
(2008) 07 GAU CK 0059
In the Gauhati High Court

Lalhlimpuii and Others

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 GLR 94 : (2008) GLT 468 Supp

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Judgement

H. Baruah, J.—Heard Mr. Michael Zothankhuma, learned, Counsel for the petitioners as well as Mrs. Helen Dawngliani, learned GA for the State respondents.

2. Having been not absorbed per guidelines of District Rural Development Agency Administration, Government of India, Ministry of Rural Development 1999, all the writ petitioners being aggrieved thereby, have filed this writ petition under Article 226 of the Constitution, praying for a writ, order or direction to the respondent authorities to absorb them as per proposal of the Director, Rural Development, issued vide letter No. A.11016/1/2003-DTE (RD) dated 11.7.2003.

3. The case of the writ petitioners is as follows:

District Rural Development Agency, for short DRDA for the District of Aizawl, Lunglei and Saiha earlier known as Chhimtuipui District had been created in the year 1982 vide letter No. B.11016/10/82-CD dated 15.5.1982 issued by the under secretary to the Government of Mizoram, Community Development Department. All the three DRDA started functioning for the implementation of various poverty alleviation schemes/programmes evolved by the Union of India. The writ petitioners herein were all recruited/appointed in the DRDA on various dates between 1982 and 1999 and were discharging their duties as such in their respective post with effect from the date prior to 1.4.1999. The scheme DRDA is certainly a Centrally Sponsored Scheme and DRDA of the State is an

instrumentality for implementation of the scheme sponsored as such. The Ministry of Rural Development, Government of India, keeping in view the needs for effective agency at a district level to co-ordinate the anti-poverty efforts/programmes, a centrally sponsored scheme was introduced with effect from 1st April, 1999 and accordingly, the respondent No. 10 issued DRDA Administration Guidelines (the Guidelines). In paragraph 4.2 of the guidelines, makes provisions that the staff currently borne on the DRDA, the State Rural Development Department should draw up a 3-5 year plan for absorption of the staff into the line departments (Annexure-3).

4. The Ministry of Rural Development, Government of India accordingly wrote a letter dated 15.12.1999 to all the Chief Ministers of all States including the Chief Minister of Mizoram, requesting them to take immediate action per DRDA Administration Guidelines with effect from 1.4.1999.

5. In response to various communication sent by the Ministry of Rural Development, a team of officers was constituted by the Government of Mizoram to study/examine the issue of permanent absorption of DRDA employees into the Rural Development Department per Para 4.2 of the guidelines vide order dated 7.9.2001 issued by the Deputy Secretary to the Government of Mizoram, Rural Development Department. In the meantime, there were various communications between the Government of India and the State of Mizoram in regard to absorption of DRDA employees in the line departments as per Para 4.2 of the guidelines.

6. The study team which was constituted vide order dated 7th September, 2001, headed by the Deputy Director (Admn.), Rural Development Department, submitted its report for absorption and regularization of the employees/staffs to the under secretary, Rural Development Department, Mizoram, Aizawl vide Annexure-1 wherein it has been clarified that no additional finance would be required in respect of pay and allowances of the staffs are absorbed in a regular service.

7. In the proposal for absorption of the DRDA staffs it was made clear that the staff appointed prior to 1.4.1999 under DRDA Aizawl, Lunglei and Saiha may be considered for absorption into the line departments. It is to be noted that the names of the writ petitioners find placed in the said proposal.

8. The said proposal submitted by the deputy director (Administration Rural Development Department) convener was approved by the Government of Mizoram vide Annexure-10 issued under the hand and seal of under secretary to the Government of Mizoram, Rural Development Department and by this annexure, the Director Rural Development Department was requested to submit a proposal for absorption of DRDA employees/Staffs who have been directly recruited under Aizawl, Lunglei and Saiha DRDA before 1.4.1999 into the line departments. Pursuant to the said direction the Director, Rural Development Department, Mizoram Aizawl vide letter dated 11.7.2003 (Annexure-II)

submitted a proposal for absorption of DRDA employees/staffs showing the cadre, place of posting and date of joining.

9. But despite submission of the proposal for absorption, the Government of Mizoram till date is sitting over the matter disregarding the guidelines. It is contended by the writ petitioners that for their absorption per guidelines in the line departments, there will be no financial crunch since the Central Government is providing 75% of the fund for implementation of the direction of the Central Government.

10. Opposing the contention of the writ petitioners, the respondent authorities vide their affidavit-in-opposition and additional affidavit-in-opposition contended that absorption of the writ petitioners per guidelines of paragraph 4.2 could not be executed due to financial crunch of the State Government. It is contended by the respondents that the scheme was introduced by the Government of India, and all States were directed to introduce the said scheme. The Government of Mizoram, accordingly introduced the scheme in three Districts namely, Aizawl, Lunglei and Saiha and appointed persons including the writ petitioners. Subsequently, Union of India per Guidelines directed absorption of the DRDA employees in the line departments and this direction finds place in paragraph 4.2 of the Guidelines of DRDA Administration, 1999. The absorption as per guidelines was to be made within a time framed of 3 to 5 years plan. The matter of absorption of the DRDA employees in the line departments though taken up and approved by the Government, the Finance Department of the Government of Mizoram expressed its inability to approve the same due to financial crunch.

11. It is the further case of the respondents that the State Level Co-ordination Committee in its meeting held on 3.8.2007 decided to make a request to the Central Government to provide fund for pension contribution in respect of DRDA employees and the outcome of which is awaited. Vide their affidavit-in-opposition and additional affidavit-in-opposition, the respondent authorities have contended that the question of the absorption of the DRDA employees in different departments is under active consideration of the Government, but the same could not be materialized on account of paucity of fund and if, in the meantime, the State Government receives money from Central Government, the respondent authorities are ready to act for absorption of such staffs into the line departments per recommendation. In regard to absorption of employees under Border Area Projects numbering 33, it is contended by the respondents that the Rural Development Department did never approach the Finance Department for approval in respect of the staff of Development of Women and Children in Rural Areas (in short DWCRA). Respondent authorities also contended under the shadow of paragraph 8 of the affidavit-in-opposition filed by the respondent No. 4 that a direction of the Central Government is not mandatory nor a State Government is duty bound to absorb the petitioners unless such fund is made available by the Central Government. Respondents further contended that due to lack of fund under the State Non-Plan Fund, the State Government is not in a

position to implement the DRDA Guidelines and the report of the study team. Thus from the affidavit-in-opposition so filed by the respondent authorities, it has become apparent that the only objection for such absorption of DRDA employees into the line departments is the financial crunch of the State Government. The respondent authorities, therefore, prayed this Court to dismiss the writ petition.

12. Mr. Michael Zothankhuma, while supporting the contention of the writ petitioners submits that the Ministry of Rural Development, Government of India for an effective agency at a district level to coordinate the Anti Poverty Efforts/ Programmes, introduced a scheme with effect from 1st April, 1991, and, for the purpose, the Ministry of Rural Development, Government of India issued DRDA Administration Guidelines, 1999 for Absorption of staff currently borne on DRDA within a period of 3-5 years plan into the line departments. In support of his contention he has referred paragraph 4.2 of the Guidelines which is reproduced below:

In respect of the staff, i.e., currently borne on the DRDA , The State Rural Development Department should draw up a 3-5 years plan for absorption of the staff into the line departments.

It is incumbent on the part of the State Government to make such absorption of the DRDA staff within a period of 3-5 years in the line departments, but such absorption is not made despite approval of the recommendation by the Government per guidelines.

13. The grounds which have been projected in the affidavits-in-opposition filed by the respondent authorities are, according to Mr. Michael Zothankhuma, learned Counsel for the petitioners, not sustainable since the Central Government is providing 75% of the fund to the State Government. Per scheme, the remaining 25% of the fund is required to be provided by the State Government in execution of tin; absorption process. Mr. Michael Zothankhuma also contents that objection to such absorption due to financial crunch cannot come into play since the State Government, in the meantime, absorb 39 persons of DWCRA into different Government Departments without obtaining concurrence of the Finance Department. Out of those 39 nos employees, one person was appointed in 1984, four persons in 1987 while rest of the 34 persons were appointed between the period from 1991-97 and those employees are being regularly paid by the State Government and branded them as regular State Government employees w.e.f. 1.4.1996.

14. Similarly in case of Border Area Projects as recommended by the Expenditure Reforms Commission, Government of India, the Social Welfare Department pursued the matter for absorption of 32 employees appointed under the Border Area Projects to the State Government and subsequently, on the approval of the Finance Department on 11.8.2005 and 17.8.2005, the State Government absorbed those 32 employees in 6 (six) different departments vide Notification dated 18.10.2005 issued by the Joint Director to the Government of Mizoram,

Social Welfare Department.

15. Mr. Michael Zothankhuma, learned Counsel for the petitioners, therefore, in the face of absorption of the employees as above in different departments of the Government under Social Welfare Department, after obtaining concurrence from the Finance Department for Border Area Project and without obtaining concurrence from the Finance Department for DWCRA employees submits, objection raised by the respondent authorities that the writ petitioners could not be absorbed per guidelines due to financial crunch cannot be accepted. Mr. Michael Zothankhuma, therefore, lays stress that when the Central Government is funding 75% of the total fund for implementation of the scheme per guidelines, sitting over the matter by the State Government till date is not appreciable. Mr. Michael Zothankhuma therefore urges this Court to issue appropriate direction to the respondent authorities to absorb the writ petitioners who are recommended and approved by the Government in the different line departments under the Social Welfare Department.

16. Mrs. Helen Dawngliani, learned GA appearing for the State respondents submits that though, per guidelines the Government of Mizoram has decided to absorb the employees of DRDA into the line departments per provisions of paragraph 4.2 of the DRDA Administration Guidelines, in particular, such absorption, could not be given effect to on account of financial crunch of the Government of Mizoram. She has further submitted that for the absorption of the DRDA employees into different line departments under the Social Welfare Department, there would be paucity of fund for payment of salary to those employees and to negotiate the problem/issue, the State Government is asking the Central Government to provide adequate fund to overcome the obstacle including fund for pension. Since the State Government is not receiving any green signal from the Central Government in this regard, the process of absorption is now stalled.

17. The Central Government, by introducing the scheme, and issuing guidelines in regard to absorption of the DRDA employees into line departments, bound itself that for implementation of the scheme and for absorption, it would provide 75% of the fund to the State Government. In the face of such fact appearing in the face of the scheme, it would be improper for the State Government to plead of financial crunch. The employees of the DRDA ought to have been absorbed within the time frame as provided in the guidelines by the State Government but the government is sitting over the matter on the ground so projected through their affidavits-in-opposition. That apart, the State Government, in the meantime, absorbed employees of DWCRA without obtaining concurrence of Finance Department and Border Area Projects after obtaining concurrence from Finance Department and therefore, non-implementation of the absorption of the DRDA employees into various line departments till date, violating the guidelines of the Ministry of Rural Development, Government of India is unfair, discriminatory and arbitrary.

18. Mr. Michael Zothankhuma further in support of the case of the petitioners submits that the absorption of the employees of Centrally Sponsored Scheme can be done and is always done by the State Government. In case of the persons appointed under DWCRA scheme, there was no direction or compulsion on the State Government for absorption of the said employees, but it even without such compulsion, at its wisdom, absorbed some persons of the DWCRA without obtaining concurrence of Finance Department and Border Area Projects in different State Government Offices under the Social Welfare Department with the concurrence of the finance department. Therefore, the contention of the respondents that the process of absorption of the writ petitioners into the line departments per DRDA Administration Guidelines would entail an additional finance implication is not sustainable. According to Mr. Michael Zothankhuma, the State Government is bound to absorb the employees of the DRDA including the writ petitioners into the line departments under the Social Welfare Department per Guidelines of the Ministry of Rural Development Department, Government of India.

19. Having been given anxious consideration of the facts situation and the submissions advanced by the learned Counsel of both the party and the guideline, this Court is of a view that when the State Government has approved the absorption of those employees of the DRDA per recommendation of the study team for absorption in various line departments, objection raised by the respondent authorities that the process of absorption could not be executed for financial crunch of the State Government is not acceptable when the Central Government has already bound itself that it would provide 75% of the fund necessary for absorption of those employees of the DRDA into the line departments. This Court does not see any logic in the grounds contended by the respondents in their affidavits-in-opposition and argument so put forward by Mrs. Helen Dawngliani, Learned Government Advocate fails to impress this Court. The State Government by not absorbing the employees of the DRDA into the line departments per guidelines of the Ministry of Rural Development, Government of India seems to have violated DRDA Administration Guidelines, Paragraph 4.2 in particular.

20. Having considered all the matters in its entirety and for ends of justice, the respondent authorities are directed to absorb the writ petitioners into various line departments as suggested by the Director Rural Development Department, Mizoram, Aizawl and approved by the Government of Mizoram vide letter No. B.11016/4/98-IRD dated 27.6.2003. This exercise shall be completed within a period of 6 (six) months from today.

21. With the direction above, this writ petition is disposed of, however, with no cost.