

GAHC030006992023



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

Case No. : WP(C)/152/2023

Sh. Vanlalthuama
S/o Biakkunga (L)
R/o Zemabawk North Venghlun
Aizawl, Mizoram

VERSUS

The State of Mizoram R/b the Chief Secretary to the Govt. of Mizoram and 5 Ors.
Mizoram, Aizawl 2:The Commissioner and Secretary to the Govt. of Mizoram
UD and PA Department

3:The Director
UD and PA Department
Govt. of Mizoram

4:The Aizawl Municipal Corporation r/b the Municipal Commissioner
AMC

5:The Municipal Commissioner
Aizawl Municipal Corporation

6:The Chief Executive Officer
Aizawl Municipal Corporatio

Advocate for the Petitioner : Mr A.R. Malhotra

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

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGEMENT & ORDER (ORAL)

Date : 27-08-2024

Heard Mr. A. R. Malhotra, learned counsel for the petitioner. Also heard Ms. Caroline K Lungawipuii, learned Government Advocate appearing for the respondents no. 1, 2 & 3 and Mr. Zoramchhan, learned counsel appearing for the respondents no. 4, 5 & 6.

2. The challenge made in the present proceeding is to a Corrigendum dated 09.05.2022, issued by the Municipal Commissioner, Aizawl Municipal Corporation, cancelling an earlier order dated 30.03.2022, by which one-third of the past service of the petitioner rendered as a Contractual Employee was considered as regular service for the purpose of promotion to higher grade/post and deputation as per the provisions of the **Mizoram Government Employees (Counting of Past Service) Rules, 2020** (hereinafter referred to as "the Rules of 2020").

3. The facts in brief for adjudication of the issues arising in the present proceeding are noticed as under:-

4. The petitioner, on his selection for the post of Sanitary Inspector on contractual basis under the Aizawl Municipal Corporation, was issued with an order dated 26.09.2011, appointing him as a Sanitary Inspector on contractual basis, against a post of Sanitary Inspector available in the establishment. The petitioner, on such appointment, was authorized a fixed pay. The petitioner, on execution of an agreement with the Chief Executive Officer, Aizawl Municipal Council, on 28.09.2011; proceeded to join his services. Although the initial appointment of the petitioner as a Sanitary Inspector was for a period of one year, the same was continued to be extended from time to time. The post of

Sanitary Inspector, against which the petitioner was so appointed on contract basis, came to be re-designated as Enforcement Inspector vide an order dated 14.12.2020; issued by the Commissioner & Secretary to the Government of Mizoram, Urban Development & Poverty Alleviation Department. Vide the said order; the pay as authorized to the post of Sanitary Inspector on re-designation was also upgraded from Level-5 to Level-6. After the said re-designation of the post of Sanitary Inspector as Enforcement Inspector, the petitioner continued to discharge his duties against the said post on contractual basis. The case of the petitioner was thereafter, considered by the Mizoram Sub-ordinate Selection Board for regularization of his services. On the said board, recommending the case of the petitioner, herein, for regularization of his services, the Commissioner & Secretary to the Government of Mizoram, Urban Development & Poverty Alleviation Department, vide notification dated 13.01.2021, proceeded to regularize the services of the petitioner against the post of Enforcement Inspector. In the said notification, it was provided that the counting of past service for leave, qualifying service for promotion, deputation, pay, pensionary benefits, seniority list etc. shall be governed by the provisions of the said Rules of 2020. The petitioner, in terms of the said notification, was also required to remain on probation, for a period of 2(two) years. Thereafter, vide an order dated 09.03.2022, issued by the Commissioner & Secretary to the Government of Mizoram, Urban Development & Poverty Alleviation Department, on satisfactory completion of probation period of one year and in the interest of public service, the services of the petitioner was confirmed against the post of Enforcement Inspector.

5. On his such confirmation in service, the Municipal Commissioner, Aizawl Municipal Corporation, vide office order dated 13.03.2022, proceeded to determine the period of contractual service that would now be counted as regular service for the purpose of promotion to the higher post/grade, deputation etc., in

terms of the provisions of the said Rules of 2020. Accordingly, a period of 03 years and 01 month was so computed in this connection in respect of the petitioner, herein. It was further provided that the benefit of such computation shall accrue to the petitioner, herein, only from the date of his confirmation i.e. w.e.f. 09.03.2022.

6. Poised thus, the authorities in the Urban Development & Poverty Alleviation Department, Government of Mizoram, vide the communication dated 13.04.2022 by holding that the computation as made in respect of the petitioner of his past services in terms of the said Rules of 2020, was not be permissible, inasmuch as, the stipulations as made in the said Rules of 2020; mandates that counting of past service is applicable for a contractual employee only upon they being granted regular appointment, against the same substantive sanctioned post so held by them on contractual basis. Accordingly, it was directed that the past service of the petitioner, be so computed only w.e.f. the date of re-designation of the post of Sanitary Inspector as Enforcement Inspector. In terms of the said communication dated 13.04.2022, the Municipal Commissioner, Aizawl Municipal Corporation, proceeded to issue a Corrigendum, dated 09.05.2022; cancelling the computation of past service as made in respect of the petitioner, herein, vide the office order dated 30.03.2022.

7. The petitioner, herein, being aggrieved by the said order dated 30.03.2022, had approached the authorities by way of a representation dated 24.08.2022; praying that the Corrigendum dated 09.05.2022, be withdrawn and the computation of the past services as made in this case vide the order dated 30.03.2022, be maintained. The said representation of the petitioner having not been given its due consideration, he had instituted the present proceeding.

8. Mr. A. R. Malhotra, learned counsel for the petitioner, by reiterating the facts as noticed herein above, has submitted that the petitioner; since the date of his

initial engagement as a contractual employee against a sanctioned post of Sanitary Inspector, has been discharging the duties attached to the said post, all along, till his services were so regularized. Mr. Malhotra, learned counsel has further submitted that on re-designation of the post of Sanitary Inspector, against which the petitioner was so appointed on contract basis, as Enforcement Inspector, the petitioner continued to discharge the same very nature of duties, as was earlier discharged by him as a Sanitary Inspector. Mr. Malhotra, has further submitted that there being no change in the nature of duties of the post of Sanitary Inspector even after its re-designation as Enforcement Inspector, the period of service rendered by the petitioner, herein, against the post of Sanitary Inspector, cannot be ignored for the purpose of computing his regular service in terms of the said Rules of 2020.

9. Mr. A. R. Malhotra, learned counsel for the petitioner, has submitted that the respondent authorities having issued the office order dated 30.03.2022, computing the period of contractual service rendered by the petitioner to be reckoned as regular service under the provisions of the said Rules of 2020, for the purpose mandated therein, vide the order dated 30.03.2022, could not have proceeded to cancel such determination so made vide the order dated 30.03.2022, without providing an opportunity of hearing to the petitioner, which he contends, admittedly, was not provided for.

10. The learned counsel for the petitioner, further submits that the petitioner having satisfied the requisites so mandated, for being considered for regularization of his services and such regularization also being so done, reckoning the services rendered by the petitioner on contractual basis against the post of Sanitary Inspector and later, as an Enforcement Inspector, on re-designation of the post held by him, the period of service rendered by the petitioner as a Sanitary Inspector cannot be ignored by the respondent

authorities while computing the period of service rendered by him on contractual basis to be reckoned as regular service under the provisions of the said Rules of 2020.

11. In the above premises, Mr. Malhotra, learned counsel for the petitioner submits that the Corrigendum dated 09.05.2022, requires an interference by this Court, with a further direction to the respondent authorities to maintain the computation of his past service as made, vide the office order dated 30.03.2022 for the purpose of reckoning the same as regular service for promotion to the next higher post/grade, including promotion through limited departmental examination as well as for the purpose of qualifying service for deputation.

12. Per contra, Ms Caroline K Lungawipuii, learned Government Advocate appearing for the respondents no. 1, 2 & 3 submits that the services of the petitioner being so regularized as an Enforcement Inspector, the mandate of the said Rules of 2020 being the counting of one-third of the past service rendered by a contractual employee on his regularization against the same substantive sanctioned post, the post of Sanitary Inspector and Enforcement Inspector, being not similar on account of a difference in the pay scale attached to the said post, the petitioner, under the provisions of the said Rules of 2020 cannot claim for having the contractual services rendered by him as a Sanitary Inspector, to also be reckoned for the purpose of computing the one-third of his past service rendered on contractual basis as regular service under the provisions of the said Rules of 2020.

13. It is the categorical contention of the learned Government Advocate that the provisions of the said Rules of 2020, mandating determination of one-third of the past service rendered by an employee concerned on contractual basis as regular service after his/her regular appointment to the same substantive sanctioned post, in respect of the petitioner, herein, can be determined only by

reckoning the services rendered by him as an Enforcement Inspector after the re-designation of the post of Sanitary Inspector held by him earlier. The services so rendered by the petitioner on contract basis against the post of Sanitary Inspector, would not be permissible to be so reckoned for the purpose of application of the provisions of the said Rules of 2020 in his case.

14. The learned counsel for the respondents no. 4, 5 & 6 adopts the arguments so advanced by the learned Government Advocate appearing for the respondents no. 1, 2 & 3. The learned counsel further submits that although the Aizawl Municipal Corporation had issued the office order 30.03.2022, determining the one-third of the past service rendered by the petitioner as a contractual employee, as regular service by also reckoning the services so rendered by him against the post of Sanitary Inspector prior to the date, the same was re-designated as Enforcement Inspector. However, on receipt of the communication dated 13.04.2022 and therein, it having been clearly prescribed that the past service rendered by a contractual employee under the provisions of the said Rules of 2020, being reckonable only against the post so held by such contractual employee which is same as the one against which he is so regularized, he submits that in terms of the said communication dated 13.04.2022, the Aizawl Municipal Corporation, on a re-consideration of the matter, proceeded vide the Corrigendum dated 09.05.2022 to withdraw the computation so made with regard to the past service rendered by the petitioner under the provisions of the said Rules of 2020, vide the office order dated 30.03.2022. The learned counsel also submits that the computation as made vide the office order dated 30.03.2022 being in violation of the provisions of the said Rules of 2020, the cancellation thereof, vide issuance of the Corrigendum dated 09.05.2022, is not erroneous and accordingly, the same would not call for any interference by this Court.

15. I have heard the learned counsel appearing for the parties and also perused

the materials available on record.

16. The facts as noticed herein above not being disputed, is not being reiterated.

17. The issue arising in the present proceeding relates to the implementation of the provisions of the said Rules of 2020. Accordingly, the provisions of the said Rules, relevant to the present proceeding are extracted herein below:-

*“2. **Application:** These rules shall be applicable to all Group ‘A’, ‘B’, ‘C’ and ‘D’ employees with prior service rendered as Work-charged, Contract, Provisional or any ad hoc/officiating employees under the Government of Mizoram including services rendered under: (a) Centrally Sponsored Schemes or other Scheme borne posts, and (b) Deficit/Ad hoc/Government Aided Colleges/Schools upon their regular appointment to the same substantive sanctioned posts.*

*3. **Eligibility for counting of past services:** Work-Charged, Contract, Provisional or any ad hoc/officiating employees as specified under rule 2 of these rules shall be eligible for the benefits provided under these rules upon fulfillment of the following conditions:*

1) There is no break between the prior service rendered as Work-charged, Contract, Provisional or any ad hoc/officiating employees and the regular appointment to the same substantive sanctioned posts.

2)

3)

4)

4.

*5. **Counting of past service as qualifying service for promotion to higher post/grade:** One-third of the past service rendered by a Work-charged, Contract, Provisional or any ad hoc/officiating employee as specified under rule*

2 of these rules shall be counted, upon regular appointment to the same substantive sanctioned post in the feeder post/grade, as regular service for the purpose of determining eligibility for promotion to the next higher post/grade, including promotion through limited departmental examination, unless otherwise expressly provided in the relevant recruitment rules.

Provided that the past service of Work-charged, Contract, Provisional or any ad hoc/officiating employee as specified under rule 2 of these rules shall be counted in terms of whole months only and services rendered less than 30 days or fractions, if any, shall be ignored in calculation of the past service to be counted.

Illustration: When the past service rendered by a Contract employee is 6 years, 11 months and 21 days i.e. 83 months and 21 days, one-third of the past service to be counted as regular service is 27 months only”.

18. The provisions of Rule 2 of the said Rules of 2020, mandates that the Rules would be applicable in the case of Group 'A', 'B', 'C' and 'D' employees with prior service rendered as Work-charged, Contract, Provisional or any adhoc/officiating employees under the Government of Mizoram upon their regular appointment to the same substantive sanctioned posts.

19. Rule 3(1) also mandates that there has to be no break between the prior service rendered as Work-charged, Contract, Provisional or any adhoc/officiating employees and the regular appointment to the same substantive sanctioned posts.

20. The provisions of Rule 2 and Rule 3(1), lays down that the persons so covered by the said Rules is mandated therein, to have so rendered service against a substantive sanctioned post on Work-charged, Contract, Provisional or any ad hoc/officiating basis and was subsequently regularized against the same

substantive sanctioned post.

21. The provisions of Rule 5 of the said Rules of 2020, mandates that an employee appointed initially as a Work-charged, Contract, Provisional or any ad hoc/officiating basis, on being regularly appointed to the same substantive sanctioned posts, shall be eligible to reckon one-third of his past service rendered in Work-charged, Contract, Provisional or any ad hoc/officiating basis as regular service for the purpose of determining eligibility for promotion to the next higher post/grade, including promotion through limited departmental examination etc. The service so computed would also be reckonable as regular service for the purpose of determination of the eligibility of such an employee for deputation in ex-cadre or in in-service posts.

22. The provisions of the said Rules of 2020, mandates that an employee, who has been engaged against a particular post on Work-charged, Contract, Provisional or any ad hoc/officiating basis, shall be entitled to reckon a part of his such contractual, ad-hoc, provisional, Work-charge etc. service, on his regularization against the same substantive sanctioned posts. Accordingly, for a better understanding, it can be said that a person who has been initially engaged on contract basis against a sanctioned post of LDC, would be entitled to count a part of his such contractual service, as regular service, pursuant to regularization of his services as an LDC.

23. Having understood the provisions of the said Rules of 2020, the service particulars of the petitioner in the present case is now being examined.

24. It is an admitted position that the petitioner, herein, was initially, in pursuance to a selection process, appointed on contractual basis against a sanctioned post of Sanitary Inspector, on fixed pay, vide an order dated 26.09.2011. The petitioner continued to discharge his duties against the said post w.e.f. the date of his initial appointment. Vide an order dated 14.12.2020, the

post of Sanitary Inspector, against which the petitioner, herein, was so appointed on contractual basis, was re-designated as Enforcement Inspector. Along with the said re-designation, the pay attached to the said post was also upgraded from Level-5 to Level-6. At this stage, it is to be noted that the petitioner, during his contractual engagement, both against the post of Sanitary Inspector and after its re-designation as an Enforcement Inspector, was paid his remuneration on a fixed pay basis and the said position continued till the petitioner was regularized in his services as an Enforcement Inspector vide issuance of the order dated 30.01.2021. The said aspect of the matter, on instructions, was clarified by the learned counsel for the petitioner, who submitted that the petitioner, since the date of his initial appointment, continued to receive his remuneration on fixed pay basis, till the date he was regularized in his services against the post of Enforcement Inspector. The said aspect of the matter is being noticed for the purpose that the re-designation of the post of Sanitary Inspector as Enforcement Inspector, the same did not have a consequential effect on the remuneration being drawn by the petitioner, herein, inasmuch as, he continued to draw his remuneration on a fixed pay basis even after re-designation of the post of Sanitary Inspector, against which he was initially appointed on contractual basis.

25. Having noticed the above position, it is to be now examined as to whether there was a change in the nature of duties, attached to the post of Sanitary Inspector after the said post was re-designated as Enforcement Inspector.

26. A perusal of the materials brought on record, does not reflect any change in the nature of duties attached to the post of Sanitary Inspector, on its re-designation as Enforcement Inspector. The nature of duties attached to the post of Sanitary Inspector, continued to remain the same even after its re-designation as Enforcement Inspector. Accordingly, the petitioner, continued to discharge similar nature of duties, during his contractual period of service even after re-

designation of the post of Sanitary Inspector, against which he was so engaged on contract basis, as Enforcement Inspector. Accordingly, it is to be held that for the purpose of the implementation of the provisions of the said Rules of 2020, the change in the level of pay of the post of Sanitary Inspector, on its re-designation, as Enforcement Inspector from Level-5 to Level-6 of the pay scale prescribed, would be of no consequence. It is also required to be notice that, on re-designation of the post of Enforcement Inspector, the respondent authorities had not proceeded to carry out any fresh process of selection, for the purpose of engagement on contractual basis against the said post now coming into existence, with a higher level of pay than that of its earlier version i.e. Sanitary Inspector and the petitioner, as before, was permitted to continue to discharge his duties as an Enforcement Inspector like before.

27. The petitioner having discharged his duties attached to the post of Sanitary Inspector since the date of his initial appointment; and there being no change in such nature of duties even after the post of Sanitary Inspector was re-designated as Enforcement Inspector, the petitioner, on his regularization against the post of Enforcement Inspector, vide the order dated 13.01.2021, must be held to have satisfied the requirements of the provisions of the said Rules of 2020, which mandates that the regularization is to be against the same substantive sanctioned post.

28. It is clarified that there being no difference between the duties, required to be discharged against a post of Sanitary Inspector on its re-designation as Enforcement Inspector, the petitioner is entitled to reckon the services rendered by him, on contractual basis against the post of Sanitary Inspector upon his regularization as an Enforcement Inspector, vide the order dated 13.01.2021 for the purpose of determination of his regular service in terms of the provisions of the said Rules of 2020.

29. In view of the above conclusions, this Court is of the considered view that the computation as made of the one-third of the past service, rendered on contractual basis by the petitioner, for being reckoned as regular service for the purposes as envisaged in the provisions of the said Rules of 2020, vide the order dated 30.03.2022, was done correctly and the same did not require an interference by the authorities.

30. The respondent authorities had held the petitioner to be not entitled to reckon the period of his contractual service against the post of Sanitary Inspector, only on the ground that the post of Sanitary Inspector on re-designation as Enforcement Inspector, also entailed an up-gradation of the scale of pay so attached from 'Level-5' to 'Level-6'. The respondent authorities while arriving at the said conclusion, had clearly failed to appreciate the fact that there was no change in the nature of duties attached to the post of Sanitary Inspector after its re-designation as Enforcement Inspector and the nature of duties required to be discharge remains the same.

31. As already concluded herein above, the change in the level of pay authorized in the post of Sanitary Inspector, on its re-designation as Enforcement Inspector, would be inconsequential, inasmuch as, the petitioner, herein, continued to receive his remunerations on fixed pay basis till he was so regularized vide the said order dated 13.01.2021. Accordingly, the communication dated 13.04.2022 and the consequential Corrigendum dated 09.05.2022 cannot be sustained and accordingly, they are set aside.

32. The setting aside of the communication dated 13.04.2022 and the Corrigendum dated 09.05.2022, would now revive the office order dated 30.03.2022, issued by the Municipal Commissioner of the Aizawl Municipal Corporation, Aizawl, computing the period of the contractual service of the petitioner for being reckoned as regular service under the provisions of the said

Rules of 2020 as "03 years and 01 month". The respondent authorities would now continue to reckon the period of contractual service of the petitioner as computed for the purpose of reckoning as regular service, under the provisions of the said Rules of 2020, vide the order dated 30.03.2022 and extend to the petitioner, herein, all requisite benefits so flowing there from.

33. With the above observations and directions, the writ petition stands allowed.

JUDGE

Comparing Assistant