14 vacancies and out of which, one (1) post was filled up by LDE only leaving a balance of 13 posts. In the year 2019-2020, there were 11 vacancies and only three (3) posts were filled up by direct recruitment, leaving a balance of four (4) posts. For the vacancy year 2020-2021, there was four (4) vacancy and the same was not filled up by any method. For the year 2021-2022, there were four (4) vacancies and eight (8) posts were filled up by direct recruitment, thereby exceeding the filling up of the post by four (4) posts.

[17.] Having regard to the provision of Rule 6 of the Rules of 2008, the percentage of post to be filled up by LDE, promotion and direct recruitment is to be calculated from the total substantive sanctioned post. The chart at paragraph No. 12 of the counter affidavit otherwise shows that maximum post has been filled up by way of direct recruitment method. The fact however remains that the petitioners who were either Divisional Accountants, Treasury Accountants or Auditors were upgraded and re-designated as Accounts Officer or Audit and Accounts Officer as the case may be pursuant to the decision taken by the Council of Ministers in their meeting held on 25.10.2017 vide three (3) separate Notifications, all dated 14.11.2017. It may be seen that the petitioners were earlier

in a lower Pay Band and Grade Pay and in a Group 'B' post. On being re-designated and upgraded, they became Group 'A' officers in Pay Band – 3 with their Grade Pay as Rs. 5,400/-. Rule 6 (b) of the Rules of 2008 provides that 25% of the Junior Grade substantive post shall be filled up by promotion through selection method from amongst those substantively holding not less than five (5) years the post of Auditors, Divisional Accountants and Treasury Accountants under the Finance Department. The petitioners after their upgradation and re-designation vide Notifications dated 14.11.2017 are no longer in their original post and therefore they cannot be said to be in the feeder post for promotion under Rule 6 (b) of the Rules of 2008.

[18.] The Rules of 2008 having been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, any provisions contained therein cannot be altered or amended by way of an executive order including the impugned Notification dated 17.11.2017. However, this by itself cannot be the ground to allow the writ petition as prayed for by the petitioners in view of the fact that the petitioners have clearly accepted their re-designation and upgradation to the post of Accounts Officer or Audit & Accounts Office issued vide the three (3) Notifications dated 14.11.2017 and therefore, they are no longer holding their original post, which was a feeder post for promotion to the Junior Grade of the MF&AS. Moreover, the petitioners have not challenged the decision taken by the

Council of Ministers in their meeting held on 25.10.2017 wherein, apart from approving the re-structuring of the post of Divisional Accountants, Treasury Accountants and Auditors, the meeting approved the proposal made for deleting the said three (3) posts from the feeder post of Junior Grade of MF&AS. The petitioners have only challenged the consequential order passed vide Notification dated 17.11.2017 and that too, belatedly through the instant writ petition. The impugned Advertisement No. 7/2020-2021 was issued on 11.03.2021 but the petitioners remained a silent spectator and decided to approach this Court only on 05.12.2022 after the selection process and the appointment orders in favor of the private respondents were issued. The petitioners have clearly demonstrated laches on their part for having failed to take appropriate steps without delay. Besides this, the Rules of 2008 have also since been amended by the Rules of 2021 where the posts of Auditors, Divisional Accountants and Treasury Accountants don't find a place.

[19.] The petitioners at paragraph Nos. 12 and 13 of the writ petition have contended that during the subsistence of the Rules of 2008, there were 34 vacant posts of Junior Grade MF&AS and with the coming into force the Rules of 2021, another four (4) posts became vacant. They have further contended that 16 posts are quota meant for LDE, 12 posts are the quota of promotion and six (6) posts are the quota for direct recruitment. However, considering Rule 6 of the Rules of 2008

and in the absence of any roster prepared in this regard, the claim of the petitioners about the vacancy position and the quota meant either for LDE or promotion or direct recruitment cannot be accepted. Rule 6 provides that the percentage is to be calculated from the substantive post available. The Rules of 2021 came into force from date of its publication in the Mizoram Gazette i.e., 09.06.2021. Schedule – II of the Rules of 2021 relatable to Rule 6 (2) provides for the method of recruitment, field of selection and eligibility criteria. Column (3) of the Schedule provides for the methods of recruitment and percentage of the vacancies to be filled by various methods. The Schedule therefore goes to suggest that the percentage of post to be filled up has to be calculated from the vacancies unlike the Rules of 2008.

[20.] The learned counsel for the petitioners has relied upon the case of *Sh. Lalparliana Sailo* (supra) wherein, the ratio laid down by the Supreme Court that statutory rules framed under Article 309 of the Constitution of India cannot be amended by a rule or notification or by an executive order was highlighted. Similarly, the learned counsel has relied upon the case of *Ajaya Kumar Das* (supra) and *K. Kuppusamy & Anr.* (supra) on the same issue. There cannot be any argument on the settled principles of law in this regard. However, in the instant case, the petitioners have been unable to show their indefeasible right to be considered for promotion by applying the Rules of 2008 since they have accepted

their re-designation and upgradation from their original posts to the next higher post and for which reason, no relief can be granted to them. This apart as earlier pointed out, the Rules of 2008 has since been repealed. The case of *Kulwant Singh & Ors.* (supra) relied upon by the counsel for the petitioners due to the reasons mentioned in the preceding paragraph No. 17 also cannot be applied to their case. Same is the case of *Sh. Lalthankima & Anr.* (supra) relied upon by the learned counsel for the petitioners.

[21.] In State of *Uttar Pradesh & Ors. -Vs- Rajmati Singh* (supra), the Apex Court adopted its earlier decision rendered in *Union of India -Vs- Tarsem Singh (2008) 8 SCC 652*, wherein, it was held that if the grievance is in respect of any order or administrative decision which relates to or affects several others and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained.

[22.] Although no period of limitation is prescribed for filing a writ petition, but a party aggrieved should approach the Court as early as possible so that the chance of their being an infringement upon third party rights do not crop up. The Apex Court in *M/S North Eastern Chemicals Industries (P) Ltd. & Anr.* held that in a situation where no limitation is provided by the Limitation Act or special statute governing the dispute, the Court should consider the facts and circumstances of the case in hand, the conduct of the parties, the nature of the proceeding, the

length of delay and the possibility of prejudice being caused and the scheme of the statute in question. In the present case, the feeder post to the Junior Grade of the MF&AS which was held by the petitioners prior to their upgradation and re-designation was issued as far back as on 17.11.2017 but the writ petition was filed only on 05.12.2022. Therefore, the writ petition of the petitioners only suffers from the vice of delay and laches and as such, liable to be rejected.

[23.] In the case of *State of Tripura & Ors. -Vs- Nikhil Ranjan Chakraborty & Ors.* (surpa), the Apex Court in the given facts and circumstances of that case held that a candidate only has the right to be considered in the light of the existing rules namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled up by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of *Deepak Agarwal -Vs- State of Uttar Pradesh (2011) 6 SCC 725*, the facts in *Nikhil Ranjan Chakraborty & Ors.* (surpa) was that certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. Since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to

stipulate that the vacancies be filled in accordance with the Rules as amended and moreover, the process to amend the Rules had begun well before the impugned Notification was issued. Similarly, the Apex Court in *Subodh Kumar & Ors.* (supra) also held that there is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up earlier year vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. As already noticed in the present case, the petitioners are no longer holding their original post which was a feeder post for promotion to the Junior Grade of the MF&AS under the Rules of 2008 and therefore, they cannot have any legitimate grievance in the selection and appointment of the private respondents. Thus, upon due consideration of the case in its entirety, I do not find merit in the writ petition and accordingly, the same is dismissed.

[24.] Before parting with the record, it is seen that this Court on 16.01.2023 while issuing notice of motion had passed an interim order directing status quo be maintained with regard to the filling up of ten (10) posts of Junior Grade of the MF&AS by direct recruitment. The same was however modified vide Order dated 23.02.2023 by allowing the respondent No. 4 MPSC to proceed with the selection process for the ten (10) posts of Junior Grade of MF&AS but not to finalize the same without leave of this Court. Now upon hearing the parties and upon coming

to the above findings and conclusion, the interim order passed on 16.01.2023 and 23.02.2023 shall merge with this Order. In other words, the respondent authorities concerned may now proceed in finalizing the selection made by bringing the same to its logical conclusion.

[25.] With the above observations and directions, the writ petition is disposed of.
No cost.

JUDGE

Comparing Assistant