

---

**(2015) 03 GAU CK 0104**  
**In the Gauhati High Court**  
**Case No : WP(C) No. 43 of 2014**

J. Lalchhanhima APPELLANT  
Vs  
State of Mizoram and Others RESPONDENT

---

**Date of Decision :** 31-03-2015

**Acts Referred:**

Constitution of India, 1950 — Article 162, 309

**Citation :** (2015) 3 GLT 391

**Hon'ble Judges :** M.R. Pathak, J

**Bench :** Single Bench

**Advocate :** C. Lalramzauva, Senior Advocate, A.R. Malhotra, K. Laldinliana, Lalramsangzuali, Zoramchhana, Lalhruaitluangi Chhangte, Lalchhuansanga Sailo, Noel L. Kompa and Johnny L. Tochhawng, for the Appellant; Linda L. Fambawl, GA, Advocates for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

M.R. Pathak, J—Heard Mr. Anil Rinliana Malhotra, learned counsel appearing for the petitioner. Also heard Mrs. Linda L. Fambawl, learned Government Advocate, Mizoram, appearing for the State respondents. The petitioner, namely, Sh. J. Lalchhanhima on 07.05.1983 was initially appointed to the post of Work Charge Section Assistant in the Public Works Department (PWD, in short), Government of Mizoram. During the course of his service tenure under the PWD, Government of Mizoram, on the recommendation of the Mizoram Public Service Commission, the Engineer-in-Chief, PWD, Mizoram, Aizawl respondent No. 4 vide order No. A.32015/2/2012/EC/E-II/139 dated 20.10.2013 (Annexure-1 to the Writ Petition) promoted the petitioner to the post of Junior Engineer along with 62 such other Section Assistants/Overseers Grade-II and accordingly, the petitioner was posted at Project-II Division, PWD.

2. The petitioner, while serving as Junior Engineer, PWD, Project Division-II, Laipuitlang, Aizawl, by a written application dated 31.10.2013 sought for voluntary retirement from service and prayed before the Engineer-in-Chief, PWD,

Government of Mizoram, to consider and approve the same at an early date, requesting to relax the required period of three months of notice, as per provision of Rules in force (Annexure-2 to the writ petition).

3. Said application of voluntary retirement from service of the petitioner dated 31.10.2013 with his Service Book, Application in original and Joining Report in service was placed before the Engineer-in-Chief, PWD, Aizawl, Mizoram through the Executive Engineer, PWD, Project Division-II, Mizoram, Aizawl, the respondent No. 6 and the Chief Engineer, PWD, Buildings, Mizoram, Aizawl, the respondent No. 5.

4. The Engineer-in-Chief, Mizoram, Aizawl, on considering that the petitioner rendered more than 29 years of qualifying service in the PWD, Mizoram; accordingly by his Order No. A.38043/1/99/EC/17 dated 01.11.2013 allowed the petitioner to go on voluntary retirement w.e.f. 01.11.2013 (Forenoon) under Rule 48(A) of the CCS (Pension) Rules 1972, on condition that he shall not apply for commutation of a part of his pension before the expiry of the period of notice of the period of 3 months (Annexure-5 to the writ petition).

5. Subsequently, on 30.12.2013 the petitioner submitted a written application before the Engineer-in-Chief, PWD stating that he has right to claim his lien and that he desires to revert back in service under the State Government as permissible under the Fundamental Rules in force read with Rule 26 of the Central Civil Service (Pension) Rules 1972 and Government of India's decisions thereunder. By the said application, the petitioner sought for withdrawal of his application and to allow him to rejoin his service by treating the resignation already tendered by him as Technical formality and also due to failure and changed in the circumstances, which originally compelled him to tender his voluntary retirement from service (Annexure-6 to the writ petition).

6. In his said application for withdrawal dated 30.12.2013 submitted before the Engineer-in-Chief, PWD, the petitioner stated that he was compelled to submit the application for voluntary retirement from service as his family was in urgent need of large sum of money for meeting various unforeseen expenditures, which he thought would only available from his pensionary benefits and as the said requirement of fund is no longer there, since the same was already made from other sources, he prayed for allowing him to withdraw his said application and also to allow him to rejoin his service by treating the resignation already tendered by him as technical formality and also due to failure and change in the circumstances which originally compelled him to tender his voluntary retirement from service.

7. The Engineer-in-Chief, PWD, Aizawl through the Deputy Director (Administration) vide communication No. A.38043/1/99/EC/22 dated 28.01.2014 informed the Principal Secretary to the Government of Mizoram, PWD, Aizawl that the petitioner who was released from service w.e.f. 01.11.2013 submitted an application on 30.12.2013 for withdrawal of his voluntary retirement from

service stating the reason as mentioned in the petitioner's aforesaid application and that the petitioner now wants to re-join in his relinquished post (Annexure-7 to the writ petition).

8. In his said communication dated 28.01.2014, the Engineer-in-Chief, PWD quoted the provisions of Sub-Rule (4) of Rule 26 of the CCS (Pension) Rules, 1972 and further informed the Secretary concerned that as per Notification No. A.19018/2011-VIG dated 27.05.2013, the "Appointing Authority" in respect of Group "B" Officers (Non-Gazetted) is the Secretary of Cadre Controlling and accordingly referred the matter of the petitioner to the Department Secretary concerned for his necessary consideration.

9. The Joint Secretary to Government of Mizoram, PWD by his communication No. A.38020/1/2003-PW dated 25.02.2014 informed the Engineer-in-Chief, PWD, Mizoram that the Government has given ex-post facto approval for voluntary retirement in respect of the petitioner, which has the approval of the concerned Minister on 17.02.2014 and a copy of the said Government communication dated 25.02.2014 was forwarded to the petitioner (Annexure-8 to the writ petition).

10. With regard to the said application of the petitioner dated 30.12.2013 for withdrawal of voluntary retirement from service, the Department of Personnel and Administrative Reforms (GSW), (DP & AR in short) vide their I.D. No. GSW-25/2014/3659 dated 22.04.2014 intimated that it regrets its inability to approve the request of the petitioner for withdrawal of his application for voluntary retirement from service w.e.f. 01.11.2013. The Deputy Secretary to Government of Mizoram, PWD, vide communication No. A38020/2003-PW dated 24.04.2014 conveyed the same to the Engineer-in-Chief, PWD, Mizoram (Annexure-9 to the writ petition) and the same was intimated to the petitioner on 30.04.2014 by the Deputy Director for the Engineer-in-Chief, PWD, Mizoram.

11. Mr. Malhotra, learned counsel for the petitioner submitted that with regard to the conditions of Government Services in the State of Mizoram, provisions of Central Civil Services Rules are followed and that the Rule 48A(2) of the CCS (Pension) Rules, 1972 provides that the notice of voluntary retirement is required to be accepted by Appointing Authority. Mr. Malhotra further submitted that the post of Junior Engineer, PWD, Mizoram belongs to the Group "B" Non-Gazetted Officers post and that the Chief Secretary to the Government of Mizoram in the Vigilance Department of the State vide Notification under Memo No. A.19018/1/2011-VIG dated 27.05.2013 notified that the Secretary of Cadre Controlling is the Appointing Authority of all Group "B" Non-Gazetted Officers (Annexure-11 to the writ petition).

12. Mr. Malhotra pointed out that the petitioner, while serving as Junior Engineer, PWD, Mizoram, submitted his application for voluntary retirement from service on 31.10.2013 before the Engineer-in-Chief, PWD, Mizoram and in terms of the aforesaid Notification dated 27.05.2013 of the Chief Secretary of the State, the Departmental Secretary of PWD, Government of Mizoram being the Secretary of

Cadre Controlling and as such the Appointing Authority and therefore, he was required to accept petitioner's application for voluntary retirement from service and not the Engineer-in-Chief, PWD, Mizoram who accepted petitioner's said application vide order dated 01.11.2013, without any authority and in violation of the Rules in force, which was subsequently ex-post-facto approved by the Secretary concerned on 25.02.2014 giving effect from 01.11.2013, in terms of Engineer-in-Chief's said order dated 01.11.2013.

13. Mr. Malhotra submitted that the contention of the petitioner is that he submitted his application for withdrawal of his voluntary retirement from service on 30.12.2013, which is much before the acceptance of his application for voluntary retirement from service dated 31.10.2013 by his Appointing Authority, i.e. the Departmental Secretary of PWD, Government of Mizoram on 25.02.2014. Therefore, illegal acceptance of the petitioner's application for voluntary retirement from service dated 31.10.2013 by the Engineer-in-Chief, PWD, Mizoram vide his order dated 01.11.2013 being non est in the eye of law, the Appointing Authority cannot ex-post-facto approve the same on 25.04.2014, after submission of his application for withdrawal of his voluntary retirement from service on 30.12.2013.

14. The other contention of the petitioner as submitted by Mr. Malhotra is that the State respondents in the DP&AR (GSW) vide their ID No. GSW-25/2014/3659 dated 22.04.2014, without stating any reasons cannot pass an order regretting its inability to approve the request of the petitioner for withdrawal of his application for voluntary retirement from service w.e.f. 01.11.2013. For the aforesaid reasons it is submitted that such action of the State respondents in accepting petitioner's voluntary retirement from service w.e.f. 01.11.2013 being void-ab-initio is illegal and therefore, the impugned orders are required to be set aside and quashed and the petitioner should be reinstated in service w.e.f. 01.11.2013. Hence this writ petition.

15. The State respondent Nos. 1 to 6 have contested the matter by filling their affidavit in this case. Mrs. Fambawl, on behalf of the State respondents submitted that the petitioner earlier on 14.12.2012 also submitted such application for his voluntary retirement from service and prayed for curtailment of the notice period of three months, as in the present case; but prior to the acceptance of his said application by the authority concerned, it was withdrawn on 04.02.2013.

16. The respondents submitted that as the petitioner intended to contest the Mizoram State Legislative Assembly Election, 2013 as a Zoram Nationalist Party (ZNP, in short) candidate from the 8-Chalfilh (ST) Constituency, he submitted application for voluntary retirement from service without any stipulated/intended date of his voluntary retirement from service, but with a request to the Appointing Authority to curtail the notice period of three months as provided in the Rules in force and as requested by him, the Appointing Authority by his order dated 01.11.2013 accepted petitioner's voluntary retirement from service and

allowed him to go on voluntary retirement w.e.f. 01.11.2013 (Fore Noon). The respondents stated that after he lost the said 2013 State Assembly Election, the petitioner thereafter on 30.12.2013 submitted his application for withdrawal from voluntary retirement from service, on the pretext of overcoming the financial crisis faced by his family.

17. It is also submitted on behalf of the respondents that on receipt of the petitioner's application for voluntary retirement from service it was duly accepted by the Appointing Authority w.e.f. 01.11.2013 which was merely confirmed by the Competent Authority with retrospective effect and conveyed on 25.02.2014. Furthermore, petitioner's application for withdrawal of his voluntary retirement from service was also referred to the Competent Authority for its decision and on due consideration of the same, the Competent Authority, rejected said request of the petitioner.

18. The State respondents also submitted that the Engineer-in-Chief, PWD, Mizoram being the Head of the Department is the Appointing Authority of all Non-Gazette Staff, including the Junior Engineers of PWD, which is evident from Schedule-II of the relevant Recruitment Rules of Junior Engineer in the State of which the petitioner is fully aware of and that it is the Engineer-in-Chief, PWD who by his order dated 28.10.2013 promoted the petitioner to the post of Junior Engineer. The State respondents also urged that the CCS (Pension) Rules, 1972 applicable in the present case, do not prescribe any time frame for acceptance of application for voluntary retirement from service and as such the Competent Authority is at liberty to accept such application at any time. According to the State respondents it is irrelevant as to whether petitioner submitted his request for withdrawal of his application for voluntary retirement from service before his application for voluntary retirement was accepted by the Competent Authority or not, since both of his applications were duly considered by the Competent Authority, decision was taken accordingly and by exercising his discretionary power, the Competent Authority accepted petitioner's application for voluntary retirement and regretted his request for withdrawal from voluntary retirement

19. The State respondents submitted that in accordance with Rule 48A(3-A)(b) of the CCS (Pension) Rules, 1972 and at the request of the petitioner for curtailment of the period of notice of three months, the Appointing Authority duly considered petitioner's request and being satisfied that such curtailment will not cause any administrative inconvenience, accordingly accepted his application for voluntary retirement from service. The State respondents further stated that CCS (Pension) Rules, 1972 and Government of India's Orders & Decisions on the issue of voluntary retirement do not stipulate for stating any reason in the acceptance order of the voluntary retirement from service as well as in the order of disapproving the request for withdrawal from voluntary retirement from service.

20. The State respondents submitted that Rule 5(1) & 5(4) of the CCS (Conduct) Rules 1964 bars Government employee to be in association with any political

party or any organisation or with any political activity in any manner. According to the State respondents, only after the Appointing Authority accepted petitioner's voluntary retirement w.e.f. 01.11.2013, the petitioner could contest the General Election 2013 and after losing the same, he submitted the request for withdrawal of his application for voluntary retirement from service and had it not been accepted by the Appointing Authority w.e.f. 01.11.2013, the petitioner would have continued to be a Government Employee and in that case he could not have contested the said Election in 2013. The State respondents urged that the application for voluntary retirement from service of the petitioner accepted by the Engineer-in-Chief, PWD, Mizoram w.e.f. 01.11.2013 is not legally permissible on the ground that the said Engineer-in-Chief, PWD is not the petitioner's Appointing Authority and in such circumstances, the petitioner is liable to be terminated from service because of his misconduct as he contested General Election 2013, representing a Political Party, during his continuance in Government service. In addition to that the State respondents also submitted that there was no such change in the circumstances to justify petitioner's withdrawal from voluntary retirement from service.

21. The petitioner in his reply to the affidavit of the State respondents, submitted that as his application for voluntary retirement was readily approved by the Engineer-in-Chief, PWD, Mizoram on 01.11.2003, only thereafter, he contested the General Election 2013 as a ZNP candidate and in his said application for voluntary retirement dated 31.10.2013 though he prayed for curtailment of notice period of three months/90 days, but he did not mention any specific date for allowing him to go on voluntary retirement. The petitioner submitted that his said application for voluntary retirement was not for contesting election and reiterated that as he was in urgent need of large amount of money to meet his various unforeseen family expenditures, that he could not procure from any other source, considering that there is a possibility of getting the said amount from his pension after his retirement, accordingly submitted his application for voluntary retirement from service and as said requirement of fund was no longer there, which he managed from other sources, the petitioner filed the application dated 30.12.2013 for withdrawal of his application for voluntary retirement from service dated 31.10.2013 to enable him to rejoin in his duty. The petitioner also reiterated all his statements made in the writ petition. Mr. Malhotra on behalf of the petitioner placed reliance on the Judgments of Hon'ble Supreme Court of India in Union of India and Another Vs. Tulsiram Patel and Others, AIR 1985 SC 1416 : (1985) 3 CompLJ 45 : (1985) 51 FLR 362 : (1985) 2 LLJ 206 : (1985) 2 SCALE 133 : (1985) 3 SCC 398 : (1985) 2 SCR 131 Supp : (1985) 2 SLJ 145 and Raj Kumar Vs. Union of India (UOI), AIR 1969 SC 180 : (1969) 18 FLR 125 : (1969) LabIC 310 : (1970) 1 LLJ 13 : (1968) 3 SCR 857 .

22. In this writ petition, the petitioner prayed for setting aside and quash the impugned orders under memo No. A38043/1/99/EC/17 dated 01.11.2013 (Annexure-5) issued by the Engineer-in-Chief, PWD, Mizoram by which the petitioner was allowed to go on voluntary retirement w.e.f. 01.11.2013 as well as

the communication No. A.38020/1/2003-PW dated 25.02.2014 issued by the State Government in the PWD, Mizoram (Annexure-8) by which petitioner's voluntary retirement was ex post facto approved by the State Government w.e.f. 01.11.2013 and also the observation made by the DP&AR (GSW), Government of Mizoram vide their ID No. GSW-25/2014/3659 dated 22.04.2014 regretting inability to approve petitioner's application for withdrawal from voluntary retirement and to reinstate him in service with effect from 01.11.2013 with all service benefits.

23. Rule 48A of the CCS (Pension) Rules, 1972 provides for Retirement on completion of 20 years' qualifying service and the relevant Sub-Rules of Rule 48 applicable in this case are quoted herein below:

1) At any time a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to Government servant, including Scientists or Technical expert who is-

2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

3) Omitted.

3-A)(a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons thereof;

b) On receipt of request under Clause (a) the Appointing Authority subject to the provision of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

4) A Government servant who has elected to retire under this Rule and has given the necessary notice to that effect to the Appointing Authority shall be precluded from withdrawing his notice except with the specific approval of such authority;

Provided that the request for withdrawal shall be made before the intended date of his retirement.

5) Omitted.

6) This rule shall not apply to a Government servant who-

Explanation - For the purpose of this Rule, the expression "Appointing Authority"" shall be the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

24. The State Respondents with their affidavit filed in the case have annexed all the relevant Rules applicable in the present case. From the same it is seen that the Government of Mizoram vide Notification No. A.12018/29/80-APT(B) dated 20.09.2000 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India formulated the "Mizoram Public Works Department and Public Health Engineering Department (Group "B" posts) Recruitment Rules, 2000" relating to the recruitment to the post of Junior Engineer (Civil) under Public Works Department and Public Health Engineering Department of the State, which was published in the Mizoram Gazette, Extra Ordinary, Volume XXIX, Issue No. 285 on 18.10.2000.

Subsequent to that the Government of Mizoram vide Notification No. A.12018/42/2004-P&AR (GSW) dated 09.11.2004 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India formulated the "Mizoram Public Works Department (Group "B" posts) Recruitment Rules, 2004" relating to the recruitment to the post of Junior Engineer (Civil) of the Public Works Department, under Group "B" (Non-Gazetted) Class & Service specifying that the Engineer-in-Chief, PWD shall be the Appointing Authority of Junior Engineer (Civil) of the PWD Group "B" (Non-Gazetted) post and said 2004 Rule was published in the Mizoram Gazette, Extra Ordinary, Volume XXXIII, Issue No. 329 on 10.11.2004.

Though vide Notification No. A. 12018/42/2004-P&AR (GSW) dated 05.08.2011, the Government of Mizoram by the Mizoram Public Works Department (Group "B" post) Recruitment Rules, 2011 amended the Column Nos. 2, 11 & 12 of the First Schedule of the aforesaid Mizoram Public Works Department (Group "B" post) Recruitment Rules, 2004; but there was no change with regard to the Engineer-in-Chief, PWD being the Appointing Authority of Junior Engineer, Civil of PWD, Group "B" (Non-Gazetted) post. The said 2011 Amendment Rules was published in the Mizoram Gazette, Extra Ordinary, Volume XL, Issue No. 348 on 12.08.2011.

25. In the Notification No. A.19018/1/2011-VIG dated 27.05.2013, issued by the Chief Secretary to the Government of Mizoram (Annexure-11 to the writ petition), it is noticed that the Secretary of Cadre Controlling shall be the Appointing Authority of Group "B" (Non-Gazetted) post like the post of Junior Engineer, PWD. And the petitioner heavily relied on the same, stating that it is the Departmental Secretary, who is the Appointing Authority for the post of Junior Engineer, PWD that was held by the petitioner and the Engineer-in-Chief,

PWD, Mizoram is not the Appointing Authority of the petitioner. From the careful reading of the above noted Notification No. A.19018/1/2011-VIG dated 27.05.2013, it is seen that the State Government in the Vigilance Department, in exercise of the powers conferred by Article 162 read with proviso to Article 309 of the Constitution of India and in terms of the Rule 8, Rule 12(2)(a) & (b) and Rule 29(1)(vi) of the Central Civil Services (Class, Control & Appeal) Rules, 1965 made an order specifying the competent authorities who are to exercise powers in appropriate manner as enumerated in the Schedule appended thereto in relation to Appointment to the State service under the Government and disciplinary proceedings against the delinquent Government servants of the State to impose adequate penalties as specified in Rule 11 of the CCS (CCA) Rules, 1965 commensurate with the offence committed upon the Government servant who is found guilty of the charge against him without prejudice any provisions of the rule ibid and the Government of Mizoram (Transaction of Business) Rules, 1987 as amended from time to time. Said Notification dated 27.05.2013 was published in the Mizoram Gazette, Extra Ordinary, Volume XLII, Issue No. 268 on 31.05.2013.

Moreover, the Schedule appended to the said Notification dated 27.05.2013 specified the Competent Authorities in relation to appointment and disciplinary matters of State services of the Government of Mizoram under CCS (CCA) Rules, 1965 and it specified (i) the Description Service/Post, (ii) Appointing Authority, (iii) Kind of penalties specified in Rule 11 of CCS (CCA) Rules, (iv) Disciplinary Authority, (v) Appellate Authority (vi) Revision/Review Authority under the CCS (CCA) Rules, 1965 as applicable in the State of Mizoram. As per said Schedule, the Secretary of Cadre Controlling is the Appointing Authority for Group "B" Officers (Non-Gazetted) under CCS (CCA) Rules, 1965.

26. Explanation to Rule 48-A of CCS (Pension) Rules, 1972 for the purpose of said Rule, defines "Appointing Authority" as that "it shall be the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement". The Notification dated 27.05.2013 (Annexure-11) stated above, which is relied by the petitioner, provides for Competent Authorities for various services/posts, including Group "B" (Non-Gazetted) Officers, in relation to appointment and disciplinary matters of State Services of the Government of Mizoram under CCS (CCA) Rules, 1965 only.

The said Notification dated 27.05.2013 of the State Government did not state its applicability and/or for repealing any other Rules in force in the State, like the CCS (Pension) Rules, 1972, the Recruitment Rules of various Departments/Organisations under the State Government that are in force in the State, including the Mizoram Public Works Department (Group "B" posts) Recruitment Rules, 2004" and for any other purpose, except its applicability under the CCS (CCA) 1965 Rules.

Further, it is the Engineer-in-Chief, PWD, Mizoram, vide his Office Order dated

28.10.2013 promoted the petitioner to the post of Junior Engineer along with others, much after the aforesaid Notification dated 27.05.2013 was published in the Mizoram Gazette, Extra Ordinary on 31.05.2013, which fact is not denied by the petitioner. Moreover, it is also not the case of the petitioner that the said Engineer-in-Chief, PWD, Mizoram do not possess the valid authority/power to promote the petitioner to the post of Junior Engineer on 28.10.2013.

27. While going through both the judgments of the Hon"ble Apex Court cited on behalf of the petitioner, it is seen that Hon"ble Supreme Court have settled the law that-

"a particular officer when acts as an Appointing Authority or a Disciplinary Authority as the case may be he must have his source of authority and he cannot exercise said power unless power for the same exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction."

"Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter."

28. It is seen from the above that the Mizoram Public Works Department (Group "B" posts) Recruitment Rules, 2004 is a Rule formulated by the Government of Mizoram in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India relating to the recruitment to the post of Junior Engineer (Civil) of the Public Works Department, Government of Mizoram under Group "B" (Non-Gazetted) Class & Service wherein it is clearly provided that the Engineer-in-Chief, PWD is the Appointing Authority of Junior Engineer of PWD, Mizoram and the said 2004 Rule is still in force in the State. As such, the Engineer-in-Chief, PWD, Mizoram is the "Appointing Authority" of Junior Engineers (Civil), PWD, Mizoram, which is in consonance with the Explanation to the Rule 48-A of the CCS (Pension) Rules, 1972 stated above. The said Engineer-in-Chief, PWD, Mizoram gets the power to act as an Appointing Authority from the statutory rules, i.e. the Mizoram Public Works Department (Group "B" posts) Recruitment Rules, 2004.

29. From the discussions made herein above, it can be safely hold that as per the Mizoram Public Works Department (Group "B" posts) Recruitment Rules, 2004, the Engineer-in-Chief, PWD is the "Appointing Authority" of Junior Engineers of PWD, Mizoram, who is also the "Appointing Authority" for the purpose of Rule 48-A of the CCS (Pension) Rules, 1972. As such the Engineer-in-Chief, PWD being the Appointing Authority has duly accepted petitioner's application/notice for voluntary retirement from service dated 31.10.2013, wherein he made a request to approve his said application relaxing the required period of three months notice as per the Rules in force, but without stipulating/intending any future date of effect of his retirement and the said Appointing Authority has rightly passed the impugned order dated 01.11.2013 (Annexure-5) and accordingly allowed the petitioner to go on voluntary retirement w.e.f. 01.11.2013 (FN) under Rule 48-A of the CCS (Pension) Rules, 1972.

30. As per the Rule 48-A of CCS (Pension) Rules 1972, which is in force in the State with regard to the voluntary retirement from Government Service, an incumbent who files an application/notice for voluntary retirement from service is required to make a request for withdrawal of his said notice, only if he prefers such withdrawal of notice before the intended/stipulated date of his retirement. In the present case, the petitioner on 31.10.2013 submitted his application for voluntary retirement from service before the Engineer-in-Chief, PWD, Mizoram, which did not contain any intended/stipulated future date of his retirement and as prayed him in his said application/notice dated 31.10.2013, the Appointing Authority, Engineer-in-Chief, PWD, Mizoram by his order dated 01.11.2013 allowed the petitioner to go on voluntary retirement w.e.f. 01.11.2013 itself. As such, the effective date for the voluntary retirement from Government service of the petitioner from the post of Junior Engineer, PWD, Government of Mizoram is 01.11.2013, i.e. the date on which petitioner's retirement from service took effect. But the petitioner's application dated 30.12.2013, withdrawing his application for voluntary retirement from service dated 31.10.2013, is much after his said effective date of retirement i.e. 01.11.2013, since the relationship of master and servant between the Government of Mizoram in the PWD Department and the petitioner was terminated long back on 01.11.2013, the date from which the petitioner ceased to be in Government Service in the rank/position of Junior Engineer, PWD, Government of Mizoram, that he held prior to the said date.

31. From the discussions made herein above, the Court is of the opinion that the application dated 31.10.2013 preferred by the petitioner seeking voluntary retirement from service was duly considered and accepted by his Appointing Authority, namely, the Engineer-in-Chief, PWD, Mizoram, which is also in conformity with the Rule 48-A(2) of the CCS (Pension) Rules, 1972 and the petitioner's application for withdrawal from voluntary retirement from service dated 30.12.2013 was much after due acceptance of his voluntary retirement from service by the Appointing Authority on 01.11.2013, which was submitted by the petitioner at a time when there was no existence of master and servant relation between the State Respondents in the PWD Department and him and

after he being ceased to be a Government Employee. It is a settled law that:-

"it is not open to the public servant to withdraw his resignation after the same is accepted by the appropriate authority and till it is accepted by the authority concerned in consonance with the Rule, the public servant has the locus standi to withdraw the same and not after such acceptance."

32. For the reasons stated above, the present petition being devoid of any merit stands dismissed. No order as to cost.