
(2015) 06 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 5 of 2014

Ramhmangaihai and Others

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309, 39(d)

Citation : (2015) LabIC 3187

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

Bench : Single Bench

Advocate : C. Lalramzauva, Senior Advocate, A.R. Malhotra, Lalramsangzuali, Zoramchhana, Ruth Lalrinliani and Johny L. Tochhawng, for the Appellant

Final Decision : Disposed off

Judgement

M.R. Pathak, J—Heard Mr. Anil Rinliana Malhotra, learned counsel appearing for the petitioners and Mrs. Linda L. Fambawl, learned Govt. Advocate appearing for the State respondent Nos. 1 to 4. The Government of Mizoram in the Department of Personnel & Administrative Reforms vide Notification No. A.12018/6/81-APT(B) dated 16.01.1989 framed a statutory Rule under Article 309 of the Constitution of India relating to recruitment to the post of Workshop Instructor (Blacksmith/Fitting/Carpentry/Mechanical/Welding) in the Mizoram Polytechnic under Education & Human Resources Department, namely, the Mizoram Education & Human Resources Department (Group-C Posts) Recruitment Rules, 1989, which was published in the Mizoram Gazette on 16.01.1989 in the Pay Scale of Rs. 1,400/- to Rs. 2,600/- per month. As per said 1989 Rules, the educational and other qualification required for direct recruitment of Workshop Instructor was Matriculation or equivalent with Industrial Training Institute Certificate in the Trade or Central Training Institutes" Diploma/Technical Teacher Training Institutes" Certificate in the concerned Trade and further practical experience in the field/Institution in Workshop practice and working knowledge of Mizo was desirable.

2. Subsequently, the Government of Mizoram in the Department of Personnel & Administrative Reforms vide Notification No. A.12018/6/81-APT(B) dated 19.07.2002 amended the 1989 Recruitment Rules with another statutory Rule under Article 309 of the Constitution of India relating to recruitment to the post of Workshop Instructor (Blacksmith/Fitting/Carpentry/Mechanical/Welding) in the Mizoram Polytechnic under Education & Human Resources Department, namely, the Mizoram Education & Human Resources Department (Group-C Posts) Recruitment (Amendment) Rules, 2002, which was published in the Mizoram Gazette on 25.07.2002 amending, amongst others, the age limit for direct recruitment between 18 years to 30 years, relaxing 5 years for Schedule Castes/ Schedule Tribes candidates and with regard to educational qualification instead of Matriculation, the requirement was (1) High School Leaving Certificate or equivalent with (a) Industrial Training Institute Certificate in the Trade or (b) Central Training Institutes' Diploma/Technical Teacher Training Institutes' Certificate in the concerned Trade, (2) Working knowledge of Mizo language up to Middle School standard and Practical experience in the field/Institution in Workshop practice was made desirable.

3. On the recommendation of the Departmental Promotion Committee (Non-Gazetted), the Director of Higher & Technical Education, Mizoram vide his Office Order No. A.12011/7/00-DTE(HTE) dated 09.04.2003 appointed both the petitioners as Workshop Instructor (Electrical) and Workshop Instructor (Moulding) respectively in the Pay Scale of Rs. 5,000/- to Rs. 8,000/- per month and posted them in the Mizoram Polytechnic, Lunglei with effect from their date of joining. Accordingly, in terms of the same, the petitioners joined in their services and are continuing as Workshop Instructors in the Mizoram Polytechnic, Lunglei till date.

4. The State respondents in the Education & Human Resources Department with the concurrence of the Department of Personnel & Administrative Reforms (ARW) and Finance Department, Government of Mizoram in the year 1998 created 10 Posts for Women's Polytechnic, Mizoram, Aizawl including 1 Post of Workshop Instructor in the Pay Scale of Rs. 1,640/- to Rs. 2,000/- per month which was subsequently revised in the Pay Scale of Rs. 5,500/- to Rs. 9,000/- per month.

5. Being aggrieved with the difference in their Pay Scale @ of Rs. 5,000/- to Rs. 8,000/- per month with the pay scale of Workshop Instructors in their counterpart in the Women's Polytechnic at Aizawl @ Rs. 5,500/- to Rs. 9,000/- per month, the petitioners submitted representations for enhancement of their Pay Scale to Rs. 5,500/- to Rs. 9,000/- per month, which was duly forwarded by the Principal, Mizoram Polytechnic, Lunglei on 05.03.2008 to the Director of Higher & Technical Education Department, Government of Mizoram for due redressal, which in turn, was again forwarded to the State Government in the Higher & Technical Education Department.

6. The State Government in the Higher & Technical Education Department by its communication dated 29.10.2008 informed the Director of Higher & Technical

Education Department that by letter dated 17.10.2008, the Finance Department intimated that the proposals/recommendations for up-gradation/revision of Pay Scales of the petitioners cannot be considered at the said juncture and the concerned Directorate by its communication dated 07.01.2009 informed about the same to the Principal of Mizoram Polytechnic, Lunglei.

7. On the information sought for by the petitioners, the Director of Higher & Technical Education Department, Mizoram on 15.01.2009 informed that the sole Workshop Instructor at the Women's Polytechnic, Aizawl Pu. Lalrochama Bawlte was appointed on the recommendation of the Departmental Selection Committee under Higher & Technical Education following the Recruitment Rules of Workshop Instructor of Mizoram Polytechnic, Lunglei.

8. The Technical Supporting Staff Association of Mizoram Polytechnic, Lunglei on 04.06.2010 and 29.10.2010 submitted representations before the Chief Minister of Mizoram and the Chairman of the Pay Review Committee with regard to the grievance of the petitioners. The petitioners also submitted a representation on 10.09.2011 before the Chairman, Pay Committee, 2011 of the State.

9. As per Mizoram (Revision of Pay Rules, 2010); the Pay Scale of Workshop Instructor of Mizoram Polytechnic, Lunglei is Rs. 9,300/- to Rs. 34,800/- + Grade Pay of Rs. 4,200/-, whereas as per said Pay Rules, 2010 Workshop Instructor of Women Polytechnic, Aizawl is Rs. 9,300/- to Rs. 34,800/- + Grade Pay of Rs. 4,400/-. Further, as per said 2010 Revision of Pay Rules, Mizoram, which has been deemed to have come into force w.e.f. 01.01.2006, Pay under said Rules was fixed notionally w.e.f. 01.01.2006 and the actual monetary benefit was given w.e.f. 01.01.2009. The said Pay Committee, 2011, duly constituted by the Government of Mizoram, found the grievance of the petitioners as genuine and accordingly, in the recommendation submitted by it before the Government, recommended for up-gradation of the pay scale of Workshop Instructor of Mizoram Polytechnic, Lunglei as Rs. 9,300/- to Rs. 34,800/- + Grade Pay of Rs. 4,400/-.

10. The petitioners submitted that in spite of such recommendation of the duly constituted Pay Committee, 2011, the State respondents did not rectify the parity of Pay with regard to the post of Workshop Instructor in the Mizoram Polytechnic, Lunglei wherein the petitioners are serving as Workshop Instructor since 2003.

11. The petitioners submitted that the Director, Higher & Technical Education, Mizoram in its communication dated 15.01.2009 clarified that the Mizoram Education & Human Resources Department (Group-C Posts) Recruitment Rules, 1989 as amended in 2002 was followed for appointment of Workshop Instructor at Women's Polytechnic, Aizawl and the petitioners submitted that it is the same very Rule, which was followed while they were recruited and appointed as Workshop Instructor in the Mizoram Polytechnic at Lunglei in the year 2003. The petitioners also submitted that on the recommendation of the Selection

Committee held on 20.07.2007, one Sh. Ramfangzauva was appointed as a Workshop Instructor (Blacksmith) in the Mizoram Polytechnic; Lunglei on contract basis and vide order dated 27.02.2012, the Director of Higher & Technical Education, Mizoram transferred him to Women's Polytechnic at Aizawl. The petitioners have annexed a copy of said transfer order dated 27.02.2012 in their petition to show that the post of Workshop Instructor in both, the Mizoram Polytechnic, Lunglei as well as in the Women's Polytechnic at Aizawl, being inter-transferrable, are equal with similar educational and other requisite qualifications and therefore, the petitioners submitted that they i.e. the Workshop Instructor's of Mizoram Polytechnic, Lunglei are entitled to same "scale of pay" with same "pay band" and "grade pay" like the Workshop Instructor of Women's Polytechnic at Aizawl in the Pay Scale of Rs. 9,300/- to Rs. 34,800/- + Grade Pay of Rs. 4,400/-.

12. Therefore, the petitioners have submitted that in denying similar pay scale and benefit to them, the State respondents have acted illegally, arbitrarily and in violation of the provision of the Articles 14, 16 and 39(d) of the Constitution of India. The petitioners are also aggrieved that till date the State respondents did not comply with the recommendation of the Pay Committee, 2011 with regard to their entitlement of Higher Scale of Pay as Workshop Instructors of Mizoram Polytechnic, Lunglei whereas their counterpart in the Women's Polytechnic at Aizawl is receiving higher "scale of pay" with higher "grade pay". Hence, this Writ petition.

13. The Higher & Technical Education Department of the State filed their affidavit in the matter on 04.06.2014 and submitted that without the concurrence of the Finance Department of the State up-gradation of pay scale of the Workshop Instructor's of Mizoram Polytechnic, Lunglei can't be done and for the said purpose, necessary proposal has been placed before the Finance Department (PRU) for up-gradation of the petitioners' pay scale and in terms of the same the Finance Department of the State on 16.01.2014 sought for requisite information from both, the Higher & Technical Education Department of the State as well as from the Directorate of Higher & Technical Education directing them to indicate the number of posts and the existing incumbents of Workshop Instructors of various Polytechnics under the State Government enjoying the Pay Band 2 + Grade Pay of Rs. 4,400/- for necessary action. In the said affidavit of the Higher & Technical Education Department of the State, it is also submitted that as and when the aforesaid information sought for is received it would be furnished to the Finance Department for consideration of up-gradation of pay scale of the petitioners.

14. The Finance Department of the State also filed in their affidavit in the matter on 16.09.2014 and submitted that that in order to implement the recommendation of the Central 6th Pay Commission, the Government of Mizoram on 14.10.2008 constituted a Fitment Committee to examine the 6th Central Pay Revision and the feasibility or otherwise of its adoption in respect of all the

employees of Mizoram Government and by the time the petitioners submitted their representation, the said Fitment Committee had already taken up all the matters relating to pay of the State Government employees and therefore at that juncture petitioner's representation could not be considered. The Finance Department also submitted that the Government of Mizoram accepted only few recommendation of the Pay Committee, 2011 considering their geniuses and other relevant factors. The Finance Department also submitted that the petitioners received pay Rs. 39,120/- in the month of July 2014, whereas the Workshop Instructors at Women's Polytechnic, Aizawl, who are working on contract basis received fixed pay of Rs. 17,904/- in the month of July 2014. The said respondent also admitted that pay scale of Workshop Instructor at Women's Polytechnic, Aizawl was created at a pay scale higher than the prescribe pay scale as envisage in the Recruitment Rules for Workshop Instructors" at Mizoram Polytechnic, Lunglei which was issued under Article 309 of the Constitution of India and this parity has been brought to the notice of the Department of Personnel & Administrative Reforms and suggestion has been made that that the pay scale in respect of Workshop Instructor, Women's Polytechnic, Aizawl may be reduced to the level of Workshop Instructor of Mizoram Polytechnic, Lunglei on the expiry of the present contract so that any regular appointee as Workshop Instructor in the Women's Polytechnic, Aizawl may receive equal salary with the Workshop Instructor of Mizoram Polytechnic, Lunglei. Said respondent (Finance Department) also stated that post creation order for Workshop Instructor in the Women's Polytechnic, Aizawl was issued as per executive order whereas Workshop Instructor of Mizoram Polytechnic at Lunglei was made as per Recruitment Rules made under Article 309 of the Constitution of India. According to said respondents, petitioners did not suffer any loss as the contract employees working in the Women's Polytechnic, Aizawl are earning lesser salary than the petitioners.

15. During the course of hearing, Mrs. Linda L. Fambawl, learned Govt. Advocate submitted a communication issued by the Finance Department of the State bearing I.D. No. FTN(PRU)44/2014 dated 18.09.2014 informing the Higher & Technical Department of the State that the said Department in the File No. A.11014/1/2006-EDN (POLY) has informed that pay scale of Workshop Instructor at Women's Polytechnic, Aizawl shall be reduced to the level of Workshop Instructor of Mizoram Polytechnic, Lunglei as per the approved existing Recruitment Rules in the Mizoram Polytechnic, Lunglei which has been approved by the Department of Personnel & Administrative Reforms (ARW) vide their I.D. No. ARW/FIN/2014-15/B-149 dated 10-07-2014 and as the Workshop Instructor at Women's Polytechnic, Aizawl are engaged on contract basis, their remuneration should be reduced to the level of Workshop Instructor's, Mizoram Polytechnic, Lunglei at Pay Band 2 + Grade of Rs. 4,200/- when the present contract period is over and new contract is to be signed.

16. However, the State respondents have failed to show before the Court whether any fresh contract has been signed with the Workshop Instructor of

Women's Polytechnic, Aizawl in the aforesaid Pay Band 2 + Grade of Rs. 4,200/- after completion of their such contract in terms of the said communication dated 18.05.2014 of the Finance Department of the State placed before the Court. Moreover, the respondents in the Higher & Technical Education Department also could not show whether the information with regard to indicating the number of posts and the existing incumbents of Workshop Instructors of various Polytechnics under the State Government enjoying the Pay Band 2 + Grade Pay of Rs. 4,400/-, as sought for by the Finance Department was placed or not as such information was sought on 16.01.2014 itself.

17. The respondents are fully aware that the Workshop Instructor of Women's Polytechnic, Aizawl are getting a higher Grade Pay of Rs. 4,400/- than the petitioners, who are working as Workshop Instructor in the Mizoram Polytechnic at Lunglei whose Grade Pay is only Rs. 4,200/- and it is not urged by the respondents nor it is their pleaded case that nature and function of the job, educational & other requisite qualification with regard to the post of Workshop Instructor of Women's Polytechnic, Aizawl is different than that of Workshop Instructor in the Mizoram Polytechnic at Lunglei. Respondents did not deny the fact that the post of Workshop Instructor at Mizoram Polytechnic, Lunglei and Women's Polytechnic, Aizawl are equal. The Finance department of the State in their affidavit clearly stated that it accepted recommendation of the Pay Committee 2011 which are genuine and the said Pay Committee 2011 duly made recommendation for up-gradation of the pay scale of Workshop Instructor of Mizoram Polytechnic, Lunglei as Rs. 9,300/- to Rs. 34,800/- + Grade Pay of Rs. 4,400/- and the Finance Department in their affidavit failed to show how such claim for up-gradation of pay scale (grade pay) of the petitioners recommended by the Pay Committee 2011 of the State is fake or illegal.

18. From the Pay Certificates of the petitioners (Workshop Instructors of Mizoram Polytechnic, Lunglei) and a Workshop Instructor of Women's Polytechnic, Aizawl working on contract basis annexed in the affidavit of the Finance department of the State, marked as Annexure-II "A", "B" & "C" clearly shows that petitioners with the pay @ of Rs. 14,560/- are getting Grade Pay of Rs. 4,200/-, whereas, the Workshop Instructor of Women's Polytechnic, Aizawl with a lesser pay (fixed pay as stated) than the petitioners @ of Rs. 10,520/- are getting a higher Grade Pay of Rs. 4,400/-.

19. There is no dispute that both the Mizoram Polytechnic, Lunglei and Women's Polytechnic, Aizawl are State Government Institutions and the same post of Workshop Instructor in the Mizoram Polytechnic, Lunglei cannot have a lesser Grade Pay than that of Workshop Instructor of Women's Polytechnic, Aizawl and the said action of the State respondents in paying lesser grade pay to the Workshop Instructors of Mizoram Polytechnic, Lunglei than the Workshop Instructor of Women's Polytechnic, Aizawl is clearly a discriminatory one.

20. The Hon''ble Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, AIR 1990 SC 968 : (1990) 60 FLR

503 : (1990) 1 JT 293 : (1990) 1 SCALE 247 : (1990) 1 SCC 306 Supp : (1990) SCC 306 Supp : (1990) 1 UJ 355 with regard to parity in employment & pay, has held that "teachers of Government aided schools are entitled to scales revised at par with the Government School teachers and also additional Dearness Allowance on the basis of revised pay scales and arrears of such DA as found payable".

21. Though fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision is very limited. But when such administrative decision pertaining to pay fixation and pay parity is found to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material & relevant factors, the Court in exercising its power under Article 226 can always interfere with the same.

22. After hearing the parties and considering the above, the State respondents herein are directed to consider to extend the benefit of Grade Pay of Rs. 4,400/- to the petitioners with effect from 04.03.2008, when the Mizoram Polytechnic Technical Supporting Staff Association, Lunglei submitted first representation on behalf of the petitioners for up-gradation of their pay scale, which was forwarded by the Principal, Mizoram Polytechnic, Lunglei to the Director of Higher & Technical Education, Mizoram, Aizawl vide No. A-27011/1/04/MPL-139 dated 05.03.2008 (Annexure-6 to the petition) and shall pass an appropriate order in that connection. The said exercise shall be carried out by the respondent Nos. 1, 2 and 4 within a period of 3 (three) months from the date of receipt of certified copy of this order to be submitted by the petitioners. With the aforesaid observation and direction this petition stands disposed of. No order as to cost.