

GAHC030005752023



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

Case No. : WP(C)/137/2023

Sh. Lalmalsawma and Anr.
S/o F. Laldula (L)
R/o Aizawl Venglai, Aizawl, Mizoram 2: Sh. B.
Rothanglian

VERSUS

The Chief Secretary to the Govt. of Mizoram and 4 Ors.
Aizawl

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

3:The Commissioner/Secretary to the Govt. of Mizoram
Power and Electricity Dept.
Govt. of Mizoram

4:Sh. David Chakma

5:Sh. Lalramnghak

Advocate for the Petitioner : Mr. Zochhuanmawia

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1-3

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

24.09.2024

Heard Mr. C Zoramchhana, learned counsel for the petitioners and Ms. Caroline K Lungawipuii, learned Government Advocate appearing for the respondent Nos. 1, 2 & 3. None appears for respondent Nos. 4 & 5 despite notice.

[2.] By filing this writ petition, the petitioners have questioned the order of transfer and posting of the respondent Nos. 4 & 5, vide Notifications dated 05.04.2023 & 28.04.2023 to the Senior Grade of the Mizoram Engineering Service (MES) Functional. According to the petitioners, the two posts in which the private respondent Nos. 4 & 5 have been posted are meant for Non-Graduate Engineers and therefore, the said private respondents being Graduate Engineers could not have been transferred and posted as shown in the impugned notifications.

[3.] Mr. Zoramchhana, learned counsel for the petitioners submits that as per the provisos to Rule 22(5)(a) of the Mizoram Engineering Service (Amendment) Rules, 2017 (Rules of 2017), 80% of the posts of Senior Grade is reserved for direct quota (Graduate Engineers) and 20% for promotion quota (Non-Graduate). The reservation is to continue until all the incumbents in Junior Grade from promotion quota as on the date of commencement of the Principal Rules i.e. 23.09.2013

are either promoted, expired while in service, retired, resigned or removed/dismissed from service. He submits that the reservation continues as on date since there are incumbents remaining who were already in the Junior Grade as on 23.09.2013. He submits that as on the date of issuance of the impugned notifications, there were already 27 Graduate Engineers out of the 34 sanctioned posts of Senior Grade of the MES, P&E Cadre, and therefore, the private respondents could not have been posted in the Functional Posts as reflected in the impugned notifications. He submits that out of the 7 posts meant for Non-Graduate Engineers in the Senior Grade of the MES, there are only 5 Non-Graduate Engineers holding Senior Grade Functional Posts. Therefore, the impugned Notifications dated 05.04.2023 & 28.04.2023 should be set aside and the petitioners who are qualified as per the Rules of 2017 should be considered for promotion. Mr. C Zoramchhana, learned counsel also submits that the instant case is clearly covered by the decision of this Court in WP(C) No. 63/2019 which was also subsequently relied in WP(C) No. 63/2020.

[4.] Ms. Caroline K Lungawipuii, learned Government Advocate, on the other hand, by referring to the affidavit-in-opposition filed by the official respondents on 07.03.2024 submits that due to the implementation of O.M dated 09.08.2021, all Departments are to maintain vacancy based roster register for identification of quota where two or more methods of recruitment are provided in the relevant

Recruitment Rules. That every vacant post in the Senior Grade of MES (Electrical) have to be filled up in accordance with the above mentioned Office Memorandum and that the Office Memorandum has done away with the post-based roster by replacing it with vacancy based roster. She further submits that in respect of the two vacancies in the Senior Grade of MES (Electrical), the matter was discussed with the under the Chairmanship of the former Power Minister on 10.11.2023 attended by the representatives of DP&AR (GSW) and DP&AR (ARW) and it was decided that the promotion be process as per the Mizoram Engineering Service Rules and the standing instructions of the Government. Insofar as the reliance of earlier decision of this Court is concerned, the learned Government Advocate submits that she may be given some more time to examine the same and obtain instructions.

[5.] The projected case of the petitioners is that the Rules of 2017 clearly provides for reservation for Graduate Engineers and Non-Graduate Engineers in the Senior Grade of the MES. 80% of the posts is reserved for direct quota while 20% is reserved for promotion quota. The petitioners being Non-Graduate Engineers are covered by the quota meant for promotion. The writ petitioners at paragraph No. 9 of the writ petition have taken the stand that the current strength of Senior Grade of the MES (P&E) East-35 out of which 28 posts are occupied by Senior Grade who are Graduate Engineers and out of the 7 posts meant for Non-Graduate Engineers, there are

only 5 posts filled up by Non-Graduate Engineers, in view of the impugned notifications posting the respondent Nos. 4 & 5 as Senior Grade Functional.

[6.] The learned counsel for the petitioners has however clarified that 1 (one) post is an ex-cadre posts belonging to Zoram Electrical Development Agency (ZEDA), which is also occupied by a Graduate Engineer. The State respondents in their counter affidavit at paragraph No. 4 have stated that at present, there are 27 Direct Recruit (Graduate) Engineers and 5 promotees (Non-Graduate) Engineers under the Department. Be that as it may, the Rules of 2017 clearly stipulates that 80% of the posts are to be filled up by Graduate Engineers while 20% of the posts are to be filled up by Non-Graduate Engineers. The State respondents at paragraph No. 10 of the counter affidavit have admitted that the two vacant posts of Senior Grade MES (Electrical) have been filled up as per the Service Rules and as per the standing instructions of the Government. In other words, the State respondents have admitted to the fact that the two vacancies which occurred at the relevant time had been filled up by transfer and posting the respondent Nos. 4 & 5 to the vacancies, which otherwise was meant for Non-Graduate Engineers as per the Rules of 2017. The explanation given is that vacancy based roster has prevailed over the post-based roster as provided by the O.M dated 09.08.2021. It may, however, be noticed that the Rules of 2017 have been framed in exercise of the powers conferred by

the proviso to Article 309 of the Constitution and has not been further amended to harmonize or to give effect to the O.M dated 09.08.2021.

[7.] This Court in WP(C) No. 63/2019 had the occasion to deal with a similar and identical issue except that the matter was pertaining to Public Health Engineering Department. This Court upon taking into consideration, Rule 22(5) of the Rules of 2017 including the proviso in the given facts of that case came to a finding that the quota system between the Graduate and Non-Graduate Engineers existed as on that date and therefore, the two vacancies in the Functional Posts of Senior Grade of the MES being the quota meant for Diploma Engineers, the private respondents could not have been placed against the Functional Posts. Accordingly, the placement of the private respondent Nos. 5 & 6, who were Graduate Engineers to the Functional Posts of Senior Grade in the service was set aside.

[8.] In the present case as well, the quota system still exist as can be seen from the averments made in paragraph No. 13 of the writ petition and also as admitted in paragraph No. 7 of the counter affidavit filed by the official respondents. Such being the case, the impugned Notifications dated 05.04.2023 & 28.04.2023, insofar as the respondent Nos. 4 & 5 are concerned, are found to be not sustainable and are accordingly set aside. The State respondents shall, within a period of four (4) weeks from the date of receipt of a certified copy of this

order, consider the case of the petitioners alongwith all other eligible Diploma Engineers (if any) as on the date when the private respondent Nos. 4 & 5 were considered for their placement/promotion in the concerned Functional Posts of Senior Grade of the MES under P&E Department, in terms of Rule 25(5)(a) of the Rules of 2017. On such consideration, if the petitioners are found eligible to be promoted and be placed in the Functional Post of the Senior Grade MES (Electrical), the same shall be done without delay and the consequential benefits as may be entitled to them in law should also follow.

[9.] Since the present case is found to be squarely covered by WP(C) No. 63/2019 and also by WP(C) No. 63/2020, further time for receiving instructions has not been granted to the learned Government Advocate as prayed for by her.

[10] With the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant