
(2015) 08 GAU CK 0028
In the Gauhati High Court
Case No : WP(C) No. 44 of 2015

C. Lalthazuala

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Citation : (2015) 5 GLT 300

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : C. Lalramzauva, Sr. Counsel, A.L. Malhotra, Johny L. Tochhawng, K. Lalramnghaki, K. Laldinliana, Zoramchhana, Benjamin Lalthlamuana, Abigail Hmingthanpari, Jonathan L. Sailo and Lalpianfela Chawngthu, for the Appellant; Aldrin Lallawmzuala, Addl. AG, and Dinari T. Azyu, for the Respondent

Final Decision : Allowed

Judgement

Manojit Bhuyan, J.—Heard Mr. A.R. Malhotra, learned counsel representing the petitioner as well as Mr. Aldrin Lallawmzuala, learned counsel representing the respondent Nos. 1 & 2. Also heard Mrs. Dinari T. Azyu, learned counsel representing the respondent No. 3. The petitioner has been in employment since 25.07.2006 as Inspector of Tax, Taxation Department, Government of Mizoram. The said post is a Group "B" Gazetted post. The petitioner is aggrieved of his stagnation in service and inaction on the part of the respondents in denying career advancement to the Junior Grade Service. Reference is made to the Mizoram Civil Service Rules, 2000 as well as the Amendment brought about vide Notification dated 21.01.2002, more particularly to Rule 8 thereof. As per the said Mizoram Civil Service (Amendment) Rules, 2002, recruitment to the service in the Junior Grade is permitted by following two methods - (1) by direct recruitment through competitive examination conducted by the Commission and confined to 2/3 rd of the vacancies, and (2) by selection from amongst Officers who hold Gazetted post in a substantive capacity, confining it to 1/3rd of the vacancies. In so far as appointment by selection is concerned, the minimum

years of service for both Gazetted and Non-Gazetted Officers, the same are indicated therein.

2. The said Rules had undergone further amendment by means of the Mizoram Civil Service (Amendment) Rules, 2012, vide Notification dated 21.03.2013. However, in terms of the said Notification the same was given effect to from the date of publication in the Mizoram Gazette i.e. 28.03.2013. In terms of the said Amendment of 2012 promotional prospects for Group "B" Gazetted Officers have been taken out. 20% of the total sanctioned posts were kept open for being filled up by selection from amongst the Officers holding Group "A" posts.

3. Be that as it may, the petitioner is aggrieved of the letter dated 16.01.2015, issued under the hand of the Under Secretary to the Government of Mizoram in the Department of Personnel & Administrative Reforms, (Civil Service Wing) whereby a decision had been taken to fill up 10 vacancies in the Junior Grade of Mizoram Civil Service during the year 2015-2016 by direct recruitment through competitive examination. The petitioner's contention is that the respondents before initiating the exercise for filling up the said 10 vacancies, the vacancies as obtaining prior to the Amendment should be filled up according to the then prevalent Rules i.e. Mizoram Civil Service (Amendment) Rules 2002. The primary point urged by the petitioner is that the vacancies which had occurred prior to Amendment of the Rules be governed by the old Rules and as such they are required to be filled up as per the old Rules.

4. In so far as the vacancies available prior to the Amendment of the Rules in 2012, Mr. A.R. Malhotra makes reference to the affidavit-in-opposition filed by the State respondents. It may be noted that at paragraph 9 of the said affidavit-in-opposition the State respondents had fairly disclosed that as on 16.04.2012 there were 27 vacant posts in Junior Grade. Having regard to 1/3rd of the 27 vacancies, at least 9 posts were available for being filled up by promotion.

5. The said statistics given in paragraph 9 of the affidavit-in-opposition has been taken note of. At this stage it is clarified that the mention of 5 vacant posts arising in the year 2010, the same are independent of the available vacancies under Rule 8(b) arising in the year 2012. Going by the data so provided the pin-pointed argument of Mr. A.R. Malhotra is that having regard to the law laid down by the Apex Court in the case of H.C. Kulwant Singh Vs. H.C. Daya Ram, , the vacancies that had arisen after the Amendment would be governed by the amended Rules and the vacancies that were available prior to the Amendment would be governed by the unamended Rules. Applying the ratio of the Apex Court judgment to this instant case, it is reiterated that the Rules holding the field when such 9 vacancies had arisen is the Mizoram Civil Service (Amendment) Rules 2002. According to the said Rules 1/3rd of the vacancies is required to be filled up by selection from amongst Officers holding Gazetted posts in substantive capacity. As such, having regard to the case in Kulwant Singh (supra); it would be wholly impermissible to fill up the vacant posts that had arisen prior to the amendment by enforcing the amended Rules of 2012.

6. Mr. Aldrin Lallawmzuala, learned counsel representing the State Respondent Nos. 1 and 2, submits that the 10 vacant posts indicated in the letter dated 16.1.2015 are posts which had arisen pursuant to the amendment of Mizoram Civil Service Rules, 2012. Accordingly, the same do not call for interference of this Court.

7. Without going into the nitty-gritty of the case, the foremost point for consideration is whether the 9 (nine) vacancies, being 1/3rd of the 27 posts, can be allowed to be filled up in terms of the amendment brought about in the year 2012. The answer to this question can be had from the aforesaid case of Kulwant Singh (*supra*) which lays down that the vacancies occurring prior to the amendment of the Rules have to be governed by the provisions under the old Rules. In that view of the matter, the 9 vacancies which are required to be filled up by selection from amongst the officers in the rank of Gazetted Posts and working in substantive capacity must be filled up in terms of Rule 8(b) of the Mizoram Civil Service (Amendment) Rules, 2002.

8. At this stage, Mr. Malhotra by referring to the Notification dated 13.10.2008 (Annexure-V to the affidavit-in-opposition) and to the Notification dated 10.12.2008 (Annexure 11 to the writ petition) submits that, in fact, the vacancy position as on 2012 was 29 and not 27 and considering the 1/3rd of 29 vacancies available to be filled up by selection from amongst officers holding Gazetted Posts, the available vacancies round up to 10 posts. This is a matter which requires a fresh look by the State Respondents.

9. In view of the clear prescription of law, the vacancies which were available prior to the amendment of the Rules in 2012, has to be filled up according to the old Rules, which is the Mizoram Civil Service (Amendment) Rules, 2002. In the facts and circumstances of the case, a direction is made to the State Respondents to fill up the said vacancies from amongst the officers holding Gazetted Posts for recruitment to the service in Junior Grade. It is made clear that in the event the petitioner comes within the zone of consideration, his case for selection and promotion shall also be duly considered. The exercise for recruitment to the service in the Junior Grade in terms of the Mizoram Civil Service (Amendment) Rules, 2002, as indicated above, shall be completed by the State Respondents within a period of 4(four) months from today.

10. The petitioner is permitted to furnish a copy of this order along with the copy of this writ petition to the State Respondents for their doing the needful in terms of the above. Resultantly, this writ petition stands allowed to the extent indicated above, however, without interfering with the letter dated 16.1.2015 (Annexure-15 to the Writ Petition). Interim order passed earlier stands modified accordingly and the parties are left to bear their own costs.