

**(2006) 05 GAU CK 0086**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No's. 5628 and 5832 of 2003

Jodhraj Baid and Another

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

**Date of Decision :** 29-05-2006

**Acts Referred:**

Administration of Justice (Lushai Hills) Rules, 1937 — Rule 10, 8, 9  
Constitution of India, 1950 — Article 233, 234, 235, 236, 237  
Criminal Procedure Code, 1973 (CrPC) — Section 32  
Industrial Disputes Act, 1947 — Section 7(3)  
Penal Code, 1860 (IPC) — Section 120B  
Prevention of Corruption Act, 1988 — Section 12, 13, 13(1), 13(2), 3  
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 9

**Citation :** (2006) 2 GLT 673

**Hon'ble Judges :** B.S. Reddy, C.J;P.G. Agarwal, J

**Bench :** Division Bench

**Advocate :** N. Dutta, S.S. Dey and B. Bhuyan, for the Appellant; P. Pathak, A. Dasgupta, A.K. Sarma, B.C. Das, R.C. Paul, S. Roy and D.N. Bhattacharyya, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.G. Agarwal, J.—Writ Petition (C) No. 5628/2003 was heard by the learned Single Judge, who vide order dated 6.5.2004 referred the matter to the Hon'ble Chief Justice and accordingly the matter has been listed before this Bench along with WP (C) No. 5832/2003. Both the cases were heard together.

2. We have heard Mr. N. Dutta, learned Senior Advocate assisted by Ms. B. Bhuyan, learned Counsel for the Petitioner. Also heard Mr. P. Pathak, learned Advocate General for the State of Mizoram and Mr. B.C. Das, learned Standing Counsel for the Respondent No. 4.

3. The Petitioner before us, Sri Jodhraj Baid is arrayed as an accused in Criminal Trial Case No. 1326/1996 arising out of Aizawl P.S. Case No. 631/1996 u/s 120 (B) IPC, R/W Section 7/12/ 13(I)(d)/13(2) of the Prevention of Corruption Act,

1988 (for short the Act), which is pending before the Special Judge, Aizawl, Mizoram. Besides the Petitioner, there are other accused persons. The facts of the above Aizawl PS case are not relevant for the purpose of considering this Writ Petition and as such we do not propose to refer to them.

4. The case of the Writ Petitioner, is that Sri P. Singthanga, Respondent No. 5, who has been appointed and posted as Special Judge, Mizoram under the Act, is not qualified to be appointed and he was not appointed as per provisions of Section 3 of the said Act, and as such Respondent No. 5 is not eligible and has no jurisdiction to hold the trial against the Petitioner. It is also alleged that the case is politically motivated and the Special Judge entrusted with the trial, being an Executive Officer under the control of the Government of Mizoram, the Petitioner may not get a fair trial. Section 3 of the Act reads as follows:

3. Power to appoint Special Judges-(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely-

(a) Any offence punishable under this Act; and

(b) Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a).

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973.

5. In this case, the Respondent State has filed a comprehensive affidavit regarding administration of justice in the State of Mizoram and the question of separation of Judiciary from the Executive. The Respondent Gauhati High Court has also filed a detailed affidavit. Although, a writ of quo-warranto has been sought against the Respondent No. 5, the said Respondent has not filed any affidavit-in-opposition. The Petitioner has filed an affidavit-in-reply.

6. The present State of Mizoram, before attaining Statehood was a district of Assam known as Lushai Hills and the Administration of Justice in the Lushai Hills were carried out under the Rules for the Regulation of the Procedure of Officers appointed to Administer justice in the Lushai Hills, (for short the 1937 Rules). Rules 1,8,9 and 10 of the 1937 Rules provides as follows:

1. The administration of the district known as the Lushai Hills is vested in the Governor of Assam and the Deputy Commissioner of the Lushai Hills and his Assistants and in the chiefs and headmen of villages.

8. Criminal justice shall be ordinarily administered by the Deputy Commissioner and his Assistants.

9. The Deputy Commissioner shall be competent to pass sentence of death, transportation or imprisonment up to the maximum amount provided for the

offence, of whipping and of fine up to any amount: provided that all sentences of death, transportation or imprisonment of seven years and upwards shall be subject to the confirmation by the Assam High Court.

The Assam High Court hereinafter referred to as the High Court or Deputy Commissioner may call for the proceedings of any officer subordinate to him and may reduce, enhance or cancel any sentence passed or remand the case for retrial but no offence shall be punished by a sentence exceeding that awardable under the Indian Penal Code.

Assistants to the Deputy Commissioner shall exercise such powers as they may be invested with by the Governor of Assam not exceeding those of a Magistrate of the first class, as defined in the Code of Criminal Procedure.

10. An appeal shall lie to the Deputy Commissioner against any order passed by any of his Assistants.

An appeal shall lie to the High Court for any sentence passed by the Deputy Commissioner.

In respect of magisterial decisions of the Commandant of the Assam Rifles, the Superintendent shall exercise the appellate revisional powers conferred upon the Court of Sessions or the District Magistrate by the Code of Criminal Procedure in the case of decisions of the class of Magistrate with the powers of which the Commandant of Assam Rifles has been invested.

7. Subsequently, the Administration of Justice (Lushai Hills Rules), 1953 were enacted but these rules are primarily made for Village Courts, Subordinate District Council Courts and District Council Courts.

8. The main plank of the arguments of Mr. Dutta, learned Senior Advocate is that there is no separation of judiciary in the State of Mizoram and there is no "Judicial Service" in the State of Mizoram as envisaged under Article 233 to 237 of the Constitution and as Respondent No. 5 is not a member of "Judicial Service" he is not eligible for appointment to the post of Special Judge under the Act.

9. The Registrar General of the Gauhati High Court Respondent No. 4 had earlier filled an affidavit explaining as to how the Respondent No. 5 and others were invested with the powers of the Sessions Judge at the request of the Government of Mizoram. Subsequently, as directed, another affidavit-in-opposition has been filed by the Respondent No. 4 on 11th April 2006 narrating the history, various correspondence entered into between the High Court and the Government of Mizoram regarding separation of Judiciary. Paragraph 6 of the said affidavit-in-opposition reads as follows:

6. That, in view of the facts as stated above, no judicial service as envisaged under Article 236 (b) of the Constitution of India has yet been created in the State of Mizoram and the officers exercising judicial functions are, in fact executive officers invested with judicial functions. It is stated that the officers of

the Government of Mizoram exercising judicial functions have not yet been brought under the supervision and control of the High Court and they are continuing under the control of the executive.

10. As stated above, the State of Mizoram has also filed a comprehensive affidavit on 29th December 2005, wherein it is mentioned that since 1988 Gauhati High Court is urging upon the State Government to separate the Judiciary in the State from the Executive and the various steps taken by it in the matter, culminating into the Notification of Mizoram Judicial Service Rules, 2005 on 29.7.2005 and published in the Mizoram Gazette Extra Ordinary dated 1.8.2005. We have painstakingly gone through the above facts and circumstances to observe that during the last 18 years, in spite of taking a policy decision to separate Judiciary from the Executive, no specific and concrete steps have been taken in that direction in order to achieve the desired goal of Separation of Judiciary from Executive. The State Government from time to time prepared certain draft bills like Mizoram Civil Courts Bills, 1986, Mizoram Judicial Service Rules 1989 etc. etc. but it seems that the entire exercise lacked purpose.

11. The matter of separation of Judiciary was transferred from one department to another and at times there were some disputes as to which department should issue notifications etc. The matter, however, need not detain us, in view of certain judicial pronouncements made in the matter. The question of judicial service or its status in the State of Mizoram was considered by the Apex Court in the case of Shri Kumar Padma Prasad Vs. Union of India and others, wherein the Apex Court held that there is no separation of Judiciary in the State of Mizoram and that there is no "Judicial Service" as defined under Article 233 to 236 of the Constitution of India. The Apex Court also rejected the submissions that there being no separation of Judiciary in Mizoram, justice civil and criminal being solely administered by the executive officers under the 1937 Rules, they are judicial officers within the ambit of 217 (2) (a) of the Constitution of India. The Apex Court held:

39. It is thus obvious that the magistrates who are not appointed to the judicial service of the State can be brought into the judicial service by way of a notification under Article 237 of the Constitution of India. Till the time there is separation of judiciary or a notification under Article 237 of the Constitution of India is issued there is no question of considering the executive officers or even magistrates for appointment to the post of District Judge or a High Court Judge even though the executive officers or magistrates concerned have the adornment of a judicial office.

12. The case of Kumar Padma Prasad (supra) was decided on March 10, 1992. The Mizoram Government thereafter, issued the Notification dated 25.8.93 appointing certain persons in Grade I, II, III and IV of Mizoram Service Rules, 1989 in exercise of the powers conferred under Article 237 of the Constitution. The Mizoram Service Rules, 1989 were challenged in Civil Rule No. 3483/93 and vide judgment dated 9.8.94, of the Division Bench of this Court, the said writ

petition was disposed of by observing inter alia that appointments are required to be made in compliance of the directions of the Apex Court in the case of All India Judges Association. It was also observed that Notification dated 24.8.1993 is subsequent to the judgment of the Apex Court. This Court, however, did not disturb the services of the existing officers.

13. In the year 1995, one Lalhmathuoi Khobung, Additional District Magistrate (Judicial) who was appointed under the Mizoram Judicial Service Rules, 1986 was placed under suspension by the Government of Mizoram and the said order of suspension was challenged before this Court in Civil Rule No. 2985/1995 on the ground that being a judicial officer the State had no authority to suspend Sri Lalhmathuoi Khobung and this Court vide judgment dated 1.3.1996 held that Sri Lalhmathuoi Khobung cannot be deemed to be a judicial officer and as such the suspension order passed by the State Government was found to be valid one.

14. The Respondent State has filed copies of certain orders of appointment in order to show that these appointments were made with approval of the Gauhati High Court and as such the appointees may be deemed to be judicial officers. We find no substance in the above submission as, admittedly judiciary was not separated in the State of Mizoram and no notification under Article 237 of the Constitution was issued till 22.1.2002, when the following Notification was issued.

No. A-48011/2/92-LJE/290

In exercise of the powers conferred by Article 237 of the Constitution, the Governor of Mizoram is pleased to direct that the provisions of Articles 233, 234, 235 and 236 of the Constitution shall apply in respect of the existing, Judicial officers of the State appointed and governed under the Mizoram Judicial Service Rules, 1989, with immediate effect.

It is further ordered that the existing Judicial officers of the State appointed under the Mizoram Judicial Service Rules 1989 be placed under the administrative control of the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) with immediate effect.

This issues with the approval, of the Council of Ministers, Communicated under the political and cabinet Department's Memo No. J. 11012/2/2001-POL dt. 16th January, 2002.

By order and in the name of the Governor.

Sd/- P. Chakraborty Secretary to the Govt, of Mizoram Law and Judicial Department Memo No. A. 32013/13/89-FAR(GS) Dated Aizawl, the 25th August 1993

15. The above Notification was taken cognizance by this Court in WP (C) No. 47/2000, Mizoram Judicial Service Association v. State of Mizoram, disposed of on 1.4.2002, wherein it was observed that prior to the Notification dated

22.1.2002 the officers of the Petitioners' Association were not serving under the High Court and it was not a judicial service as provided under the Constitution of India. Although, the Notification under Article 237 was issued by the Secretary, Law and Judicial Department, when the question of placing the services of the officers under the control of the Gauhati High Court came up, the Government developed cold feet. The ray of hope engineered by the said Notification was short lived, as on 14.3.2002, the Secretary, Law and Judicial withdrew the notification dated 22.1.2002 vide Notification dated 1.4.2002, with immediate effect. Thus, the said Notification dated 22.1.2002 became non est. the matter remained in cold storage for more than three years and fresh Notification was issued on 16.6.2005 (Annexure R 28 of the Affidavit-in-opposition).

16. In the meantime, the Apex Court in the judgment dated 21.3.2002 of all India Judges' Case gave directions for framing of the State Judicial Service Rules fixing the time frame and the Model Judicial Service Rules prepared by the First National Judicial Service Commission (Shetty Commission) was approved and it was observed that to maintain uniformity all over the country, Model Rules may be followed. The Gauhati High Court, being the High Court of seven States and in order to maintain uniformity in the Service Rules, prepared Draft Service Rules including one for the State of Mizoram and these were approved by the Full Court and these were sent to the respective State Governments for consideration and consultations as required under law. From the records, we find that Respondent Mizoram Government proposed some minor changes here and there and communicated the same to the High Court. The Respondent No. 4 considered the matter and accepted certain suggestions and did not agree with some suggestions. Thereafter, we find that the Mizoram Judicial Service Rules 2005 were notified on 29.7.2005.

17. The learned Counsel appearing for the Respondent No. 4 has submitted that these Rules are not in consonance with the draft Rules prepared after consultations that took place between the State Government and the High Court and the Rules contained certain provisions which are in flagrant violation of the provisions of the Constitution of India and the Respondent No. 4 has already communicated to the State Government that the above Rules cannot be acted upon.

18. The learned Advocate General, Mizoram was fair enough to submit that the notified Rules are not as per the consultations between the High Court and the Government.

19. At this stage, we may recapitulate the following observations of the Apex Court in the case of Thomas Antony Vs. Varkey Varkey,

It is, therefore, obvious that the State Legislature has no role to play while controlling appointments of District Judges under Article 233 or appointment of Civil Judges to Subordinate Judiciary at grass-root level under the District Judiciary and it is only the Governor who is entrusted with the said task which he

has to undertake after consultation with the High Court and by framing appropriate rules for recruitment to judiciary at grass-root level as enjoined by Article 234 and can only act on recommendation by the High Court for direct recruitment from the Bar for being appointed as District Judges as laid down by Article 233 sub-article (2). There is no third method or third authority which can intervene in the process or can have its say, whether legislative authority or executive authority, as the case may be, independently of the complete scheme of such recruitment as envisaged by the aforesaid two Articles. It is, therefore, difficult to appreciate the contention of learned senior Counsel for the Appellant-State that paramount legislative power of the State Legislature stands untouched by the scheme of the aforesaid two Articles of the Constitution.

34. It has also to be kept in view that judicial independence is the very essence and basic structure of the Constitution. We may also usefully refer to the latest decision of the Constitution Bench of this Court in Registrar (Admn.), High Court of The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another, wherein K. Venkataswami, J., speaking for the Constitution Bench, made the following pertinent observations in the very first two paras regarding Arts. 233 to 235 of the Constitution of India:

An independent judiciary is one of the basic features of the Constitution of the Republic. Indian Constitution has zealously guarded independence of judiciary. Independence of judiciary is doubtless a basic structure of the Constitution but the said concept of independence has to be confined within the four corners of the Constitution and cannot go beyond the Constitution.

The Constitution Bench in the aforesaid decision also relied upon the observations of this Court in All India Judges' Association (1993 AIR SCW 3195: All India Judges' Association and Others Vs. Union of India and Others, , wherein on the topic of regulating the service conditions of judiciary as permitted by Article 235 read with Article 309, it had been observed as under:

....the mere fact that Article 309 gives power to the executive and the legislature to prescribe the service conditions of the judiciary does not mean that the judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the judiciary in that behalf, for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the judiciary.

In view of this settled legal position, therefore, even while operating in the permissible field of regulating other conditions of service of already recruited judicial officers by exercising power under Article 309, the concerned authorities have to keep in view the opinion of the High Court of the concerned State and the same cannot be whisked away, (emphasis is ours)

35. In order to fructify this constitutional intention of preserving the

independence of judiciary and for fructifying this basic requirement, the process of recruitment and appointment to the District Judiciary with which we are concerned in the present case, is insulated from outside legislative interference by the constitutional makers by enacting a complete Code for that purpose, as laid down by Arts. 233 and 234. Consultation with the High Court is, therefore, an inevitable essential feature of the exercise contemplated under these two articles. If any outside independent interference was envisaged by them, nothing prevented the founding fathers from making Arts. 233 and 234 subject to the law enacted by the legislature of States or Parliament as was done in the case of other articles, as seen earlier. In the case of *State of Kerala Vs. Smt. A. Lakshmikutty and others*, , a two member Bench of this Court, speaking through Sen. J. placing reliance on the Constitution Bench judgment of this Court in *Chandra Mohan Vs. State of Uttar Pradesh and Others*, , made the following pertinent observations in paras 22 to 25 at pages 647-648 (of SCC): (Paras 21 to 24 at pages 340, 341 of AIR) which read as under:

22. The heart of the matter is that "consultation" between the State Government and the High Court in the matter of appointment of District Judges under Article 233 (1) of the Constitution must be real, full and effective. To make the consultation effective, there has to be an interchange of views between the High Court and the State Government, so that any departure from the advice of the High Court would be explained to the High Court by the State Government. If the State Government were simply to give lip service to the principle of consultation and depart from the advice of the High Court in making judicial appointments without referring back to the High Court the difficulties which prevent the Government from accepting its advice, the consultation would not be effective and any appointment of a person as a District Judge by direct recruitment from the bar or by promotion from the judicial services under Article 233 (1) would be invalid. Unless the State government were to convey to the High Court the difficulties which prevent the Government from accepting its advice by referring back the matter the consultation would not be effective.

20. In view of the aforesaid discussions, we hold that (i) Mizoram Judicial Service Rules 2005 as notified, are ultra vires and these have been framed and notified without proper and effective consultation. These Rules cannot be acted upon, (iii) There is no "Judicial Service" in the State of Mizoram as provided under Article 236 (b) of the Constitution.

21. The learned Counsel for the Petitioner has submitted that in absence of any "Judicial Service" in the State of Mizoram, the conferment/investment of the powers of Sessions Judge to Respondent No. 5 u/s 32 of the Code of Criminal Procedure is bad in law and as Respondent No. 5 is not eligible to hold the post of Special Judge, the trial cannot proceed before him. It is also submitted that Respondent No. 5 was not appointed in consultation with the High Court and the post of Special Judge can be manned by a person belonging to the "Judicial Service" only. In support of his submission, the learned Counsel has placed

reliance on the following observations of the Apex Court in the case of Chandra Mohan v. State of U.P. AIR 1966 SC 1987:

13. The third point raised is one of farreaching importance. Can the Governor, after the Constitution, directly appoint persons from services other than the judicial service as district judges in consultation with the High Court? Can he appoint "judicial officers" as district Judges? The expression "judicial officers" is a misleading one. It is common case that they belong to the executive branch of the Government, though they perform certain revenue and magisterial functions. The relevant article on which both the parties rely upon in support of their respective contentions is Article 233. It reads:

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

While the learned Counsel for the Appellant contends that the said article must be read along with the group of articles embodied in Ch. VI of Part VI of the Constitution and also in the background of the history of said provisions and that, if so read, it would be clear that the Governor can only appoint district judges either from the judicial service or from the Bar, the learned Counsel for the Respondents, on the other hand, argues that Article 233 is expressed in general terms and that there is no warrant to restrict the scope of the said article by construction or otherwise.

22. The learned Advocate General, Mizoram on the other hand has submitted that u/s 3(2) of the P.C. Act, there is no requirement of law that in order to qualify for appointment as Special Judge, a person is required to be a member of the "Judicial Service". The only requirement is that he is or has been a Sessions Judge or Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure.

23. At this stage, we may note the State Amendment in respect of the Mizoram, which were inserted vide Clause 3(5) Code of Criminal Procedure vide Notification No. Jud. 25/74, dated 2.4.1974:

After Sub-section (4), the following Sub-section shall be inserted, namely:

(5) Notwithstanding anything contained in the foregoing provisions of this Section:

(i) Any reference in such of the provisions of this Code, as applied to the Union territories of Arunachal Pradesh and Mizoram, to the Courts mentioned in Col. (1) of the Table below shall, until the Courts of Session and Courts of Judicial

Magistrate are constituted in the said Union territories the construed as references to the Court of Magistrate mentioned in the corresponding entry in Col. (2) of that Table.

#### TABLE

1. 2.

Court of Session or Session Judge or Chief Judicial Magistrate District Magistrate

Magistrate or Magistrate of the first class or judicial Magistrate of the first class Executive Magistrate

(iii) The functions mentioned in Clause (a) of Sub-section (4) shall be exercisable by an executive Magistrate.

24. It is, therefore, submitted by Mr. Pathak that Respondent No. 5 was serving as an Additional District Magistrate (Judicial) and thus in that capacity he was serving as a Sessions Judge and as he has been the Sessions Judge under the Code of Criminal Procedure, there was no impediment under the Act for his appointment as a Special Judge.

25. There is no dispute at the Bar that Deputy Commissioner or Additional Deputy Commissioner in the State of Mizoram discharges the functions of the Sessions Judge under the Code of Criminal Procedure although these officers are not Judicial Officers and they are not under the control and supervision of the High Court. In support of his submission, Mr. Pathak has placed reliance on a decision of this Court in the case of *Lal Siamkunga v. State of Mizoram* (1994) 2 GLR 178, where the question arose was whether a Deputy Commissioner or a District Magistrate can be appointed as Judge of the Designated Court under the TADA Act in the Schedule Areas. This Court on consideration of its earlier decisions in the case of *Bhagawari Devi v. Uma*, AIR 1961 Assam 304 and in the case of *Kulendu Kumar Dey v. Union Territory of Arunachal Pradesh*, (1983) 1 GLR 23 held:

11. It is a long standing legal position in the "Schedule Areas" that reference to Courts of Session are construed as references to Courts of Deputy Commissioner/ District Magistrate. In *B. Lakshmipathi Naidu Vs. The Distt. Educational Officer and others*, the Supreme Court held that long standing legal position of law should not be disturbed. Applying the principles laid down by the Supreme Courts, we are of the view that, although Courts of Sessions have not been constituted, construction of references to courts of Sessions as reference to the Courts of Deputy Commissioner should not be disturbed. For the reasons stated, references to "Deputy Commissioner" or "District Magistrate", in the relevant rules, in the context of cases are triable by the Courts of Session, should be read as references to "Sessions Judge". We hold that "Sessions Judge" and "Additional Sessions Judge" in Section 9 of the TADA Act must be deemed to include Deputy Commissioner for the purpose of TADA Act. The question is answered in the affirmative.

26. In the case of *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, the question that arose before the Apex Court was whether a Sub Deputy Collector vested with the powers of 1st Class Magistrate was a Judicial Officer in terms of Section 7(3) (d) of the Industrial Dispute Act:

The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law. If a station master were appointed we can readily question the appointment but when a person exercising judicial functions is appointed one cannot be too astute to say that the person does not hold a judicial office when it must at least be conceded that he holds an office of some kind. Nor does the argument that magistrates will claim to be appointed Judges of the High Court need detain us. The scheme of Chapter v. of Part VI of the constitution has its own effect on the meaning of the expressions "Judicial office" and "judicial service". In any case the use of the same expression in any other enactment not in pari material can have no bearing upon the Industrial Disputes Act and vice versa. In the constitution these words must bear the meaning which the context dictates and in that connection the history of appointment of Judges cannot be overlooked.

27. The facts of the present case are more or less identical with that of *Statesman (Private) Ltd.* The Respondent No. 5 is admittedly not a member of the State Judicial Service as no proper "Judicial Service" has been constituted in the State of Mizoram as yet. However, the Respondent No. 5 as an Additional Sessions Judge, was discharging the functions of a Sessions Judge in view of the provisions of Section 3(5) of the Code of Criminal Procedure. The Respondent No. 5 may not be a Sessions Judge under the Constitution, but he was admittedly functioning as the Sessions Judge under the Code of Criminal Procedure. The Respondent No. 5 is a Law graduate and since his appointment, he is discharging his duties as Additional Sessions Judge. He was also serving as Special Judge under the Narcotic Drugs and Psychotropic Substances Act. Thus he has been and is a Sessions Judge under the Code of Criminal Procedure. In view of the provisions of Section 3(2) of the Act, we hold that being an Additional Sessions Judge under the Code of Criminal Procedure, the Respondent No. 5 was qualified for appointment as a Special Judge under the Act and hence his appointment as Special Judge cannot be found fault with.

28. In view of the above, the Writ Petitions stand dismissed.